

PARLIAMENT OF VICTORIA

**PARLIAMENTARY DEBATES
(HANSARD)**

LEGISLATIVE COUNCIL

FIFTY-EIGHTH PARLIAMENT

FIRST SESSION

Thursday, 12 November 2015

(Extract from book 16)

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The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC, QC

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Minister for Finance and Minister for Multicultural Affairs	The Hon. R. D. Scott, MP
Minister for Planning	The Hon. R. W. Wynne, MP
Cabinet Secretary	Ms M. Kairouz, MP

Legislative Council committees

Privileges Committee — Mr Drum, Ms Hartland, Mr Herbert, Ms Mikakos, Ms Pulford, Mr Purcell, Mr Rich-Phillips and Ms Wooldridge.

Procedure Committee — The President, Dr Carling-Jenkins, Mr Davis, Mr Jennings, Ms Pennicuik, Ms Pulford, Ms Tierney and Ms Wooldridge.

Legislative Council standing committees

Standing Committee on the Economy and Infrastructure — Mr Eideh, Mr Elasmarr, Mr Finn, Ms Hartland, Mr Morris, Mr Ondarchie and Ms Tierney.

Standing Committee on the Environment and Planning — Ms Bath, #Mr Bourman, Mr Dalla-Riva, Mr Davis, Ms Dunn, #Ms Hartland, Mr Leane, #Mr Purcell, #Mr Ramsay, Ms Shing, Mr Somyurek and Mr Young.

Standing Committee on Legal and Social Issues — Ms Fitzherbert, Mr Melhem, Mr Mulino, Mr O'Donohue, Ms Patten, Mrs Peulich, #Mr Rich-Phillips, Ms Springle and Ms Symes.

participating members

Legislative Council select committees

Port of Melbourne Select Committee — Mr Barber, Mr Drum, Mr Mulino, Mr Ondarchie, Mr Purcell, Mr Rich-Phillips, Ms Shing and Ms Tierney.

Joint committees

Accountability and Oversight Committee — (*Council*): Ms Bath, Mr Purcell and Ms Symes. (*Assembly*): Mr Angus, Mr Gidley, Mr Staikos and Ms Thomson.

Dispute Resolution Committee — (*Council*): Mr Bourman, Mr Dalidakis, Ms Dunn, Mr Jennings and Ms Wooldridge. (*Assembly*): Ms Allan, Mr Clark, Mr Merlino, Mr M. O'Brien, Mr Pakula, Ms Richardson and Mr Walsh

Economic, Education, Jobs and Skills Committee — (*Council*): Mr Bourman, Mr Elasmarr and Mr Melhem. (*Assembly*): Mr Crisp, Mrs Fyffe, Mr Nardella and Ms Ryall.

Electoral Matters Committee — (*Council*): Ms Patten and Mr Somyurek. (*Assembly*): Ms Asher, Ms Blandthorn, Mr Dixon, Mr Northe and Ms Spence.

Environment, Natural Resources and Regional Development Committee — (*Council*): Mr Ramsay and Mr Young. (*Assembly*): Ms Halfpenny, Mr McCurdy, Mr Richardson, Mr Tilley and Ms Ward.

Family and Community Development Committee — (*Council*): Mr Finn. (*Assembly*): Ms Couzens, Mr Edbrooke, Ms Edwards, Ms Kealy, Ms McLeish and Ms Sheed.

House Committee — (*Council*): The President (*ex officio*), Mr Eideh, Ms Hartland, Ms Lovell, Mr Mulino and Mr Young. (*Assembly*): The Speaker (*ex officio*), Mr J. Bull, Mr Crisp, Mrs Fyffe, Mr Staikos, Ms Suleyman and Mr Thompson.

Independent Broad-based Anti-corruption Commission Committee — (*Council*): Mr Ramsay and Ms Symes. (*Assembly*): Mr Hibbins, Mr D. O'Brien, Mr Richardson, Ms Thomson and Mr Wells.

Law Reform, Road and Community Safety Committee — (*Council*): Mr Eideh and Ms Patten. (*Assembly*): Mr Dixon, Mr Howard, Ms Suleyman, Mr Thompson and Mr Tilley.

Public Accounts and Estimates Committee — (*Council*): Dr Carling-Jenkins, Ms Pennicuik and Ms Shing. (*Assembly*): Mr Dimopoulos, Mr Morris, Mr D. O'Brien, Mr Pearson, Mr T. Smith and Ms Ward.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr Dalla-Riva. (*Assembly*): Mr J. Bull, Ms Blandthorn, Mr Dimopoulos, Ms Kealy, Ms Kilkenny and Mr Pesutto.

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Mr P. Lochert

**MEMBERS OF THE LEGISLATIVE COUNCIL
FIFTY-EIGHTH PARLIAMENT — FIRST SESSION**

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Deputy President: Ms G. TIERNEY

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Deputy Leader of the Government:
The Hon. J. L. PULFORD

Leader of the Opposition:
The Hon. M. WOOLDRIDGE

Deputy Leader of the Opposition:
The Hon. G. K. RICH-PHILLIPS

Leader of The Nationals:
The Hon. D. K. DRUM

Leader of the Greens:
Mr G. BARBER

Member	Region	Party	Member	Region	Party
Atkinson, Mr Bruce Norman	Eastern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Morris, Mr Joshua	Western Victoria	LP
Bath, Ms Melina ²	Eastern Victoria	Nats	Mulino, Mr Daniel	Eastern Victoria	ALP
Bourman, Mr Jeffrey	Eastern Victoria	SFP	O'Brien, Mr Daniel David ¹	Eastern Victoria	Nats
Carling-Jenkins, Dr Rachel	Western Metropolitan	DLP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Dalidakis, Mr Philip	Southern Metropolitan	ALP	Patten, Ms Fiona	Northern Metropolitan	ASP
Dalla-Riva, Mr Richard Alex Gordon	Eastern Metropolitan	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Davis, Mr David McLean	Southern Metropolitan	LP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Drum, Mr Damian Kevin	Northern Victoria	Nats	Pulford, Ms Jaala Lee	Western Victoria	ALP
Dunn, Ms Samantha	Eastern Metropolitan	Greens	Purcell, Mr James	Western Victoria	V1LJ
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Ramsay, Mr Simon	Western Victoria	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Shing, Ms Harriet	Eastern Victoria	ALP
Fitzherbert, Ms Margaret	Southern Metropolitan	LP	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Springle, Ms Nina	South Eastern Metropolitan	Greens
Herbert, Mr Steven Ralph	Northern Victoria	ALP	Symes, Ms Jaelyn	Northern Victoria	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Wooldridge, Ms Mary Louise Newling	Eastern Metropolitan	LP
Lovell, Ms Wendy Ann	Northern Victoria	LP	Young, Mr Daniel	Northern Victoria	SFP
Melhem, Mr Cesar	Western Metropolitan	ALP			

¹ Resigned 25 February 2015

² Appointed 15 April 2015

PARTY ABBREVIATIONS

ALP — Labor Party; ASP — Australian Sex Party;
DLP — Democratic Labour Party; Greens — Australian Greens;
LP — Liberal Party; Nats — The Nationals;
SFP — Shooters and Fishers Party; V1LJ — Vote 1 Local Jobs

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Government contracts4401

Thursday, 12 November 2015

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

PETITIONS

Following petition presented to house:

Police numbers

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council that Premier Daniel Andrews has failed to commit to providing additional police officers as Victoria grows.

The petitioners therefore respectfully request that the Legislative Council of Victoria calls on Premier Daniel Andrews to commit to providing additional police for our community as a matter of priority.

By Mr O'DONOHUE (Eastern Victoria) (10 signatures).

Laid on table.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Budget estimates 2015–16

Ms PENNICUIK (Southern Metropolitan) presented report, including appendices, extract of proceedings and minority report, together with transcripts of evidence.

Laid on table.

Ordered that report be published.

Ms PENNICUIK (Southern Metropolitan) — I move:

That the Council take note of the report.

The report on the 2015–16 budget estimates that I am tabling today on behalf of the Public Accounts and Estimates Committee is a very extensive and comprehensive report on the budget estimates process. I have presented one of these reports in the Parliament before, and I draw the attention of members to the fact that there is a lot of information in this report that can inform them on the budget estimates process for the finances of the state of Victoria, in particular the areas for which they may have responsibility or a particular interest in.

I pay tribute to my fellow members of the committee in this chamber, Ms Shing and Dr Carling-Jenkins, for the hard work they have done. I pay tribute also to the chair, Danny Pearson, the deputy chair, David Morris, and the other committee members, Steve Dimopoulos, Danny O'Brien, Tim Smith and Vicki Ward, who are the members for Essendon, Mornington, Oakleigh, Gippsland South, Kew and Eltham in the other chamber. I thank in particular all the committee staff: Ms Valerie Cheong, Dr Christopher Gribbin, Mr Alejandro Navarrete, Mr Bill Stent, Mr Simon Dinsbergs, Ms Melanie Hondros — who works really hard for our committee — and Ms Natalie-Mai Holmes.

I commend this report to the Parliament. It will keep people up to date with what is actually going on with the finances of Victoria. There is a wealth of information in this report, and I recommend that everyone look at it.

Motion agreed to.

ENVIRONMENT, NATURAL RESOURCES AND REGIONAL DEVELOPMENT COMMITTEE

Country Fire Authority Fiskville training college

Mr RAMSAY (Western Victoria) presented special report on the production of documents, including appendix.

Laid on table.

Ordered to be published.

Mr RAMSAY (Western Victoria) — I move:

That the Council take note of the report.

I would like to make some remarks in relation to why this special report has been tabled in the Parliament. It is highly unusual, if not unprecedented, for a joint committee of the Victorian Parliament to report to the house a lack of cooperation by government agencies. Joint committees, which have been in operation for many decades, have traditionally been chaired and dominated by government party members, so the tabling of a unanimous report of this kind is significant. While Council standing and select committees have from time to time reaffirmed the rights and powers of committees to require the production of evidence from government agencies, this report is a report to both houses by a joint committee which reaffirms those rights and powers.

The actions of the committee in issuing summonses for evidence from government and then reporting to both houses the obstruction of the inquiry caused by non-disclosure by government is the most significant step that a committee can take in affirming that parliamentary privilege overrides government claims of public interest immunity or any other attempts by government to withhold information from a committee.

While obstruction of a committee inquiry may constitute a contempt of Parliament, a committee cannot formally declare someone in contempt of Parliament and sanction them accordingly. Only a house can formally declare someone in contempt of Parliament and sanction them. For this reason, the committee's report to both houses must be viewed as the most significant step that the committee can take, and the importance of the report should be understood in that context.

I would like to make a couple of remarks in the time I have available in relation to the reasons why this report has been tabled in the Parliament. Every member of the Environment, Natural Resources and Regional Development Committee conducting the inquiry into Fiskville is committed to seeking out the truth. The government referred this important matter to this committee because, in the words of the Premier of Victoria, the Honourable Daniel Andrews, 'We need a full and frank inquiry to answer every question, honour every worker and reassure every family'. These remarks were quoted by the chair of the committee, Bronwyn Halfpenny, the member for Thomastown in the other place, in her foreword to the report.

Ms Halfpenny goes on to say:

... I highlighted the evidence we have received about many people having difficulties accessing information from the CFA. I emphasised that the committee believes people have the right to access information and that we are committed to finding a way to provide both answers and justice. We are seeking to unravel the history and to find out the truth.

The community has confidence in the CFA and it could be assumed that the CFA would have an interest in knowing what happened at Fiskville to inform how it moves into the future. A history commissioned by the CFA demonstrates its awareness of the value in understanding the past. This point is made well by the Governor of Victoria in his foreword to the CFA history:

History is important. If you do not know where you have come from, you do not know where you are going.

The CFA administration has issued many assurances to the committee that it wants to cooperate with the Fiskville inquiry. In spite of this the committee had to issue summonses in order to access critical information. We are now forced to table this report to Parliament due to documents not being produced under the terms of the summons relating to CFA board papers.

This special report details the extensive withholding of information that is crucial to the committee's understanding about what happened at Fiskville from 1970 to the present.

These documents and information being withheld go to the very heart of the terms of reference we are required by Parliament to investigate. For example, we know that requests for information regarding chemicals used at Fiskville were made to the board in 1987. Yet as the report demonstrates, the CFA has not provided any of the minutes from the 22 meetings held that year.

The committee has substantial powers and privileges as a joint house committee of the Parliament of Victoria. These powers and privileges are necessary to ensure transparency and accountability in a democratic society.

Obviously the committee is very disappointed that it has had to table this special report today to seek some guidance and some support from this Parliament.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Auditor-General's Report on Public Hospitals: 2014–15 Audit Snapshot, November 2015 (*Ordered to be published*).

Community Visitors, Report 2014–15 (*Ordered to be published*).

Coronial Council of Victoria, Report 2014–15.

Crimes (Assumed Identities) Act 2004 — Report pursuant to section 31 by Victoria Police for 2014–15.

Crimes (Controlled Operations) Act 2004 — Report pursuant to section 39 by the Victorian Inspectorate for 2014–15.

Project Development and Construction Management Act 1994 — Nomination order and application order, 10 November 2015 and a statement of reasons for making a nomination order, 29 October 2015.

Public Transport Development Authority — Minister's report of failure to submit 2014–15 report to the Minister within the prescribed period and the reasons therefor and the Report, 2014–15.

Shrine of Remembrance Trustees, Report 2014–15.

Subordinate Legislation Act 1994 — Documents under section 15 in respect of Statutory Rules Nos. 114, 116 and 117.

Surveillance Devices Act 1999 — Report pursuant to section 30L by Victoria Police for 2014–15.

Terrorism (Community Protection) Act 2003 —

Report pursuant to sections 13, 13ZR and 21M by Victoria Police for 2014–15.

Report pursuant to section 13ZR by the Independent Broad-based Anti-corruption Commission for 2014–15.

Tourism Victoria, Report 2014–15.

Wildlife Act 1975 — Report pursuant to section 74P by the Victorian Inspectorate for 2014–15.

BUSINESS OF THE HOUSE

Adjournment

Mr JENNINGS (Special Minister of State) — I move:

That the Council, at its rising, adjourn until 2.00 p.m., Tuesday, 24 November 2015.

Motion agreed to.

MEMBERS STATEMENTS

Whittlesea Show

Ms LOVELL (Northern Victoria) — Last Sunday I had the great pleasure of attending the Whittlesea Show, which is always a wonderful event. I would like to congratulate Jim Clements. Jim, who is already a life member of the Whittlesea Agricultural Society, was awarded an additional long service award for his 70 years continuous and active involvement in the Whittlesea Agricultural Society and show. I also congratulate Cloverly Pastoral Pty Ltd, which was awarded the City of Whittlesea perpetual trophy.

OUTintheOPEN festival

Ms LOVELL — Last Saturday, together with the deputy mayor of the City of Greater Shepparton, Fern Summer, I had the pleasure of speaking at the opening of the OUTintheOPEN festival, a festival which was developed to address some of the inequalities faced by our local LGBTI and allied communities with the intention of building a more inclusive community in Greater Shepparton. Now in its fourth year, the festival has been a huge success and is well supported by the Shepparton community. I congratulate Kildonan UnitingCare, Georgie Poort, Damien Stevens and the organising committee on a wonderful weekend.

Cheeky Grog Co.

Ms LOVELL — On Saturday, 7 November, together with the federal member for Murray, Dr Sharman Stone, I attended the grand opening of the Cheeky Grog Co. Pty Ltd cidery and cider garden in Bunbartha. The Cheeky Grog company was established in 2004 by Mark and Jenny Morey, and the cider is produced at a cidery on their orchard from fruit grown on the property. A new addition at Cheeky Grog is a wonderful cider garden with very comfortable tables

and chairs made from wooden fruit crates. I wish Mark and Jenny all the best with their new venture.

Melbourne Period project

Ms PATTEN (Northern Metropolitan) — Recently I had the privilege of meeting two inspirational women who are the ingenious minds behind the Melbourne Period project, an incredible charity that assists women and transgender men experiencing homelessness in Melbourne and surrounding areas by providing them with menstruation products, help and support.

Natalie Cruz and Donna Lee Stolzenberg launched the Melbourne Period project only four months ago, and they are already supplying over 1300 packs via five distribution hubs — in Geelong, Echuca, Gippsland, Bendigo and Ballarat. What differentiates the Melbourne Period project from other organisations which simply supply menstruation products to their female clients are the volunteer-assembled packs. Each pack responds to a different need for use. As the women in chamber will understand, people need different products at different times, and the products are individually named to assist people to receive them without having to ask for the specific product they need.

The 2011 census found that approximately 9000 women were identified as being homeless in Victoria. I commend this fantastic project and the wonderful women who are managing it.

Ivanhoe Bowls Club

Mr ELASMAR (Northern Metropolitan) — On Friday, 30 October, I was invited by the Banyule City Council along with my colleague Anthony Carbines, the member for Ivanhoe in the Assembly, to the opening of the refurbished synthetic bowling green at the Ivanhoe Bowls Club. The Minister for Sport officiated at the ceremony. The bowling green looks magnificent and will give many years of pleasure to bowling enthusiasts. I thank Banyule City Council's mayor and council officers and the Andrews Labor government for organising this very special and useful addition to Banyule's sporting facilities.

Taste of India

Mr ELASMAR — On another matter, on Friday, 30 October, I had the pleasure of representing the Minister for Multicultural Affairs at the Taste of India, which was held as part of the Darebin Music Feast. The event was co-hosted by the Taste of India president,

Mr Basil Balendran, its treasurer, Mr Kasi Nathan Basil, and the Bharatalaya Dance Academy.

The evening began with a lamp-lighting ceremony, which was absolutely beautiful. There were musicians, and there was colourful national dancing. The night lived up to its reputation for fantastic food and entertainment. A truly multicultural gathering of Australian-Indian people was in attendance, and a great evening was enjoyed by everyone, myself included.

Victims of Crime Awareness Week

Mr O'DONOHUE (Eastern Victoria) — I wish to make this statement in strong support of victims of crime and to acknowledge the tremendous work of victims support groups in Victoria this week, Victims of Crime Awareness Week. Last Sunday, at the commencement of Victims of Crime Awareness Week, I was kindly invited to and attended the victims of crime awareness service held at Sacred Heart Church in St Kilda, along with victims, families, friends, support workers and others.

While it is always difficult for victims to relive and speak about their experiences and grief, there is also often a cathartic element in their being able to express and share their feelings in a supportive environment. First launched in 2006 by the Victoria Homicide Victims Support Group, Victims of Crime Awareness Week is an important platform to help raise public awareness of the issues faced by those who have been directly and indirectly impacted upon by crime and to highlight the support services and assistance provided by community-based support organisations and government agencies to help victims and their families.

It should be acknowledged that support for victims of crime has significantly improved over the past decade. However, I was particularly proud to be a minister in the former government, which last year established the victims of crime commissioner in recognition of the fact that, despite the various support service improvements, victims of crime still have a genuine need for a greater champion and advocate across government to ensure that their views are properly represented and that the services provided, particularly in the justice system, are focused, not duplicated but adequately funded and achieve the outcomes intended.

During Victims of Crime Awareness Week I implore all in this chamber to always recognise and support the needs of victims of crime, their families and their supporters in whatever way they can.

Bus services

Mr BARBER (Northern Metropolitan) — There are a couple of problems that the state government is grappling with at the moment which ought to be self-evident to all members in this place. One is the rapid decline of the automobile manufacturing industry in Victoria; the other is the extraordinary amount of road congestion that is occurring. When you look at where that problem is at its greatest, you find it is in the outer suburbs and the new and growing fringes of Melbourne. We have an opportunity to fix both problems in one go by the government rapidly expanding the provision of bus services in outer suburban areas and, in the process, building up a bus manufacturing industry in Victoria.

Members might be interested to know that many of those who supply components, parts and materials to the auto industry also do so to the basic providers of rail, tram and bus manufacturers in Victoria. It is literally the same group of suppliers and in many cases the same group of employees providing to both. It would be amazing to see the state government make it a priority, with its healthy budget position that it frequently boasts about, to develop bus services in the outer suburbs in time for next May's budget and, in the process, create a new manufacturing industry in Melbourne.

TAFE funding

Ms SYMES (Northern Victoria) — My members statement refers to my visit last week to my electorate, particularly the Goulburn Valley and the north-east, during which I was able to announce \$2 million funding for the establishment of skills and jobs centres for GOTAFE at the Shepparton and Wangaratta campuses and also for Wodonga TAFE.

The Andrews Labor government is restoring, rebuilding and reinvigorating the entire TAFE sector and will ensure that young people in regional Victoria have the same opportunities for success as city kids. These new hubs will be the first point of call in the north-east and Goulburn Valley areas for students looking to start training, workers needing to reskill, unemployed workers needing support for retraining and work placements, as well as for employers.

The centres will help link local job seekers and employers to ensure that students are engaged in quality training that will lead to a job at the end of their course. It is imperative that training be linked to employment outcomes, and an effectively functioning system that

collaborates with employers, trainees and training providers can, and will, deliver this.

There are so many emerging opportunities and industries across northern Victoria, be it agriculture, tourism, hospitality or logistics, just to name a few. By creating an environment that serves the needs of those looking for staff and those looking for work, by providing a mechanism for training that can link the two and by working together we will progress a long way down the path towards reducing unemployment, particularly amongst our young people.

Wodonga TAFE and the Wangaratta and Shepparton campuses of GOTAFE expect to have skill centres open early next year. I look forward to visiting them in the new year and to hearing the success stories that I am sure will emerge.

East–west link

Mr DAVIS (Southern Metropolitan) — My matter today is the east–west link and the extraordinary figures that have come to light in recent days. We now know that more than \$850 million has been squandered on the non-provision of a project — a massive project. We saw Daniel Andrews before the election say that the contract was not worth the paper it was written on and that the Labor Party would not pay 1 cent — there would not be 1 cent required in compensation.

Mr Dalidakis interjected.

The PRESIDENT — Order! Mr Davis actually did have the whole floor. I do not think he needs to shout; it is not a football match. But I emphasise to Mr Dalidakis particularly that it is not a football match. In 90-second statements I am of the view, as I have indicated to the house before, that members ought to be able to complete their statements basically in silence, because it is a very short time and they need to get their entire matter across. That is very difficult to do if there is a barrage of interjections.

Ms Lovell — From the top?

The PRESIDENT — Order! Mr Davis has not got it written down — Mr Davis is winging it. I may be a little bit lenient.

Mr DAVIS — President, as you will understand, and as the whole chamber will understand, the east–west link was a very important road, but the government made the decision to tear up a lawful and legal contract, claiming that there would not be 1 cent required in compensation. But now we know that \$850 million and more, as it

climbs higher and higher, has been squandered on the non-provision of infrastructure.

This is a first statewide. We have seen Labor governments waste money on infrastructure before, but at least we got something. On this occasion we have got nothing, but we know that Tim Pallas and Daniel Andrews tried to slip this information out. They tried to slip this information out over the last few days, but no-one is buying it. Everyone knows that this money has been squandered; everyone knows that this is a waste of taxpayers money and that there is an enormous amount of money being wasted by this non-provision of the contract.

It is very clear that Daniel Andrews has broken the promise he made where he said that not 1 cent would be spent on compensation. We know that more is going to be wasted as time goes forward, given the debt swap arrangements and given the arrangements for a financial facility that are going to bite in over the future period. We are paying more interest than we should be, and it is very clear that Daniel Andrews and his government are now taking the state into deep debt, squandering money on the non-provision of infrastructure.

Phillip Island

Mr BOURMAN (Eastern Victoria) — On Monday, 26 October, I visited the Phillip Island visitor centre to partake in a tourism strategy session conducted by the Bass Coast Shire Council, which is looking out to 2035. The session was open to anyone who was interested to come and have their say. Numerous members of the local community attended whilst I was there, and they were fully engaged by the shire staff and councillors who attended. The attraction of Phillip Island is its idyllic nature, and it is clear that whilst growth is to be expected, the council is determined to retain the existing feel of the island so that its attraction will not be lost in this coming expansion, and for this I congratulate the Bass Coast Shire Council.

I urge all members of Parliament to consider spending more time on Phillip Island to enjoy what is on offer. Attractions range from family-friendly parks to the Westernport Field and Game Association, fishing, walking and generally just relaxing amongst that idyllic setting. I also encourage everyone to go fishing. Last Sunday I went out with T-Cat Charters, which is based in Rhyll on Phillip Island. As well as discussing tourism on the island in general and the intricacies of running fishing charters, I managed to catch a small ray, a silver trevally and a reasonable snapper. The fishing must be pretty spectacular if I managed to catch something! It

was also Dave's first day as the new owner of the charter company, so having a member of Parliament along must have made it interesting for him.

Remembrance Day

Mr MELHEM (Western Metropolitan) — I rise to speak on Remembrance Day, which I did not have the opportunity to do yesterday, to honour the memory of every Australian who served, and in particular the men and women of Melbourne's west who lost their lives in the First World War. Yesterday, along with my colleagues from the other place Marlene Kairouz, the member for Kororoit, and Natalie Hutchins, the Minister for Local Government, I attended the Remembrance Day service conducted by the Caroline Springs RSL sub-branch. It was good to see so many members of the community, especially the young ones, coming out and participating in the event.

The workers of Melbourne's western suburbs armed every Australian soldier who fought for their country a century ago. Bullets, guns and artillery fired on foreign soils came from factories in Footscray. Ships came from our shipyards, from places like Williamstown. The factories of western Melbourne were the only sites of weapons and munitions manufacturing anywhere in Australia.

In the suburb of Sunshine alone, then the Shire of Braybrook, an estimated 235 locals served, which was large for a municipality that numbered only 2373 in 1911. Further east, in Footscray, an estimated 1400 locals served, and as local historian Associate Professor John Lack points out, it is possible that a full third of those are still missing.

We remember the men and women who answered the call of duty, whether or not the war itself was just. Let's we forget.

Grand Final Friday

Mrs PEULICH (South Eastern Metropolitan) — I rise to convey the thoughts of families and businesses in Melbourne's south-east regarding another Labor white elephant. It has been a while since we have seen white elephants here in Spring Street. You have to go back to Labor's desalination plant and north-south pipeline. But this Labor government — following the finest traditions of the Cain and Kirner Labor governments that trashed Victoria — is pumping out herds of the mystical beasts, a menagerie of white elephants, each with Dumbo-style big floppy ears.

The government has spent millions not to build a road. It is a government whose first budget is the first deficit

budget in 20 years. It spent \$20 million to change the Victorian logo to look like the old State Bank logo. There is a \$100 million job plan that created 164 jobs. Its leader proposed to send water up the north-south pipeline, but a previous Labor government designed it not to do that.

There are many other such examples, and now there is the grand final eve public holiday. Estimates suggest it cost the average Victorian business \$14 000 — a quarter of an annual wage. One in four businesses could have employed someone for a year. Melbourne was closed for an influx of tourists from Western Australia. Thousands of casuals lost a day's pay — ironically, at a time when Labor is being investigated for allegedly misusing casual staff.

I have received objections from businesses and individuals in Melbourne's south-east and from the wider metropolitan Melbourne area. The grand final eve holiday is another Labor white elephant — a job-killing economic disaster to generate short-term voter support and to sacrifice the long-term economic wellbeing of the state of Victoria and Victorian businesses and the best interests of the Victorian community.

Werribee Football Club

Dr CARLING-JENKINS (Western Metropolitan) — Back in May I advocated for the redevelopment of the Werribee Football Club's home ground facilities. I asked the Minister for Sport to provide a clear commitment on the provision of funding to this project.

I am here today to congratulate the government on its recent commitment of the \$1.5 million needed for the club to finally begin its redevelopment. On 15 October the Minister for Local Government announced funding of \$1.5 million to redevelop the home of Werribee Football Club, allowing the club to build on existing services for young people and those from diverse backgrounds.

Since 2008 the club has been working with Wyndham City Council, the AFL and AFL Victoria to obtain the funding required to appropriately renovate and upgrade its home facilities at Avalon Airport oval. The club had raised \$7 million for the project, but it was approximately \$1.5 million to \$3 million short of its target. It has been a long seven years.

The redevelopment will benefit not only the club but also the wider community by bringing facilities up to modern standards, incorporating community spaces and

enabling the hosting of first division women's and girls' matches and finals. No longer will female umpires have to change in the toilets; they will have dedicated changing rooms. This redevelopment will be a huge boost for the local community. Many groups are waiting to use the redeveloped facilities. I congratulate the CEO, Mark Penaluna, and the dedicated board that supports him and the club. They have kept working towards their fundraising goal and now have a big job in front of them. I wish them luck.

Sunshine College

Mr EIDEH (Western Metropolitan) — I rise to congratulate the Sunshine College maths teaching team on being awarded the prestigious Lindsay Thompson Award for Excellence in Education and the Outstanding School Advancement Award for a dramatic improvement in maths results. These awards have been presented to the Sunshine College maths team because of its use of an innovative teaching model. It is an internationally recognised maths teaching approach, and it makes me proud that this revolutionary and much sought after teaching approach has been developed in a government school in my electorate.

A key feature of the program is that maths textbooks are not used. Teachers design work for students on an individual level, according to the student's abilities. It is a great, innovative way to engage students with the maths program being delivered. I am pleased to say that Sunshine College was awarded a total of \$45 000 to put towards professional development and collaboration, in the form of reciprocal teaching and live streaming of its maths classes, so that other schools can see maths classes in action at Sunshine College.

Sunshine College's teachers, principal, business managers and school support staff deserve to be congratulated. I take this opportunity to recognise and thank all teachers across our state for their hard work and commitment to delivering the best education possible for our students.

Women's Health Victoria

Ms FITZHERBERT (Southern Metropolitan) — On 27 October I was pleased to attend the annual general meeting of Women's Health Victoria, which was also attended by Ms Patten. It was a great recognition of the achievements of the organisation over the past year. It was also the launch of the Victorian Women's Health Atlas. This is a really good resource for health planning that provides for each local government area in Victoria the gender differences in various data indicators, including sexual health and

reproduction and mental health. It is intended to provide evidence to assist in the planning of health services at different levels of government. It is a terrific achievement.

Women's Health Victoria developed the atlas with other statewide and regional women's health organisations. It has shared this data to create a resource that can be used by a variety of different organisations and at different levels of government. I want to recognise the work that has been put into this terrific resource. I also congratulate Women's Health Victoria on its other achievements during 2015. I acknowledge the contribution of Rita Butera, the executive director of Women's Health Victoria, and I congratulate other staff, volunteers and board members.

CHILDREN, YOUTH AND FAMILIES AMENDMENT (ABORIGINAL PRINCIPAL OFFICERS) BILL 2015

Second reading

Debate resumed from 22 October; motion of Mr HERBERT (Minister for Training and Skills).

Ms CROZIER (Southern Metropolitan) — I am pleased to be able to rise to speak this morning on the Children, Youth and Families Amendment (Aboriginal Principal Officers) Bill 2015. In doing so I acknowledge that there has been significant work in this area by successive governments to improve outcomes for Aboriginal children and young people.

The purpose of this bill is to amend the Children, Youth and Families Act 2005 to make further provision regarding the authorisation of principal officers of Aboriginal agencies. The intentions of the bill are to provide practical measures to allow a smoother transition and application of the Aboriginal guardianship program and to allow principal officers to perform the functions and exercise the powers specified in section 18 of the act.

By way of background, because there is a bit of history to section 18, this was included in the 2005 act to empower Aboriginal agencies to have responsibility for the protection and care of Aboriginal children. At the time it was hoped we could mirror what was happening in international jurisdictions that have indigenous communities, such as Canada and New Zealand. It looked at involving the state welfare system in decisions that affect children should they need to come under that system and in doing so support the child within their own culture.

The coalition supports the bill and acknowledges the work done in this area. I especially commend the work of my colleague Ms Wooldridge, who is in the chamber this morning, who as Minister for Community Services undertook significant work in this area. Members will recall the Cummins report, which was instigated by Ms Wooldridge as minister. The 2012 *Report of the Protecting Victoria's Vulnerable Children Inquiry* recommended the amendment of section 18 of the Children, Youth and Families Act 2005. This bill is a continuation of the work undertaken by the coalition government, which acted on that recommendation.

One of the actions undertaken by the previous government was the introduction of the Children, Youth and Families Amendment Bill 2014. It was second read by the then minister on 7 May 2014. In her speech she said:

This bill to amend the Children, Youth and Families Act 2005 is a further example of this government's continued commitment to all vulnerable children and in particular to vulnerable Aboriginal children, as we continue to reform and enhance Victoria's child protection system.

It was one of many initiatives undertaken by the coalition government. I also acknowledge the work of former Aboriginal affairs ministers Mr Bull and Mrs Powell, who undertook initiatives towards closing the gap. They did significant work to improve health and education outcomes, increase employment opportunities and promote greater awareness of drug and alcohol abuse and family violence. These are all areas that are concerns for vulnerable Victorian communities, not just Aboriginal communities, because some of the statistics we see unfortunately have wider implications than just to the Aboriginal community.

In looking at this bill, the previous government commenced the work and worked closely with a number of stakeholders. I acknowledge the input of the various agencies and stakeholders that have done considerable work in that respect, in particular the Victorian Aboriginal Child Care Agency, or VACCA, which has provided significant advice and feedback.

For some years the number of protection applications made to the Children's Court in Victoria has been increasing, and unfortunately there have been significant delays in some of the decisions. There is a range of reasons that may occur and why children require representation. In Victoria Aboriginal children and young people make up 1.6 per cent of the Victorian population but the number of Aboriginal children and young people within state care or subject to protection orders is at around 16 per cent. We would all agree that there is significant overrepresentation of this

demographic. We need to do as much as we can to ensure that future generations do not see these sorts of figures. Hopefully we will see a decrease in the trend in the statistics.

I note from a report tabled this week that there are still significant numbers of Aboriginal children requiring out-of-home care placement. I note the comments of the commissioner for Aboriginal children and young people, Mr Jackomos, who cites various factors leading to the removal of children, such as family violence, parental alcohol and substance abuse, neglect and mental illness. These are complex areas, but there is still an over-representation of Aboriginal children in terms of the number of children in out-of-home care. We need to work collectively on those numbers to see them decrease.

As I said, the former government was working towards that aim of decreasing that trend. It instigated the Cummins inquiry, which recommended the implementation of section 18 of the Children, Youth and Families Act 2005, and it introduced the Children, Youth and Families Amendment Bill 2014. I also note that the former government undertook a number of other initiatives, including Taskforce 1000, which is an ongoing project to improve the outcomes for Aboriginal children and young people and inform future planning by reviewing their circumstances. As part of that project approximately 1000 Aboriginal children in out-of-home care were identified and issues surrounding their representation in the out-of-home care system were looked at. I know a review is being undertaken in relation to Taskforce 1000. I look forward to seeing what the government will continue to do with that initiative because it has been very informative. Again, that was an initiative of the former government.

Another initiative undertaken by the former government was Koori Kids — Growing Strong in Their Culture, which was established in 2013. Again it was looking at out-of-home care. I note that the latest *Strong Families, Thriving Children* strategic plan states that:

In 2013, during the development of a submission (Koori Kids — Growing Strong in Their Culture) for the five-year out-of-home care complementary plan for Aboriginal children it was recognised that there is a need for a strong, collective voice to drive better outcomes for Aboriginal children and young people. Therefore in 2014, an in-principle agreement had been formed by 13 of the Victorian Aboriginal community-controlled organisations ... involved in providing out-of-home care services to form an alliance to advocate for, and positively influence the future of, Aboriginal children and young people in Victoria, thus creating the Victorian Aboriginal Children and Young People's Alliance.

As you can see, over recent years a number of initiatives have been undertaken in relation to improving the circumstances of Aboriginal children and young people.

While I am speaking about those initiatives, I also mention the annual report of the Commission for Children and Young People for 2013–14, which was tabled this week, and the appointment of the first commissioner for children and young people, Mr Bernie Geary. I take this opportunity to acknowledge the work of Mr Geary and his outstanding achievements over some four decades working with Victoria's most vulnerable children. He is a man of great commitment and has always put first the interests of children, especially vulnerable children, in the work he has undertaken. I put on record my appreciation for the significant amount of work he has done on behalf of all Victorians, and most importantly Victoria's vulnerable children. Mr Geary is retiring from that position.

As the then minister, Ms Wooldridge also appointed the very first commissioner for Aboriginal children and young people, Mr Andrew Jackomos. It is an important position that looks at the representation of this important group of young Victorians. As I stated, much has been done by consecutive governments to improve the lives of our vulnerable children. We need to continue to undertake that commitment. It requires ongoing diligence and commitment in this space.

To return to this bill, as I said, it mirrors much of what has formerly been put to the house, but a number of new provisions, including the powers and functions of an acting principal officer, have been included in it. These changes will allow that the person who is in that acting principal officer role does not have to be an Aboriginal person, so it gives greater flexibility. These are practical measures that will enable outcomes and decisions to be made. Under the bill, the principal officer of an Aboriginal agency will be able to delegate powers to a suitable person within that Aboriginal agency.

Other matters addressed by the bill include the disclosure of information by the secretary to the principal officer of an Aboriginal agency. Under section 18, the secretary may disclose to the principal officer of an Aboriginal agency any information that is otherwise prohibited from being disclosed. That allows for information to be shared in cases where doing so would have previously been prohibited.

Another important element of the bill concerns the use of information disclosed to an Aboriginal agency and

principal officer. That gives an Aboriginal agency the ability to make an informed decision as to whether or not to agree to an authorisation, and that includes any information from the secretary to the Aboriginal agency.

These important changes to the bill will enable the agencies to work effectively and empower them to make those decisions, and we can have a review by the Victorian Civil and Administrative Tribunal to enable that to occur should it be deemed to be necessary. These measures are very much in line with the previous bill. They will provide for improved outcomes for Aboriginal children who are in out-of-home care or leaving care and returning to their families.

Whilst I am speaking about this, I want to acknowledge the work of VACCA. It has been working closely with the department. Under the previous government it commenced a pilot project to look at the practical measures by which section 18 would actually work. I would like to note the comments made by VACCA, which has been heavily involved in this trial, which has been completed. It noted that the project:

... has shown to have improved outcomes for Aboriginal children and facilitated Aboriginal children leaving care and returning to their families.

This trial was commenced in October 2013. It was to conclude earlier this year — I note that it was extended to June. I am very keen to understand the evaluation process. I have a number of questions in relation to the evaluation of this project, and I hope the minister can answer these in her summing up of the bill rather than during the committee stage. It is important that we understand how this project was undertaken and what will happen. It is also my understanding that a further trial will be conducted in a regional area.

The questions I have include: will the evaluation of the first project have an impact on that second trial? Has the evaluation been concluded, and are those findings as yet known? If not, when will it be undertaken and when will it be expected to conclude? Will the government commence investing in a full rollout, as is the intent of section 18, and commit to funding the program once the evaluation process has been undertaken? I note that is of concern to VACCA and so it would want to understand whether and when that rollout will occur. Has the government undertaken preliminary costings on how much a full rollout will cost? If it is not going to be a full rollout, if it is going to be a partial rollout, has it also costed that process?

As I said at the outset, the coalition will be supporting this bill. There are important elements to it that were

commenced under the former government. I am pleased that the current government has brought the legislation into the house and that we can conclude this issue and get on with improving the outcomes for some of our most vulnerable members of the Victorian community in the Aboriginal community. I look forward to hearing from the minister in response to some of the issues I have raised in my contribution. I commend the bill to the house.

Ms SPRINGLE (South Eastern Metropolitan) — I too would like to confirm that the Greens will be supporting the Children, Youth and Families Amendment (Aboriginal Principal Officers) Bill 2015. As we have heard, this bill at long last activates section 18 of the Children, Youth and Families Act 2005 to allow Aboriginal organisations to take over much of the role of the Department of Health and Human Services in relation to particular Aboriginal children on protection orders.

The Greens are very strong advocates of self-determination. It is one of our core pillars and points to the values that the Greens party is founded on. Therefore we are strong advocates for the right of self-determination for Aboriginal and Torres Strait Islander people in Australia. It was the intention of the drafters of section 18 a decade ago to afford Aboriginal communities in Victoria some self-determination with respect to vulnerable children in their own communities. Of course the movement for self-determination hardly ends with this bill, but at least it is a step in the right direction. It is perhaps instructive to go back to the second-reading speech of 6 October 2005 of the then Minister for Community Services, Ms Garbutt, which says:

... a longer term reform is to transfer the responsibility for making decisions about Aboriginal children to Aboriginal communities. The Children, Youth and Families Bill enables the Secretary of the Department of Human Services —

as it was then —

to assign responsibility for managing a court order to the head of an approved Aboriginal organisation.

The government will work with Aboriginal organisations to build their capacity to assume greater case planning and case management responsibilities for Aboriginal children involved in child protection.

It is really difficult to believe that it has been 10 years since this provision was first enacted and that it has remained essentially dormant on the books for all this time. Indeed we might ask why it has taken a decade to bring this enabling legislation to Parliament. Why did the enabling legislation not happen for the remaining five years of the Bracks and Brumby Labor

governments or the subsequent four years of the Baillieu and Napthine Liberal governments?

The Victorian Aboriginal Child Care Agency (VACCA), which is the agency that can be expected to take on many of the section 18 authorisations, has indicated that it is supportive of the current bill because it is a good bill and that we should vote accordingly. It is a good bill because we know that the government is failing children in out-of-home care in Victoria, and we know that the government is especially failing Aboriginal children. Koori children are heavily over-represented in the state's child protection system — so over-represented in fact that Victoria now has a higher number of Aboriginal children in out-of-home care than at any other time in history, including the period of the stolen generation.

This is only one of the terrible legacies of the 180 years of invasion, colonisation, dispossession and institutional racism. According to Australian Institute of Health and Welfare figures, Aboriginal children are nearly 10 times more likely than non-Aboriginal children to be subject to substantiated child protection reports — in other words, whereas only 7.3 in every 1000 children across Victoria are named in child protection reports that are later substantiated, the figure rises to 68.6 for every 1000 Aboriginal children.

Even more shocking is the fact that Aboriginal children are more than 15 times more likely to be under care and protection orders and to be in out-of-home care. This state now has a responsibility to do whatever it can to ameliorate the damage caused to Kooris over generations. The Victorian state has a legal responsibility to each and every one of the children it removes from homes. But I will say it again: the Victorian state, through the Victorian government, including the Department of Health and Human Services, is failing Aboriginal children. We see today in the *Australian* that Andrew Jackomos has put out the figure in a very strong manner, and one can only salute his passion in this regard — the rate of Aboriginal children in care over the last 12 months has risen 42 per cent. That figure is in today's *Australian* newspaper.

In 2013 a truly staggering 84 per cent of Aboriginal children — that is, six in every seven — in the child protection system did not have cultural plans, even though cultural plans are mandated in legislation for Aboriginal children on guardianship-to-secretary orders. Also in 2013 a massive 58 per cent of Aboriginal children had never been subject to any attempt by the department to transition them back to their parents or close family members. As if that were not bad enough, 15 in every 100 Aboriginal children in

the child protection system in Victoria in 2013 did not even have a current case plan. Every child who is subject to a Victorian child protection order must, as a very basic minimum, have a case plan prepared within six weeks.

I think everyone would agree that allowing Aboriginal organisations which are controlled by the Aboriginal community to take over the role of the department in relation to Aboriginal children on child protection orders is most definitely a step in the right direction. Aboriginal organisations have been calling for this for a very long time and, as has been said previously, section 18, which was basically intended to authorise the transfer of departmental responsibilities to Aboriginal organisations, has sat on the books for a decade because it needed further enabling legislation.

I do not think this enabling legislation is a panacea. I do not expect that just because an Aboriginal organisation takes over the role of the department in relation to a particular child on a protection order that child will find all of his or her problems solved overnight. The many, many challenges for Aboriginal children in the child protection system will largely remain. But what we can expect is that Aboriginal organisations, which are led and controlled by senior members of the Koori community, and which in very many cases are staffed by very well-respected and well-qualified members of the Koori community, will take more care, more time and have more at stake in terms of the outcomes for the children in their care.

It is for a very good reason that the department and the government generally suffer from a deficit of trust in relation to vulnerable communities, especially vulnerable Aboriginal communities, but section 18 authorisations are not just about wishful thinking. There is some very good evidence to support the contention that Aboriginal organisations like VACCA can improve outcomes for Aboriginal children on protection orders.

As was mentioned by Ms Crozier in her address, VACCA has recently run an 'as if' guardianship trial — as if section 18 were already operational. VACCA says that it has achieved very significant results for many of the Aboriginal children under its care as part of that trial. The guardianship trial commenced in August 2013 and involved 13 children; 10 of those children had been in out-of-home care for more than eight years and 4 of those children had been placed in out-of-home care within six months of their birth. Despite these challenges, 6 of those 13 children were returned home, meaning either to their parents or to a close relative.

We know that the department gets nowhere near a success rate of 46 per cent for children in long-term out-of-home care. This may have something to do with the fact that VACCA did not exercise the functions and powers of the secretary as a secretary would have. This is a very significant point, and it goes to the heart of this bill. If the department expects that VACCA and other Aboriginal organisations that accept section 18 authorisations will discharge their functions and duties in exactly the same way as the department would, then there is ultimately no need for section 18. The very need for section 18 arises because too often the ways the department has exercised its functions and duties in relation to Aboriginal children in Victoria have not worked, and we see this in the statistics.

Too often the department has not taken enough heed of the importance of culture and of the significance of its legislative requirements to acknowledge its importance. It is very important for us to acknowledge that the principle of self-determination has meaning and that its exercising will very likely result in different decisions being made and different ways of achieving outcomes for vulnerable children and young people. In voting for this bill we must acknowledge this and we must accept that, even with the greatest will in the world, government departments will never be as sensitive to the cultural needs of Aboriginal people as Aboriginal organisations can be.

VACCA considers that its practice is especially informed by the findings of recent reports, including the *Bringing Them Home* report into the stolen generations, and as such it sees the safety, protection and long-term wellbeing of Aboriginal children as inexorably linked with their connection to their families, communities, culture and land. As such, VACCA is very likely to place much more emphasis on keeping parents, extended family and the broader community involved in an Aboriginal child's life. And VACCA is far more likely to understand the complex and lengthy history of the involvement that many Victorian Aboriginal families have with the institutions of the state, including courts, police, child protection authorities and schools.

Ultimately VACCA and other Aboriginal organisations will have views about how to acquit their responsibilities under section 18 of the Children, Youth and Families Act and these views will be different from the views of the department. It is vitally important that in practice the department does not allow its ongoing role as the provider of funds and resources, as compliance monitor and as bearing a residual duty of care to undermine decision-making by Aboriginal organisations under section 18 authorisations after they are made.

I understand there were significant disagreements between VACCA and the department during the course of the guardianship trial. Disagreements about case planning decisions were ultimately worked out through a dispute resolution mechanism. I am keen to know whether a similar dispute resolution mechanism will be part of the rollout and implementation process provided for under new section 18 of the act inserted by clause 7 of the bill. The VACCA guardianship trial also went some way to resolving one very significant conceptual issue: the extent to which the department retains control over the case management of children who are subject to such section 18 authorisations.

I understand that this issue was eventually resolved on the basis that the department would accept VACCA's case planning decisions unless the department had a duty-of-care concern. In practice, this meant that VACCA became responsible for what would otherwise be the secretary's functions, which included decisions about changing the arrangements for a child's placement, a child's access plan, a child's medical treatment or a child travelling interstate or overseas; returning a child to his or her parents; recommending a permanent care order to the Children's Court; using criminal history and other checks in decision-making; and making a case plan. I am also keen to know whether new section 18 will operate in a similar way when it is rolled out — whether the department retains the overall duty of care but essentially withdraws from day-to-day involvement in the case planning for a child or young person who is subject to a section 18 authorisation.

The guardianship pilot was initially funded for 12 months and was then extended twice, first in February 2015 and then again at the end of June of the same year. It is a shame that the guardianship pilot has not been extended until this bill comes into effect. By the time that happens VACCA will undoubtedly have lost some of the staff who worked on the guardianship pilot. This means VACCA will have lost some of its capacity. Extending the pilot would have also provided the opportunity to work out how VACCA might work with non-Aboriginal organisations, such as Berry Street, that will presumably retain case management responsibilities in relation to children who may become subject to section 18 authorisations. That is particularly pertinent in relation to some of the regional organisations that are taking on some of this work.

The majority of Aboriginal children in the Victorian child protection system are effectively case managed by non-Aboriginal organisations which have been contracted by the department's child protection division. An opportunity has been lost for both

VACCA and the department to learn more about how the section 18 implementation would work in practice. Nevertheless, the trial provided a valuable evidence base for this legislation. I understand there was a formal evaluation of the VACCA guardianship trial, which Ms Crozier also expressed interest in. It would be wonderful if the minister could alert us to when the report of that evaluation will be made public.

This bill will come into effect on 1 October 2016, and the new statutory child protection environment will be rolled out on 1 March next year, which is when the 2014 permanency changes begin. At least in theory section 18 authorisations may at last mitigate some of the worst effects of those 2014 amendments with respect to Aboriginal children in out-of-home care. It is worth noting that VACCA had grave concerns about how the 2014 amendments and reforms would impact on Aboriginal children in care both at that time and since then.

We should remind ourselves that under the changes that come into effect in March for children on the new permanent care orders, the Children's Court will not be able to order contact between the children and their parents more than four times a year, even when the court considers that more contact than that would be in a particular child's best interests. We should also remind ourselves that from 1 March next year all existing custody-to-secretary orders that have been in place for more than two years will automatically be converted to the new care-by-secretary orders. The new care-by-secretary orders will allow no court-sanctioned contact between children and their parents. This will affect thousands of children.

We should also remind ourselves that from 1 March next year the new family reunification orders will run for an absolute maximum of two years. If reunification between children and their parents has not been achieved during that time, those children will be automatically placed on care-by-secretary orders, which again prohibit the Children's Court from ordering contact between children and their parents, even when the court considers that the contact would be in a particular child's best interests.

In practice, parents will still be allowed to apply to the Children's Court for immediate reunification after children have been in out-of-home care for more than two years, but the court will be prohibited from testing the grounds for reunification by authorising any contact between children and their parents. The point to note here is that those 2014 changes will affect mainly court-ordered contact and reunification efforts. The department can still make decisions about contact and

reunification as part of its ordinary case planning with respect to children on protection orders, and under the current bill Aboriginal organisations that accept section 18 authorisations will therefore be able to continue parent-child contact to work towards the goal of reunification.

VACCA is among the many organisations that registered its opposition to the 2014 amendments. In its formal submission to the recent legal and social issues committee inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015, VACCA expressed significant reservations about the 2014 amendments, saying they were a backward step in reducing the overrepresentation of Aboriginal children in care and that they were not in the best interests of Aboriginal children.

In particular, VACCA opposed the legislation of time frames, which make it too easy to sever the connection between an Aboriginal child and their family, Aboriginal community and country. VACCA pointed out that the 2014 amendments assume a well-functioning, well-resourced and highly skilled and culturally sensitive service system at universal, secondary and tertiary service levels.

VACCA went on to acknowledge that all too often parents are not provided with the services they require to prevent their families from being broken up. In that submission VACCA pointed out that only 51 per cent of Aboriginal children in out-of-home care had been placed in accordance with Aboriginal placement principles. We cannot immediately do anything about the 2014 changes. The minister had the opportunity to reverse them this year but chose not to, despite the overwhelming views of segments of the sector.

This bill offers the prospect that Aboriginal community organisations will replace the department in relation to the case management of Aboriginal children subject to section 18 authorisations. It is extremely likely that Aboriginal organisations will take a more positive and proactive approach to contact and reunification efforts than has the department in recent times. As I said, it may be that this bill in some sense mitigates some of the worst excesses of the 2014 changes that will come into effect in March, at least for Aboriginal children subject to section 18 authorisations from next October.

I turn to resourcing and implementation. The most obvious of the outstanding questions are those around resourcing. We know that adequate resourcing is vital to making any system work. I imagine that no Aboriginal organisation will accept a section 18

authorisation if it is not properly and adequately resourced. I note that the commencement date for this bill is October of next year, as I said, so perhaps the government intends to fund section 18 in next year's budget. I would certainly appreciate some clarity around that from the minister.

I might also take the opportunity to make a further point about resourcing. I understand that under the section 18 guardianship pilot VACCA's case managers were responsible for fewer children than their departmental child protection colleagues, so that effectively the 13 children who took part in the guardianship trial were resourced at levels greater than they would have been had the department retained primary responsibility for their case management. Given the improved outcomes for those children, I would like to think that the minister and the department are intending to extend that level of resourcing to future section 18 authorisations.

The issue of resourcing is a perennial one. Social services are constantly demanding additional money, and that can be tricky, but we know how expensive it is when the child protection system fails a child. Far too many children who have survived their time in out-of-home care, especially time in residential care, subsequently come into contact with the criminal justice system and then spend time in youth justice facilities, which is exorbitantly expensive and represents costs far higher than the costs of resourcing programs such as this adequately. Unfortunately we do not have precise data on these linkages between the child protection and youth justice arms of the department, because sadly the department does not collect this data.

Hopefully that will be rectified in the future, but we know that it costs well over \$200 000 every year to keep a child in juvenile detention, so it is much, much less costly than that, even on a purely financial basis, to properly resource a child in out-of-home care or through a home-based protection order, even with heightened levels of resourcing. This is not to mention the broader social, cultural, economic and intergenerational costs of failing to properly protect children from abuse and neglect in the statutory child protection system.

It is incumbent upon the government, therefore, to provide some assurances with respect to the issue of resourcing and some clarity around that, not just for this chamber and the representatives within it but also, and more importantly, for the sector and for the community. Is the minister intending to provide for section 18 funds in next year's state budget, for instance? I certainly

support the questions Ms Crozier has put forward seeking some clarity around those issues.

With this bill there is a real chance that some and hopefully many Aboriginal children in the state will be properly and adequately cared for in the statutory child protection system. In my discussions with VACCA the hope has been that it will be enabled to reconnect a lot of these children back to country, back to community and back to their people, which VACCA feels has not happened for a long, long time. I think if we get it right, that will be an incredibly positive thing. I do think that as leaders in this place, we have the responsibility and the means to afford that chance to as many children as possible. I commend this bill to the house.

Ms SYMES (Northern Victoria) — I am pleased to be able to contribute to the Children, Youth and Families Amendment (Aboriginal Principal Officers) Bill 2015. We of course have some really important bills before the house today that are focused on the rights of children, fairness and equality, and we look forward to those bills passing the Parliament today. I will focus in particular on the bill before us, and I will not take long, because I know the minister will be summing up and addressing some of the issues that have been raised by previous speakers. This bill is about changes that will deliver a fairer, more robust and more culturally sensitive approach to the fraught area of child protection for Aboriginal children.

I have said it so many times in this place that protecting our most vulnerable is the highest honour and most serious obligation we have as members of Parliament. Today, as we debate the bill before us, it is important we remember this is not just about policy implementation or the passage of legislation. This is about children — some of them damaged, scarred, fearful and scared — and our job here is to do what we can to improve their lot in life, to create for them better circumstances and to open up greater opportunities for them.

This bill is also underpinned by a strong and determined respect for our Indigenous communities and our absolute faith in their ability to self-manage and self-determine the best outcomes for their communities and their kids. I am proud that the Andrews Labor government understands and appreciates both the protection of the vulnerable and the respect for culture, which are the hallmarks of the legislation we are dealing with. What we are doing today is important to Indigenous families and to vulnerable Aboriginal children, and we are getting on with introducing the changes that it has long been known are needed.

Removing a child from their family, no matter the child's background, is a tragic event; removing them from their culture as well is doubly so. We have seen and read far too many stories of the heartbreak and loss that comes of this over recent years not to be acutely aware that we must start doing things differently. The United Nations Convention on the Rights of Children states:

When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

It is critical that we recognise the historical travesties that provide a traumatic and frightening context for many of those impacted by the removal of Aboriginal children from parental care in their communities. This bill seeks to minimise the cultural trauma of removal by making the voice of Aboriginal expertise party to the decision-making process.

It should not be news to anyone in this chamber that Aboriginal children are overrepresented in the child protection system compared to non-Aboriginal children. According to a June 2014 report from the Australian Bureau of Statistics, 1.6 per cent of Victorian children aged 0 to 17 years were Aboriginal, yet for the same period the *Report on Government Services 2015* states that the number of Aboriginal children on care and protection orders in Victoria was 16.3 per cent. In 2014 there was a 22 per cent increase for Aboriginal children aged 0 to 2 in out-of-home care.

These statistics are just a snapshot, but they are also a very sad indictment of the outcomes and health measures, and the wellbeing of Aboriginal people. They are a reflection that the policies we have had in place have not worked. They send a loud and clear message that we have to do better for these kids, and that is the intent of this bill.

Section 18, which was inserted into the original Children, Youth and Families Act 2005, was intended to empower Aboriginal agencies to have responsibility for the care and protection of Aboriginal children subject to protection orders. This bill addresses a number of limitations in the act that impede the implementation of section 18 authorisations, including defining the term 'principal officer' for the purposes of section 18 as a CEO or equivalent position title of an Aboriginal agency allowing the principal officer to delegate specific powers and functions that they have been authorised to perform to a person within the agency. Section 18 will also allow for those powers and functions to be exercised by a person acting as a principal officer who need not be Aboriginal, allowing for the exchange of information between the secretary

and the Aboriginal principal officer at an agency for the purposes of section 18 authorisations.

The *Report of the Protecting Victoria's Vulnerable Children Inquiry*, handed down in February 2012, recommended as a major system reform goal a plan for practical self-determination for the guardianship of Aboriginal children in out-of-home care and culturally competent service delivery. I am immensely proud to be part of a government that is responding to and acting on this and which is fully committed to addressing the overrepresentation of Aboriginal children and young people in the child protection system.

We are doing so much more to give these children opportunities and pathways to success. The *Report on Government Services* showed that around 73.9 per cent of all Aboriginal and Torres Strait Islander children were engaged in preschool nationally, a gap of almost 18 per cent compared to the total population. In March we launched the Koorie Kids Shine at Kindergarten campaign to encourage more Aboriginal families to enrol their children in three-year-old and four-year-old kindergarten.

Other measures that the Andrews Labor government is responsible for include a targeted care package worth \$43 million to move children out of residential care and into home-based care. The priority is to remove primary school-aged children who are living in residential care into home-based care, with a particular focus on the overrepresentation of Aboriginal children. We have established a ministerial advisory committee on out-of-home care to assist the minister in developing policies and strategies to reduce the number of children in out-of-home care, with a particular focus on Aboriginal children and primary school-aged kids. The establishment of an Aboriginal children's forum was touted by the commissioner for Aboriginal children and young people, Andrew Jackomos, as the first major Aboriginal policy initiative in Victoria for many years. Delivering a record child protection budget in 2015–16 was also a great achievement that I would like to congratulate the minister on delivering.

These actions and the proposed amendments in this bill will signal to Aboriginal communities that this is a government that is passionately committed to self-determination and self-management. They show our genuine willingness to progress measures that have the potential to assist with the totally unacceptable overrepresentation of Aboriginal children in the child protection system and to eliminate other impediments to a long, healthy and fulfilled life for all. I commend the bill to the house.

Ms WOOLDRIDGE (Eastern Metropolitan) — I am very pleased to speak today on the Children, Youth and Families Amendment (Aboriginal Principal Officers) Bill 2015. One of the reasons I am pleased to speak on this bill is that it is effectively the same bill I introduced in the other place back in May 2014.

I have to say that it was very disappointing that the antics of the Labor Party in the other place over the course of the last six months of the last Parliament — in fact over a number of years — meant we were unable to have this bill considered due to a series of repeated non-acceptances of the government business program and stalling and obfuscation in relation to the bills that the former government put forward. This was a bill that we were very committed to and, as has been said by a number of members, there had been a significant amount of work done on it. It is pleasing to see that the bill that has returned in relation to section 18 for Aboriginal children and young people is effectively the same one that was introduced by the coalition government.

There is no doubt that there is a significant overrepresentation of Aboriginal children in our child protection system and, as has been mentioned, the commissioner for Aboriginal children and young people has highlighted that the data is actually getting worse in terms of that overrepresentation. A very important part of the work we did was initiating the Cummins inquiry, which produced the *Report of the Protecting Victoria's Vulnerable Children Inquiry*. His committee did significant work in consultation with the child protection sector in relation to children's wellbeing. There were some significant recommendations out of that process — which had not been the case for a number of years — that led to a renewed focus in relation to section 18 and Aboriginal self-determination for children in the child protection system.

When the bill was passed and the Children, Youth and Families Act was established back in 2005, it did include the provision to empower Aboriginal agencies to take on responsibility for the care and protection of Aboriginal children subject to child protection orders. My understanding of what happened is that there was a working group set up in late 2007 which had many of the Aboriginal-controlled community organisations working on it, but significant progress was not made over the course of the subsequent number of years. It was not until we had some clear recommendations from the Cummins inquiry that that focus was actually driven into action.

The Cummins report made it very clear with a recommendation that a plan for practical self-determination for guardianship of Aboriginal children in out-of-home care and culturally competent service delivery be established and determined. We know that policies that support self-management and self-determination go very much to the heart of the healing that is occurring and needs to continue to occur for Aboriginal communities. That is going to increase the capacity to care for children and to make sure that positive, good decisions are made in relation to Aboriginal children and young people.

When the work was accelerated what became very clear was that there were limitations with the wording of section 18 in the original act that prevented the implementation of these authorisations. That at its heart is what this bill is seeking to address. In relation to that, obviously the work that Muriel Bamblett does with the Victorian Aboriginal Child Care Agency (VACCA) is exemplary in terms of working each and every day for positive outcomes for children and young people. She was determined to work with VACCA in a pilot, acknowledging the constraints of the existing Children, Youth and Families Act, to test the ability of an Aboriginal organisation that has the capacity to self-manage to make the determinations and see how they practically worked. That was to inform both the legislation and the rollout in relation to the improvements to section 18 more broadly.

That work started in the second half of 2012, after the Cummins inquiry had been handed down in the first half of that year. The pilot commenced in October 2013 and ran for 12 months. There were further extensions to that work. Over \$300 000 was committed by the coalition government to ensure that VACCA was funded to run the pilot and also to undertake the evaluation and the work that needed to happen in relation to it. I think that raises some of the questions Ms Crozier has outlined in relation to where the evaluation is up to.

My advice had been that the evaluation was meant to be concluded at the end of 2014. It would be understandable that that would continue with the extension of the pilot, but it would be useful, as Ms Crozier has outlined, to know exactly, now the evaluation has been concluded, what those findings were. There has been advice from the government that there will be a rural pilot. What the rural pilot will investigate separate to the work that has already been done extensively by VACCA would be very good to understand, and the process for determining, if it is not determined, which organisation will be undertaking that pilot would also be good to know.

It is important to know when the government intends this to actually be rolled out. The work of the pilot was to get us to a position where this was able to be rolled out more broadly. Is this rural pilot a genuine pilot that does something in addition to the work that VACCA has already done, or is this a delaying tactic by the government, doing pilot after pilot after pilot and not actually funding the rollout of section 18 authorisations to Aboriginal-controlled organisations across the state? It would be useful to have some advice from the minister in relation to not only the pilot but also the broader rollout, and Ms Springle has raised these concerns as well. When will Aboriginal-controlled community organisations be authorised to undertake authorisations under section 18, and what will they need to demonstrate in order to be authorised?

I think it is important to put this in the context of the very significant work that was done not only in the child protection system but also specifically for Aboriginal children and young people by the coalition government. One of my proudest achievements in that period of time was the establishment of the Commission for Children and Young People. This was a policy that had been rejected by Labor governments for 10 years and an election commitment we made. It was something that we moved to establish, and we moved from a child safety commissioner under the direction of the secretary of the department to a truly and genuinely independent officer to look towards recommendations, advice and advocacy on behalf of vulnerable children and young people in this state.

Out of Cummins there was a recommendation for the establishment not only of the commission but also of a commissioner specifically for Aboriginal children and young people, so not only did we establish the independent agency but we took that a step further in appointing Bernie Geary, who has done a fabulous job, as the principal officer and appointing Andrew Jackomos as the commissioner for Aboriginal children and young people. There is no doubt that Andrew is a very strong, dedicated and passionate advocate for Aboriginal children and young people, and the work that he does is very significant. Part of that work is Taskforce 1000. In talking with Andrew we supported his establishment of an examination of every Aboriginal child and young person in the out-of-home care system to genuinely understand the circumstances as to why they are there and what has happened over the course of their journey in the child protection system.

It is fair to say that the work he undertook, which I think still continues to this day, has been very important for understanding genuinely how to improve the

experience of children and young people in Aboriginal communities and particularly those in the child protection system.

It was actually the extensiveness of the work that he did that led to his personal request to me for the former government not to release the out-of-home care plan for Aboriginal children and young people. We had a commitment to two plans: a plan for out-of-home care, which was released; and a subsequent plan for out-of-home care for Aboriginal children and young people. Because of the detail and the extent of the work that was undertaken, the commissioner for Aboriginal children and young people asked us not to release that plan until it could be more comprehensively informed by Taskforce 1000 and the work that it was doing.

There was further advice to the government in October 2014 — obviously just a few weeks shy of the caretaker period — that provided substantially more input in relation to what was needed for Aboriginal children. That work has been important, and it is good to see that the new government has taken a number of those recommendations and carried them forward.

A lot of other work was done. Just to touch on a few things, it included the establishment of not only Cradle to Kinder but also Aboriginal Cradle to Kinder. The Victorian Aboriginal Child Care Agency was one of the organisations funded, and it continues to be funded, to intervene early with children in the Aboriginal community who are vulnerable. Mallee District Aboriginal Services in Mildura was likewise similarly funded under the Cradle to Kinder program. There was \$8 million put into placement prevention for Aboriginal children and young people. I understand the current government has continued to use that money with a focus on Aboriginal children. There was also the human services Aboriginal strategic framework. A significant amount of work was done, just to touch on a few things.

It would be remiss of me not to touch particularly on the work of Muriel Bamblett, who I found — and I think this is one of the challenges for Muriel — to be very much in demand as a thoughtful, innovative, strategic and passionate Aboriginal leader in her work with vulnerable children and young people. Her advice across so many different forums in so many different circumstances on a range of policies and initiatives was always highly valued and very seriously and comprehensively taken into account.

I was very pleased, understanding and acknowledging the linkages and the relationship between children in the child protection system and family violence, for

example, that after the Victorian government initiated and then established with the federal government the Foundation to Prevent Violence against Women and their Children, now known as Our WATCH. I was very pleased to appoint Muriel Bamblett to the board of that, and I am pleased to see that she continues in that role.

I think one of the things that characterised the work of the former government in this area of vulnerable families is the acknowledgement of the joined-up response that was required, and the relationship between family violence, mental illness and alcohol and drug abuse with the vulnerability of children and our child protection system. Muriel is a great example of someone who has been a leader in relation to that work.

The other thing that I would like to touch on is of course the bill that I had the pleasure of introducing last year also included reforms relating to child safety conferences and the capacity to address protective concerns without the need of a court order or to attend court. So while this bill has come back specifically to looking at section 18 and Aboriginal principal officers, it is clear it lacks the second half of the bill that was introduced last year. The issue of child safety conferences is very important, as is the capacity for all the relevant people around the table to engage in relation to resolving the protective concerns that are in place with the guidance of a convener without having to go to the courts and being able to progress in a more timely way a resolution on these issues.

I just raise the point that we are a good 18 months on now and nearly 12 months into this government. It has taken 12 months to return a bill that is effectively in the same form as it was when we introduced it, but with the clear absence of another area of informing and improvement that the government has not progressed on.

I want to commend the bill to the house. We will be supporting this bill. It is an important reform. I think the big challenge now, though, is the government's commitment in relation to not only having the laws in place but realising what is needed to make this a reality.

Ms MIKAKOS (Minister for Families and Children) — I wish to make a contribution in reply to the debate. At the outset I want to express my gratitude that all parties have indicated their support for this very important bill. As the second-reading speech indicates, this is an example of the Labor government's intention to support Aboriginal children and families by ensuring that Aboriginal children subject to Children's Court orders remain connected to their community and culture.

Section 18 was first proclaimed in 2007 as part of the Children, Youth and Families Act 2005. Since that time a number of dedicated members of the Aboriginal community have continued to advocate for the implementation of section 18 and for resolution of the legislative barriers that have been addressed by this bill.

Reform of this nature does not occur quickly or without the efforts of strong leaders and advocates. I particularly wish to acknowledge the openness and willingness of our Victorian Aboriginal communities to consider these complex issues and their participation in various consultation processes over many years.

The leadership provided by Aboriginal community-controlled organisations, their CEOs and boards has been invaluable. I particularly wish to acknowledge the Victorian Aboriginal Child Care Agency (VACCA), Gippsland and East Gippsland Aboriginal Co-operative (GEGAC), Rumbalara Aboriginal Co-operative and Bendigo and District Aboriginal Co-operative (BDAC), which have demonstrated sustained commitment and involvement over many years.

VACCA, under the leadership of Professor Muriel Bamblett and with the support of the VACCA board and staff, has made a significant contribution in progressing our journey toward implementation of section 18 and enabling Aboriginal communities to retain responsibility for vulnerable Aboriginal children subject to protection orders. The recent pilot project undertaken by VACCA has been not only informative but instrumental in progressing our ability to make authorisations under section 18 possible and promote self-determination.

I also wish to acknowledge the leadership role of Andrew Jackomos, the commissioner for Aboriginal children and young people. Labor welcomed the appointment of Andrew Jackomos as someone who has demonstrated capable leadership over many years. I had the great pleasure of working closely with Andrew during the five years in which I chaired the Aboriginal Justice Forum. Andrew drove a lot of the reforms undertaken by the previous Labor government in respect of tackling the issue of young Aboriginal people in our justice system.

As members would be aware, Andrew Jackomos has been undertaking an important project called Taskforce 1000. Taskforce 1000 was established to review the current circumstances of approximately 1000 Aboriginal children and young people in Victoria's out-of-home care system. It is expected that this work will be completed soon. Funding of \$1.75 million for Taskforce 1000 was included in the

budget this year towards improving supports for vulnerable Aboriginal families and children, including funding for responses identified through Taskforce 1000.

I sincerely thank, on behalf of our government, all those who have toiled long and hard to bring these amendments to the Parliament. As we look ahead to the implementation of these amendments, I would like to inform the house about some of the specific details regarding how these powers will be rolled out and address some of the issues that have been raised during the course of the debate.

In recognition of the complexities associated with implementing section 18, a steering committee comprising departmental representatives, interested Aboriginal community-controlled organisations (ACCOs) and, more recently, the commissioner for Aboriginal children and young people has met to consider implementation issues. This steering committee will reconvene in December to consider the outstanding governance and administrative issues and to guide and progress full implementation.

A number of issues were raised during the course of the debate, and I propose to go through those issues. Ms Springle raised the issue of Aboriginal organisations taking on a section 18 authorisation in relation to a particular child or young person and whether the department would continue to have responsibilities in relation to that child. I advise the member that section 18 authorisations allow the secretary to authorise a principal officer of an Aboriginal agency to take on specified powers and functions. The responsibilities the department retains depend on the powers and functions that have been authorised and may vary from case to case. If the principal officer is authorised to carry out all powers and functions conferred on the secretary by the protection order, the secretary will not exercise those functions. Arrangements for the appropriate monitoring and oversight of an authorised organisation will be established in consultation with stakeholders. The secretary has the ability to revoke an authorisation at any time, should the need arise.

In respect of the issue of disagreements, I can advise Ms Springle that where an Aboriginal organisation has been authorised to take on specified powers or functions and the department disagrees with the exercise of those powers or functions, the secretary will have no role in vetting the Aboriginal organisation's decisions. The purpose of the authorisation is to allow the Aboriginal organisation to self-manage and determine the decisions and actions to be taken. The

secretary may, however, ultimately withdraw authorisation, should she lack confidence in the organisation's ability to perform the authorised powers or functions.

Processes to resolve any concerns or disagreements will be established to avoid revocation where possible. Decisions made in the context of section 18 authorisations will be subject to internal review as well as review by the Victorian Civil and Administrative Tribunal. The member would be aware that there are provisions in this bill that relate to those matters. There will also be independent oversight by the Commission for Children and Young People and the Victorian Ombudsman.

In relation to the other matters Ms Springle raised, the majority of Aboriginal children on protection orders are case managed by child protection. However, some cases are contracted to community service organisations, most commonly where they are providing their care. Ms Springle is correct in that the vast majority of Aboriginal children in care are currently in the care of non-Aboriginal organisations. I can inform her that at the inaugural meeting of the Victorian Aboriginal Children's Forum, which I chaired recently, there was a lot of discussion around this issue. There was a genuine willingness demonstrated by the non-Aboriginal organisations present to help address it, working in partnership with ACCOs. The capacity of an Aboriginal agency authorised under section 18 to contract case management to another out-of-home care provider may be an option they wish to consider, but that will be a matter for ACCOs to determine in the future, in consultation with other organisations.

There were a number of questions from members around the VACCA pilot, and I propose to respond to those. The VACCA project was funded as a 12-month pilot project and was extended twice, including by our government, to explore the appropriate mechanisms and arrangements required to implement section 18. An additional 12-month pilot in a rural area is about to commence, and funding has been set aside for it. An expression of interest process for this pilot is currently underway and is due to close very soon — next Wednesday, 18 November.

In respect of the question of whether the evaluation of the VACCA pilot will impact on the second pilot, I can inform the house that the evaluation of the VACCA pilot will inform the development of the second pilot and that it is being used by ACCOs as they prepare their submissions for the rural pilot, which will commence early next year. In respect of the evaluation

report itself, I can inform members that it was only recently completed and has only recently been received. I have not as yet been briefed on the findings of that evaluation, but the government will consider the report and make a decision about its release in due course, recognising the value of informing the sector and stakeholders of its findings.

In relation to other issues raised in respect of the evaluation of and issues around funding, I inform members that our government will consider the findings of both the metropolitan and rural evaluations as it develops policies, programs and funding allocations. I assure the house that we are very committed to Aboriginal self-determination, as the passage of this bill in our first term of government attests. Our government is constantly reviewing and forecasting costings of all our programs and services, and the costings for full and partial rollout will be informed by the pilots.

In respect of other matters that have been raised, in particular the query raised about when Aboriginal organisations will begin to accept section 18 authorisations, I advise that while the rural pilot is underway I regard us as still being in the evidence-gathering stage in regard to implementation. I am committed to the implementation of these section 18 authorisations when appropriate preparations have been made to enable safe and enduring authorisations to be made. The time by which the first authorisations will be achieved will depend on a range of factors, including the establishment of appropriate governance and accountability processes, the availability of funding and the capacity and preparedness of Aboriginal agencies to accept authorisations.

I point out in this respect that while some ACCOs have been very supportive of this, there are varying views around this issue. That obviously relates to the history of child welfare in this state and the fact that we had stolen generations of so many children who were forcibly removed from their Aboriginal parents. These issues will be worked through by continual engagement with Aboriginal organisations to support them as they build their capacity to assume greater levels of responsibility for Aboriginal children in the child protection system. As I indicated earlier, a section 18 steering group will continue to consider and support the program of work required to achieve authorisations, and that work will be underway from next month.

In terms of other queries that have been raised, Ms Springle raised the issue of the timing of the commencement of the act. It is my intention to proclaim the bill as soon as practicable. The bill does

provide a fallback date of 1 October 2016; however, that is not to suggest we will be waiting that long to proclaim it.

Ms Springle also raised an issue around clause 6 and the retention of records. I inform the house that the bill requires that Aboriginal agencies return all of the records that have been created. This is integral to maintaining a single record of the child's involvement with child protection and ensuring that the record is stored and retained in accordance with legal obligations. Agreement regarding the most appropriate method to record, store and retain the file will be subject to further work by the steering committee. I think that addresses the issues raised in the course of the debate.

In relation to the point made by Ms Wooldridge about the passage of the debate, I remind her and other members opposite that the bill introduced by the previous government in May 2014 languished in the Legislative Assembly and was not debated at all in either house. That may have had something to do with a former member for Frankston in the other place, Geoff Shaw. The previous government made a conscious decision to debate many other bills prior to the Parliament being prorogued for the election. It is unfortunate that, while we have had a very constructive debate in relation to these issues, Ms Wooldridge would seek to politicise this issue in the course of her contribution.

I am very proud to be the minister who has introduced this bill in our first year of government, and I am grateful for the support we have had from various parties to see this legislation go through. I am absolutely committed to addressing the very sorry state that we have seen in Victoria for many years in relation to the significant over-representation of Aboriginal children in out-of-home care. There are really damning figures. A great deal of work and goodwill will be required on the part of the government and among the other political parties to address these issues on a bipartisan basis. Every Victorian should be concerned about the over-representation of Aboriginal children in out-of-home care in Victoria, and this is why we are doing a great deal of work to address this issue. This bill is just part of that.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

JUSTICE LEGISLATION AMENDMENT (POLICE CUSTODY OFFICERS) BILL 2015

Second reading

**Debate resumed from 22 October; motion of
Mr HERBERT (Minister for Training and Skills).**

Mr O'DONOHUE (Eastern Victoria) — I am very pleased to speak on the Justice Legislation Amendment (Police Custody Officers) Bill 2015. Being relieved of the burden of managing prisoners in police cells has been an issue for Victoria Police for some time, and it is something that had bipartisan support prior to the last election — albeit that the coalition had a different model, which I will touch on a bit later.

This issue was crystallised in the Victoria Police blue paper released by the former Chief Commissioner of Police, Ken Lay, in mid-2014. It foreshadowed a focus on sworn police performing core functions and a range of non-core duties, including management of prison cells, being reassigned and outsourced to either non-sworn staff or third parties.

As I said, there was a bipartisan approach to the principle prior to the election, as articulated by the then opposition in its press release of early November. The coalition announced its suite of policing initiatives during the campaign, which included an additional 250 specialist police to tackle issues such as e-crime, fraud, counterterrorism, forensics and special investigations. The last 12 months have only reinforced the need for that specialist resource to be made available to Victoria Police, which regrettably has not been forthcoming from the government. I quote from the relevant media release from the then government during the campaign:

The policy also involves outsourcing custodial services, which is estimated to free up to 450 police officers from providing these services, allowing more officers to move to frontline policing.

'Freeing up these officers is a far better use of our expertly trained police force and is directly consistent with the blue paper released by Victoria police', Mr Wells said.

As I said, there is bipartisan support for the policy, but the government and the opposition are using different models to get there. The coalition believes an outsourcing model has already proven to be very efficient, proving its worth over many years. Such a model exists at the Melbourne Custody Centre underneath the Melbourne Magistrates Court. G4S currently has the contract to manage those prisoners in police cells as they are transited in and out for court; sometimes the prisoners are there for several days as

they await receipt into the prison system. During the previous government's term we varied that contract to include some custodial services at the Ringwood court and police cell precinct as part of a response to providing additional capacity.

I thank the Minister for Police for the briefing from his office and the department. Those arrangements in relation to the outsourcing of the management of police cells at Ringwood and the management of police cells underneath the Melbourne Custody Centre will remain unchanged by this legislation. That private sector model will not be varied as part of the legislative change. Perhaps the minister could confirm in his summation of the bill whether the arrangement in relation to the Melbourne Custody Centre and the Ringwood cells, currently operated by G4S, will remain the same.

Before I get to the bill itself I must say that it is most disappointing that here we are in mid-November — the third last sitting week of the year — and we are only having this discussion now. As is evident, and indeed as the house overwhelmingly resolved yesterday, we have an emerging crisis when it comes to the number of police in Victoria. Daniel Andrews and the minister made the decision to not grow Victoria Police, to dramatically cut the number of recruits at the academy and to cut off the growth delivered by the coalition at a time when we have unprecedented challenges associated with terrorism and legitimate operational changes made by the chief commissioner, which flow from the introduction of the two-up policy. There is the scourge of ice. Everywhere I go around Victoria, either when visiting the hardworking men and women of Victoria Police or when I am just out and about in the electorate, the issue of ice is emerging more and more. There is the issue of family violence, and of course we have enormous population growth in Victoria — 100 000 people a year.

The areas in the growth corridors of places such as Casey, Cardinia, Whittlesea and others are experiencing significant growth. In recent weeks we have seen that many police stations in those growth corridors do not have the resources to keep their doors open, which again is an indictment on the lack of priority this government places on Victoria Police. Victoria Police members do a great job. They do the best they can with the resources that are made available to them, but ultimately they can only work with what they have got. As a result of the government's financial blowout with the east-west link and other wrong priorities, Victoria Police has not received the resources it should have, and we are starting to see the consequences.

The one policy the government has hung its hat on, so to speak, is the outsourcing of management of police cells to non-sworn members. But as I said, here we are nearly a year into the term of this government, and the training has not started, the legislation is only before the house today and the first deployment will not take place this year, as was promised by the minister back on 5 May in his budget press release. I also note that at the Public Accounts and Estimates Committee hearing on 12 May the minister said:

The recruitment and training of these officers will commence as soon as possible in the 2015–16 financial year.

I say to the minister that, as I understand it, the first recruits will commence training on 7 December this year, and the first deployment, despite what the minister said in his budget press release of 5 May, will not be this year at all — it will be next year. What I seek from the minister, or from government members, during the second-reading debate is a clear timetable for when the 400 custody officers will be deployed.

What became clear during the briefing — and again I thank the department and the minister's office for that — was that although I am sure the training program for the custody officers covers what needs to be covered, in a time sense it is not extensive. There will be two program streams of training, and they will depend on prior experience. The foundation or base program will be eight weeks in length and include six weeks at the academy and two weeks in a police station, as we were advised. The advanced program will be five weeks in length. It will include three weeks at the academy and two weeks at a station, and it will train recruits who have prior experience of the supervision of detained persons, such as former prison officers, protective services officers (PSO), police officers or similar.

Given the truncated time frame, a five-week program potentially could see custody officers deployed to police stations, thereby putting police back on the front line rather than babysitting criminals. We are calling for a clear articulation from the government today about the rollout of the custody officers. Given the excess capacity at the academy due to the underinvestment in future police, the academy could recruit, train and deploy these 400 custody officers in a much quicker time frame than the full term of government that was identified by the government through its public announcements as well as through the appropriation process in the forward estimates.

Given that the academy during the preceding four-year period was able to deliver 950 PSOs, with a longer training program, as well as 1900 additional police,

again with a much longer training program, and given the significant infrastructure and capacity upgrades that took place during the term of the coalition, I would like the government to explain why it will take so long to deliver these 400 custody officers when there is nothing else on the table from the government in terms of freeing up frontline police or delivering additional police to the front line to help deal with the significant challenges that are being experienced.

We have details of the first 20 recruits, and I hope the minister will be able to confirm that those 20 spots for the 7 December program have been filled and that the program is on time and is taking place, as was foreshadowed, from 7 December. I would be pleased to know when the second and the third course starts through to when the 400 custody officers will be deployed and if there is any ability to bring forward that program, given the emerging police resourcing crisis Victoria is experiencing. I give advance notice to the minister that I will be requesting that he provide those details.

I would also be interested to know when the government will announce the locations for the subsequent deployments. I note that deployment decisions will be a matter for the chief commissioner, but there are many communities around Victoria that would be interested to know whether their police will be relieved of the burden of managing prisoners in police cells in the first half of next year or in 2017 or 2018. It could make a significant difference. As a subset of that question, can the government clarify what will be the redeployment of the sworn police officers that will be freed up once custody officers are deployed at a particular station? Will they remain at that station and add to the policing of that specific location? Will they be given back to the broader region under the regional policing model, or will the chief commissioner determine that some of those officers may be placed in growth corridors or in areas of need as the chief commissioner identifies?

I have noticed press clippings from around Victoria in which the government has sold this program by saying that custody officers coming to your police station will mean there will be more police in your community to work on the front line. As I understand it, ultimately it is a matter for the chief commissioner to determine where those police that are freed up as part of this process will be deployed. Can the minister confirm exactly what the process is, whether it is at the discretion of the chief commissioner pursuant to the police act or if there is an arrangement where those police officers will be retained in a specific station

location? I would appreciate if he can clarify that as well.

I will go to some of the mechanics of the bill. Police custody officers — as was noted, we have a new abbreviation, PCOs — will perform police cell prisoner custody management functions as well as incidental custody management duties. The main purpose of the act is to amend the Victoria Police Act 2013 to provide for the authorisation and powers of police custody officers; the Corrections Act 1986 to provide for the authorisation and powers of police custody officers under that act, to make amendments in relation to certain powers of police officers under that act and to otherwise improve the operation of that act; the Court Security Act 1980; the Crimes Act 1958 in relation to the powers of police custody officers to carry out certain procedures; and the Road Safety Act 1986.

PCOs will be appointed under the Victoria Police Act 2013 and will be employed by the chief commissioner under the Public Administration Act 2004. PCOs will be subject to the existing IBAC oversight regime as they will form part of police personnel, and as Victorian public service staff, PCOs will be subject to the Victorian public service performance management and misconduct discipline system. They will be subject to random drug and alcohol testing when rostered on duty, pursuant to the police act. PCOs will undertake a range of functions, and the powers they will be provided with include issuing directions to detain persons, conducting a range of searches for the good order and management of the police jail, seizing items detected following a search, taking fingerprints and photographs for custody and management purposes and using reasonable proportionate force in respect of a person detained in a police jail.

PCOs will not be armed but will carry batons, oleoresin capicum spray and handcuffs. They will be able to request identification from visitors and search visitors to a police jail. PCOs will also have powers to transport and supervise arrested and detained persons when directed to by the chief commissioner or his delegate, generally the station officer in charge. Of course some of those matters will be contingent on a risk assessment being undertaken, and no doubt at times for high-risk prisoners, particularly in relation to transportation, sworn members may ultimately do that task from time to time.

Directions may also be made to allow PCOs to perform a range of functions, including supervising detained persons prior to and following transportation, such as at court, and supervising arrested persons at police stations and hospitals. For example, PCOs may be

deployed to guard arrested persons receiving medical treatment and transport arrested persons to and from police stations and hospitals. The transport and supervise powers include giving directions, undertaking searches, seizure and use of force. The purposes for which these powers may be used, however, are targeted to ensure safety and security. PCOs also have a number of incidental powers, such as supervising a person taking their own DNA samples pursuant to the Crimes Act 1958, conducting oral fluid tests of motorists who have tested positive to a preliminary roadside breath test pursuant to the Road Safety Act 1986 and exercising the powers of authorised officers pursuant to the Court Security Act 1980, including searching court visitors for prohibited items.

The opposition will not be opposing this legislation. While we welcome any move that returns more sworn members to the front line, we had a position prior to the election and still believe there is significant merit in the private sector model that has worked so effectively for so many years. Perhaps in the second-reading debate members of the government or the minister could clarify the relationship between what are Victorian public service staff members and the officer in charge of the station. We had some detail in the briefing in relation to that, but just for the record it would be useful if the minister could clarify the relationship.

I also ask the minister to provide some advice in relation to some of the more remote police stations. Of the 22 stations that are due to receive police custody officers, some will have prisoners in the cells 365 days a year, 24 hours a day, such as those stations associated with some of the busier court complexes — for example, Sunshine, Ringwood, Frankston, Dandenong and others. However, some of the more remote of the 22 stations, such as Bairnsdale and Warrnambool and times Mildura and Sale, may only have prisoners in cells sporadically, perhaps on a Saturday night if there is an incident in the local area. If there is court on a Wednesday or a Friday, there may be prisoners in custody who come in the police cells for court — that is, for a specific purpose — and otherwise it will be on an ad hoc basis depending on the incidents that take place. There may be periods of time when there will be no-one in the cells.

I would be interested in the minister outlining how the rostering for those sorts of locations will take place. I note that the PCOs will have the ability to do some administrative work and some sort of other work at the police station when there are no custody officers present, but fundamentally their principal purpose is to manage prisoners in police cells. I ask the minister to perhaps identify how a place like Sale or Bairnsdale, for

example, will roster PCOs. What will the response be when, for example, there is a significant incident in a place like Bairnsdale on a Sunday night, when it is generally quiet, and a number of people are arrested and brought into custody? Will there be PCOs on stand-by? What will be the response time if they are on stand-by? What will be the normal rostering arrangements for those sorts of more remote locations? This is one of the challenges of the government's model. In an outsourced model, that ultimately becomes the responsibility of the contractor. Under the government's model, it remains the responsibility of the chief commissioner and the government to respond, so I ask the minister to clarify that as well.

Earlier I touched on the time it is going to take to roll out these custody officers as articulated by the government and as foreshadowed in the forward estimates. If there is any opportunity to bring that forward, given the scarcity of police at the moment, I would welcome that. Failing that, I ask the minister to clarify the number of custody officers who will be trained and deployed in each of the financial years 2015–16, 2016–17 and 2017–18. I also ask whether the program will still be rolling into 2018–19 as we head towards the end of the calendar year 2018. I also ask the minister to confirm the number of sworn officers to be released to the front line. Previously the government said it would be 400. I ask the minister to confirm whether that is still currently the case on the modelling that has taken place.

I will conclude by again saying that we have a growing and emerging challenge with the resourcing of Victoria Police. We are seeing 24-hour police stations across Victoria that simply cannot open their doors. We have seen the police station at Ashburton have its opening hours absolutely slashed because of a lack of police numbers. It happened when the former member for Burwood in the Assembly, Bob Stensholt, was the member. The current member for Burwood, Graham Watt, saw that station upgraded, with both an infrastructure upgrade and additional police allocated. Now those additional police have been slashed and the opening hours cut back.

We have seen the first station I think in Victoria's history to be completed — a \$16 million project — but closed to the public because of a lack of police numbers, at Somerville in my electorate of Eastern Victoria Region. There is growing community concern about the government's failure to properly resource Victoria Police. The one thing the government announced in the budget was the introduction of police custody officers, and according to the minister's own benchmark, established through his press release of

5 May on the budget and at a Public Accounts and Estimates Committee hearing on 12 May, he has failed. He has failed to meet his timetable for starting training early this financial year. By anyone's measure, when the start of the financial year is 1 July and the training process will not start until 7 December, the minister has failed. That is not early in the financial year. The minister also said that the first custody officers would be deployed this year. Again he has failed: they will not be deployed until next year.

We have a lack of focus from the government on policing matters, and in what it is attempting to do it is not even meeting its own timetable and benchmark established not two years ago in opposition but a few months ago. After having months of advice from Victoria Police and the Department of Justice and Regulation, the minister has failed — failed his own timetable, failed his own benchmark — and it is not good enough. The opposition looks forward to the hardworking men and women of Victoria Police being relieved of this task and getting back to the front line.

I will add just one point. When the coalition was in government there was a spike in the number of prisoners in police cells following the necessary parole reforms. The coalition added additional prison beds and introduced a range of reforms to the management of the police cell system, including the introduction of weekend court, the better use of cells underneath the County Court and extending the contract at the Melbourne Custody Centre to include the Ringwood Magistrates Court. By the time we left office the number of prisoners in police cells was consistently below 100 and often significantly below 100. For a lengthy period before the election the number of prisoners in police cells was consistently below 100.

As a result of the disastrous riot that Premier Daniel Andrews and the Minister for Police, Wade Noonan, failed to prevent at the Metropolitan Remand Centre, police were diverted for months to managing hundreds and hundreds of prisoners in police cells — a massive diversion of police resources that was completely unnecessary, because, as we know, only a matter of a week or so after the disastrous riot at the Metropolitan Remand Centre the New South Wales government implemented a smoking ban in its prison system without incident. There was no riot and no destruction of property. The smoking ban took effect, as it did in New Zealand, in the Northern Territory and in Queensland, without major incident. We still have not had a proper explanation from the minister of how he bungled it so badly.

There were many consequences of that, including financial costs and putting maximum security prisoners at the Ararat medium security prison for a period of time — a number of consequences — but one of the significant consequences, and I got this feedback many times as I went around police stations, was that up to 300 and I understand sometimes more than 300 prisoners were in police cells for extended periods of time because of the preventable riot that took place at the Metropolitan Remand Centre. The government's record in this space, nearly one year in, is not good. I call on the government to expedite as much as possible the deployment of the PCOs, but fundamentally the government needs to get its priorities right and deliver to Victoria Police the resources it needs.

Mr ELASMAR (Northern Metropolitan) — I rise to speak briefly on the Justice Legislation Amendment (Police Custody Officers) Bill 2015. The role of police custody officers was primarily created to relieve pressure on our frontline police who are engaged in looking after detainees being held in custody. The purpose was to enable our police to perform policing duties. The Andrews government is committed to freeing up trained police personnel to ensure that their focus remains on containing crime and minimising harm to our community.

The cost of training police officers is very high, so it makes sense to devolve part of the role to specially trained custody officers. It is expected the mechanism established in the bill will provide the legislative framework needed to implement the government's commitment to recruit, train and deploy 400 police custody officers, and I understand the recruitment process has already commenced. The new custody officers will begin working at the Sunshine, Dandenong, Heidelberg, Ballarat, Geelong and Broadmeadows police stations, with the first training squad scheduled to graduate in early 2016.

The 2015–16 state budget allocates \$148.6 million over four years to implement the government's election commitment to transition the management of police cells to the new police custody officers. Our community will benefit from the release of police officers from the Broadmeadows station, which will be one of the first six stations to receive the rollout of custody officers.

We value our Victoria Police members enormously; they do a wonderful job in keeping our community safe. It is important that the skills they have learnt in law enforcement are put to maximum use. It is also very important that the community understands and embraces the role of the custody officers in the realisation that it will be served better by their

employment and that it will see a more visible police force performing the job its members are trained for.

We Victorians are all well served by a dedicated, professional and hardworking group of men and women who risk their safety to protect ours. I am proud that a Labor government has seen a solution to a vexed problem and has instigated a procedure to alleviate the significant additional stress caused by utilising police officers to perform prison officer duties on a continuing daily basis. I know in my electorate of Northern Metropolitan Region citizens and residents will be a lot happier knowing our community will be safer, and I am sure they will appreciate the additional resources that the bill provides to frontline policing. I am sure the minister will answer all the questions raised by Mr O'Donohue. I commend the bill to the house.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Timber industry

Ms DUNN (Eastern Metropolitan) — My question is for the Minister for Agriculture. The VicForests annual report for 2014–15 refers to new and replacement contracts to supply approximately 900 000 cubic metres of wood per annum, with tenures between three and four years, as well as negotiation of new contracts with harvest and haulage contractors that provide the 'greatest level of security to contractors since 2009' to enable them to purchase capital equipment. My question for the minister is this: can the minister advise how the work of the industry task force can proceed in good faith as task force deliberations and recommendations are likely to be inconsistent with these long-term contract arrangements negotiated by VicForests that guarantee long-term supply to harvest and haulage contractors?

Ms PULFORD (Minister for Agriculture) — I thank the member for her question and her ongoing interest in the activities of VicForests. The member refers to the VicForests annual report. Just briefly, by way of background for members, the report shows a very strong financial result with a net profit after tax of \$4.7 million and no net debt, so VicForests will continue to be able to provide a dividend to the state. Since being established, VicForests has returned dividends in excess of \$6 million.

The annual report that the member refers to represents the activities of VicForests in the 2014–15 financial year. The member asked how this relates to the work of the task force that is being established to consider some

issues around the sustainability of our timber industry as well as some issues around contested area and the desire of some members of the community to see the establishment of another national park. That task force is being established. It will seek to bring together industry, environmental and union representatives as well as a host of other significantly interested stakeholders, including Indigenous landholders, recreational users and others, and it will seek to identify areas of consensus in this respect.

Supplementary question

Ms DUNN (Eastern Metropolitan) — I thank the minister for her answer. Can the minister advise why contracts were allowed to be signed over a long time scale, locking in the logging of Leadbeater's possum habitat, and how this is consistent with what is now the hollow promise of the task force in 'reaching common ground on the future issues facing the industry, job protection, economic activity, protection of our unique native flora and fauna and threatened species such as the Leadbeater's possum'?

Ms PULFORD (Minister for Agriculture) — Again I thank the member for her question. Decisions to enter into contracts are decisions that are taken by the VicForests board, and I am very confident that proper due diligence and appropriate understandings of the commercial realities that are part of their responsibility are conscientiously undertaken by each and every one of the members of the VicForests board.

On the question about how this relates to the task force, I think the member has the cart before the horse a bit. VicForests needs to continue to perform the duties it is required to do, and the task force is about establishing a conversation about potential areas for change.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! Before I call Ms Dunn on a further substantive question, it is my pleasure today to welcome to the public gallery a Senate delegation from France. We have great pleasure in welcoming Senators Daunis, Procaccia, Marie and Dupont. They are accompanied today by Cedric Prieto, the deputy head of mission at the French embassy, and our own consul general, Myriam Boisbouvier-Wylie, who is very active in the consular corps. We welcome you and are delighted to have you at our Parliament today.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Timber industry

Ms DUNN (Eastern Metropolitan) — My question is for the Minister for Agriculture. Can the minister advise if there was a lack of motivation by this government to see the work of the industry task force commence due to the potential impact that work might have on the flow of funding to the Labor Party from the forestry division of the Construction, Forestry, Mining and Energy Union, or was it to ensure VicForests had time to lock in long-term contract deals?

Ms PULFORD (Minister for Agriculture) — That is a particularly absurd assertion. We have gone to all kinds of strange places in this discussion over the course of this year. The task force is being supported by the government. It is being established and led by those organisations and groups that I referred to in my previous answer. The government will be supporting this task force in a really very important conversation. While that is occurring, VicForests has in no way been released from any of its legal obligations, any of the responsibilities that the board has to properly acquit the work of VicForests. I note that it has had a strong performance, and this is reflected in its annual report. VicForests also does a power of work in supporting the recovery efforts of the Leadbeater’s possum, which I know the member does not want to hear, but it is true.

Supplementary question

Ms DUNN (Eastern Metropolitan) — I thank the minister for her answer. Given she has been nearly a year in government and logging in ash forests, a habitat of the critically endangered Leadbeater’s possum, has continued in that same time to a scale the same size as the Richmond Assembly electorate, is the industry task force just a smokescreen? When can we expect the terms of reference for the task force to be finalised so its work can commence?

Ms PULFORD (Minister for Agriculture) — The members of the task force are finalising their terms of reference, and I am sure that when they have concluded finalising their terms of reference they will be there for the member to see and to pore over to her heart’s content.

Ms DUNN — On a point of order, President, the supplementary asked when we can expect them, so there is a time frame. I am wondering if the minister can elaborate on the answer and actually provide a time frame for when those terms of reference will be ready?

The PRESIDENT — Order! The minister has sufficient time to respond further, if she would wish to.

Ms PULFORD — Thank you, President, for the opportunity to further respond to that. I think the member misunderstands. The government is supporting the task force. The members of the task force are establishing the task force and finalising the terms of reference. I have every expectation that that will occur sooner rather than later, but the decision to finalise the terms of reference is a decision of those groups and organisations. There is a lot of interest in this from a lot of different perspectives and that work is underway, as I understand, from those who are participating in it.

Firearms

Mr YOUNG (Northern Victoria) — It may surprise the house to know that I am still wading through the process of acquiring a handgun licence.

The PRESIDENT — Order! Who is the question to, Mr Young?

Mr YOUNG — Sorry, my apologies. My question is to the Minister for Police via the Minister for Training and Skills. I would have thought that was obvious.

Upon meeting the requirements to apply for a licence, an applicant is subject to a 28-day waiting period to acquire a new handgun licence. My question is: what benefit does a 28-day waiting period provide to public safety when applied to someone who already has a firearms licence and already owns firearms?

Mr HERBERT (Minister for Training and Skills) — I note that Mr Young said he does not have a handgun licence, so do not shoot the messenger, that is for sure! I am a bit safe here. I am terribly sorry. I am sure there is an excellent reason for it, but I will have to seek some detailed response to his question; I do not have it at hand.

Supplementary question

Mr YOUNG (Northern Victoria) — I thank the minister for his endeavours to find out, now that he knows which minister I am actually asking the question of. My supplementary is: after going through this process, I am recognised as a fit and proper person by Victoria Police but I will be on a probationary licence for a period of no less than six months, in which time I am not allowed to own a handgun and I may own only one for a six-month period after that. What benefits do these restrictions provide to the public?

The PRESIDENT — Order! I make the comment that Mr Young in referring, as I understood it, to himself is actually referring to a particular applicant and not to himself. It is not within the rules of the Parliament that a member would pursue their own interests through question time. Mr Young is making a point and asking that if there were an applicant in a similar position to him, would this be the situation?

Mr HERBERT (Minister for Training and Skills) — I thank Mr Young for his question about an unknown applicant who is getting a handgun licence. As a general point, guns have been a scourge in our society. There have been many attempts to limit them and to make sure that those who own them are proficient with them, know the law and store them safely — I know that Mr Young knows all of these things — but also that they do not get used for illegal purposes. We have discussed many times the subject of farm crime, the use of guns and a range of other issues in terms of legislation before this house.

I would imagine that the periods Mr Young is talking about relate to making sure that there is an element of community safety for people who have new handguns and the need for a bit of time to assess their usage. However, I will get a detailed answer to his question.

The PRESIDENT — Order! As the Clerk indicates, the question to some extent begged an opinion as well.

Mr Herbert — I gave an opinion.

The PRESIDENT — Order! You did.

Special religious instruction

Ms PATTEN (Northern Metropolitan) — My question today is to the Minister for Training and Skills who represents the Minister for Education. I recently received an email from a parent concerned that her son may be exposed to special religious instruction (SRI) whilst he is enrolled in child care. As many people would understand, childcare places in Victoria are limited and there is almost no capacity to move a child from one childcare centre to the next once they have secured a place; they are as rare as hen's teeth in some areas. I applaud the Victorian government for its changes to SRI announced in August, moving it outside of curriculum hours. However, there now seems to be an issue with SRI in childcare centres which was not covered by the recent changes. My question to the minister is: when will the government move to bring childcare centres into line with recent changes made to the school system and remove SRI programs from

childcare centres that are not identified as religious already?

Mr HERBERT (Minister for Training and Skills) — I thank the member for her question and the consistency of her views on this matter. When it comes to schools and legislation, the government runs government schools. We run schools and we are responsible for the curriculum at and the operation of those schools. As I understand it, when it comes to childcare centres, they are not run by the government per se, they are run by parents and committees of management et cetera, and that is where the decisions tend to lie. They also often get funding from different sources, it should be said. That is where the decisions lie. I am not aware that we have a time frame for looking at a legislative approach to the particular issue that has been raised.

Supplementary question

Ms PATTEN (Northern Metropolitan) — I thank the minister for his response, although I feel that childcare centres are government funded in many cases. I would also like the minister to outline what regulations and safeguards around special religious instruction in child care there are, especially as they relate to the supervision of these volunteers.

Mr HERBERT (Minister for Training and Skills) — I thank the member for her question, but I am not quite sure that it is the responsibility of the Minister for Education, whom I represent in this chamber, to make decisions with regard to the operation of childcare centres and the broader issue of how they run and what the restrictions are on the types of things that happen there. I would have thought that is probably more of an issue for another of my ministerial colleagues. I am happy to seek advice on that issue for the member. However, as I said, I am not quite sure that question is for the Minister for Education, whom I represent.

Financial report 2014–15

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Special Minister of State as the minister responsible for the Audit Act 1994, and I ask: does the government have confidence in the acting Auditor-General?

Mr JENNINGS (Special Minister of State) — The answer of course is yes.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the minister for his unequivocal answer. Section 9A of the Audit Act 1994 highlights that one of the principal roles of the Auditor-General is to sign off on the annual financial report. I ask: why has the government rejected the Auditor-General's audit statement for the annual financial report and instead commissioned its own advice which suits its preferred construction of the state's accounts?

Mr JENNINGS (Special Minister of State) — This relates to an issue that I discussed with the chamber yesterday. It relates to the appropriate accounting treatment of the 2015–16 Victorian budget. The government is absolutely confident that at no stage did the budget in 2015–16 go into deficit, as has been interpreted by the accounting treatment of the Auditor-General, so the public understanding of this issue should be as follows. The Victorian budget was predicated on \$1.5 billion being provided subject to an agreement between the coalition government in Victoria and the commonwealth that said that money would be allocated to Victoria for the east–west contract, but if it was not, then that \$1.5 billion would stay in Victoria subject to further adjustments or a level of understanding by the commonwealth government. That is the position of the Victorian budget, that is the position of which the government is confident and that is the issue that relates to the question.

Government-subsidised training

Ms BATH (Eastern Victoria) — My question is to the Minister for Training and Skills. As the minister is aware, funding for training is tied to enrolments. With student enrolments down in the first year of the Andrews Labor government, can the minister confirm that the government has reduced specific funding for government-subsidised training courses in the first six months of this year compared to the same funding envelope provided under the coalition government?

Mr HERBERT (Minister for Training and Skills) — I thank the member for the question. It is a very good question as a matter of fact, and I am absolutely delighted to be able to answer it. On Tuesday in a ministers statement I referred to the decline in the training market in regard to the legacy of cuts that are still flowing through and the impact the debacle of VET FEE-HELP is having on demand in Victoria. The question really raises the government's absolute commitment to spending the \$1.2 billion of funding that is allocated to training, and I can assure the member we are spending it. We have not reduced

funding whatsoever, not by 1 cent. In fact we have increased funding.

Supplementary question

Ms BATH (Eastern Victoria) — I thank the minister for his response. The Treasurer has indicated that increased funds for his failed Back to Work scheme will be siphoned from training and skills funding. Can the minister confirm the Treasurer's comments that money cut from his funding expenditure, such as the Victorian training guarantee and government-subsidised training courses, which have declined under his watch, is now being used under for alternative government expenditure?

Mr HERBERT (Minister for Training and Skills) — I totally reject that statement. It is not correct. It is totally incorrect. The \$1.2 billion allocated in the budget is going to training in the vocational education area. What the member seems to confuse, in terms of the government's Back to Work initiative, run by the Treasurer — \$100 million to do something about the legacy of unemployment we were left with in this state by the appalling policies of the previous government — is that we recognise — —

Honourable members interjecting.

Mr HERBERT — We recognise that — —

Honourable members interjecting.

The PRESIDENT — Order! I do not need papers being flourished around, nor do I need that loud calling across the chamber.

Mr HERBERT — The Treasurer has announced changes to the Back to Work scheme, which of course enables employers to access much higher subsidy levels to take on long-unemployed people, whether they be long-term unemployed — 26 weeks — whether they be 19 to 24-year-old youth or whether they be retrenched workers, at \$5000. That funding is all coming out of the Treasurer's \$100 million Back to Work scheme.

Landmate

Mr O'DONOHUE (Eastern Victoria) — My question is to the Leader of the Government, Mr Jennings, as the minister representing the Minister for Environment, Climate Change and Water. The Landmate program has been a successful joint venture between the Department of Justice and Regulation and the Department of Environment, Land, Water and Planning for many years. The program, which sees minimum security prisoners undertake land reparation,

fence repairs, weed removal, river restoration and other positive environment work, is a win-win: the community has important work completed while minimum security prisoners gain valuable new skills which can help them get jobs when they are released.

The program has also been instrumental in helping farmers and the community clean up after both bushfires and floods. The minister's government has recently introduced a \$400 a day charge for private landowners and some community organisations to access the Landmate program. What is the basis of the decision, which comes at a time when many farmers are already struggling to pay the bills as a result of failed crops and a dry winter and spring?

Mr JENNINGS (Special Minister of State) — I thank Mr O'Donohue for his question. I am glad he has reminded the chamber of the value — the public benefit and indeed the private benefit — that may derive from the services provided. He was very clear when he outlined the range of activities: some of them serve a broader public benefit and some of them actually serve the interests of private landholders. If a user fee has been associated with that program — which I am not mindful of, but I will take advice from my ministerial colleagues — I am not sure whether that payment is struck under the environment portfolio or the corrections portfolio. I am happy to take advice on that.

It makes sense to me that there may be some user charges associated with what might be the private benefit that is derived from this support, but the member has reminded us of the various outcomes that are worthy and should be continued, so I am pleased that the program continues. The way it is funded on a sustainable basis which will provide a public and private benefit in the years to come, I am sure my ministerial colleagues are assessing. However, in terms of the details of that administrative work — the process by which that program currently runs and its fee structures — I will have to take further advice from my colleagues on that matter.

Supplementary question

Mr O'DONOHUE (Eastern Victoria) — I thank the minister for acknowledging the many benefits that do derive from the Landmate program and for taking the details on notice, and I look forward to his response. By way of a supplementary I ask: with many farmers struggling as a result of failed crops this season, coupled with the public good of restoring waterways and removing weeds and the like on private land, will the government reverse this decision and remove the punitive charge on struggling landowners and

community organisations for accessing the Landmate program?

Mr JENNINGS (Special Minister of State) — As Mr O'Donohue would know from my answer to the substantive question, his supplementary is a little bit ahead of my knowledge base on the way the fee structure has been determined. Given the public and private benefit that derives, I think my colleagues who administer this program should be mindful of the issue the member has raised and be sensitive in terms of what the cost burden should be on a sustainable basis to support private landholders across the Victorian landscape, particularly when there may be drought-affected areas, in structuring these fees. I will remind them of this issue that is an important one to the member, and I am sure also to members of the community. I will make sure that the supplementary information that I provide to the chamber and the member accounts for that issue.

Environment, Natural Resources and Regional Development Committee Fiskville inquiry

Mr RAMSAY (Western Victoria) — My question is to the Leader of the Government. I refer to the special report of the Environment, Natural Resources and Regional Development Committee tabled today relating to the Fiskville inquiry. The report extensively details the failure of the Country Fire Authority (CFA) through the Victorian Government Solicitor's Office to provide documents under summons, with the committee concluding that it has received less than 14 per cent of the documents ordered to be provided. I ask the minister: why has the government failed to meet its obligations under the summons?

Mr JENNINGS (Special Minister of State) — I do not accept the suggestion that the government has failed in its responsibility to the people of Victoria in relation to the release of information. I am aware that hundreds of documents, if not thousands of documents, have been released and made available to the committee. That release has been based upon the assessment of the Victorian government solicitor in accordance with what is deemed by it to be the balance of legal responsibilities and appropriate community protections in the name of releasing information in the public interest.

Supplementary question

Mr RAMSAY (Western Victoria) — The request was from a joint parliamentary committee chaired by a government member of Parliament, with unanimous support for the request from the bipartisan committee.

The request for documents was in relation to the minutes of CFA meetings. My supplementary question is: the government's failure to provide the required documents under summons is a contempt of the Parliament and a contempt for the committee inquiry that the government itself established. Will the minister provide an assurance that the remaining documents sought under summons will now be provided?

Mr JENNINGS (Special Minister of State) — I do not accept that it is a prima facie incident of intent at all. In fact I stand by my substantive answer. Certainly in my responsibilities I have encouraged the maximum release of information available to this committee. On a number of occasions I have met with my colleagues and provided encouragement to the Victorian government solicitor to be as open as possible about the release of information. The government has acted in accordance with that advice. I am not able to act outside that advice, and I do not accept that it is a contempt.

Melbourne Metro rail project

Mr DAVIS (Southern Metropolitan) — My question is to the Leader of the Government. I refer to the information session conducted at the Punthill hotel in South Yarra on Tuesday, 27 October, by the Melbourne Metro Rail Authority. Will the minister confirm information from that session that the tunnel boring machine for the Melbourne Metro project will be based at Fawkner Park?

Mr JENNINGS (Special Minister of State) — I was not at the hotel in question on 27 October. I do not know what was said on that occasion, and it would be foolish of me to confirm anything that may have been conveyed at that meeting without actually seeking from the authority an understanding about who said what in relation to these matters.

Supplementary question

Mr DAVIS (Southern Metropolitan) — I thank the minister for his response. Perhaps he can confirm that through seeking the information from the relevant authority. I ask him, if he does that, will he confirm not only the entry point of the tunnel boring machine but the size of the massive pit that will be created?

Honourable members interjecting.

Mr JENNINGS (Special Minister of State) — In fact there was a spectacular incident yesterday in question time when the gallery was cleared by the intervention of an attendant. It was pretty obvious in terms of clearing the chamber, but not today.

An honourable member interjected.

Mr JENNINGS — I can assure the member an attendant cleared the gallery on the basis of a confronting moment in question time yesterday. That did occur. The attendant took very urgent action to take children out of the gallery. I can assure the member that that occurred. Maybe as a group of parliamentarians we could reflect on some of our behaviour that may lead to those circumstances occurring.

On this occasion I will seek the advice that I do not have available to me and perhaps furnish it in my report back to Mr Davis.

QUESTIONS ON NOTICE

Answers

Mr JENNINGS (Special Minister of State) — I have answers to the following questions on notice: 1688–95, 2077–90, 2107–11, 2459, 2460, 2467–9, 2474, 2577, 2578, 2588, 2601, 2602, 3735–50.

QUESTIONS WITHOUT NOTICE

Written responses

The PRESIDENT — Order! In respect of the questions today, I indicate that for Mr Young's substantive and supplementary questions on handgun requirements, the Minister for Training and Skills, Mr Herbert, has undertaken to obtain further information as to the rationale behind those particular requirements. I ask that that be provided within two days.

Mr Herbert has also undertaken to obtain information in respect of Ms Patten's supplementary question on guidelines that may have been given to childcare organisations with regard to special religious instruction. I am going to allow two days on that. If it is the Minister for Education, it would be two days anyway, but it does need to be determined. We think that it is actually in Ms Mikakos's area. I would still allow two days because there is a need to sort out that matter. That is in respect only of the supplementary question.

With respect to Mr Davis's question to Mr Jennings on the impact on Fawkner Park of works associated with the major project contemplated there, Mr Jennings has indicated that he will seek further information that will hopefully address both the substantive and supplementary questions. Given again that it is another minister, that response should be provided within two days.

With regard to Mr O'Donohue's substantive and supplementary questions on the Landmate program, Mr Jennings will obtain further information on that. Again, that is two days.

With regard to Mr Rich-Phillips's question to Mr Jennings, I have perused that question and given it some consideration. Obviously the first question was very straightforward, as was its answer. In respect of the second question, I think Mr Rich-Phillips is seeking information as to whether there was alternative advice given to the government to substantiate its position that differed from the Auditor-General's, which would be the standard advice this Parliament would normally rely on. I think that is a valid question, and I would seek a written response in respect of the supplementary question that Mr Rich-Phillips posed. Again I say two days because that may well involve other ministers.

Mr Jennings — On a point of order, President, in relation to clarification of that matter, at no stage did Mr Rich-Phillips indicate whether the advice that had been obtained by the government preceded the scrutiny of the Auditor-General or was subsequent to it. I suggest that he is trying to suggest some intrigue in that advice was obtained after the scrutiny of the Auditor-General on these matters rather than preceding it. The government is quite entitled, through the Department of Treasury and Finance, to seek any advice it wants on the basis of the way the accounts are constructed. In fact they are the circumstances by which this occurred.

Mr Rich-Phillips — On the point of order, President, just to clarify the intent of the question, it went not to the fact of whether the government had obtained advice, which is now established on the public record, but rather to the reasons the government sought the alternative advice instead of accepting the Auditor-General's views.

Mr Jennings — It predates the Auditor-General's views. What are you talking about?

The PRESIDENT — Order! That might well be the answer. That may well be the response, and from my point of view I am quite open to the government actually providing that as a response. But I guess the question put to the house was whether there is a different authority, if you like, indicating that the Auditor-General's position is wrong.

As Mr Jennings rightly says, if that was information sought before the Auditor-General's position as part of the government's response or preparation of a response to the Auditor-General's report, that is standard procedure for government and I do not have a problem

with that. If, however, the Auditor-General's position came out and there is an alternative proposition that the government is using, I think the house is entitled to know that there is an alternative view that the government is relying on in this matter.

Mr Morris — On a further point of order, President, in relation to a question without notice that I asked Minister Mikakos on 21 October — both the substantive and the supplementary question, which you reinstated on Tuesday of this week — I have received a response. However, again it does not address the question of full-time jobs, despite you reinstating that question on Tuesday of this week. I ask you to review the response I have received and consider again reinstating the substantive and supplementary questions.

Ms Mikakos — On the point of order, President, the member continues to refer questions to me that are more appropriately directed to the Minister for Employment, who has responsibility for employment issues. However, I can inform the member that the Australian Bureau of Statistics data released just today shows that youth unemployment has actually declined for the month of October, from 14.9 per cent in September to 14.7, so we are making progress —

The PRESIDENT — Order! The minister is debating. That is not a point of order, as she and I both know. In respect of Mr Morris's point, I actually have a copy of the response, and I have to say I do not understand the mathematics. Perhaps that is a deficiency on my part, but it seems to me that these figures suggest it has gone backwards. Anyway, the response has been provided, and I am not in a position to require under standing orders any further written response or to request the minister to answer in any other way. This is the response the member has, and the minister obviously invites the member to peruse the more up-to-date information that is out today.

CONSTITUENCY QUESTIONS

Eastern Victoria Region

Mr O'DONOHUE (Eastern Victoria) — I raise a constituency question for the attention of the Minister for Police. There is an emerging police resourcing and numbers crisis. We have seen numerous 24-hour police stations having to shut their doors — Reservoir, Epping, Greensborough and Pakenham — due to a chronic shortage of numbers, and now I understand that the Belgrave police station, a 16-hour police station in my electorate and the electorate of the Deputy Premier, was closed on 24 separate occasions during the month

of September during the 16-hour time frame it was supposed to be open — an absolute disgrace.

I call on the minister, by way of my constituency question, to resource Victoria Police in the way it needs to be resourced to be able to keep police station doors open for the advertised time during the day. The members of the Belgrave community want their station open 16 hours a day. They expect it to be open 16 hours a day. The Minister for Police, Wade Noonan, must provide the resources so it can be open 16 hours a day.

Western Metropolitan Region

Mr MELHEM (Western Metropolitan) — My constituency question is to the Minister for Small Business, Innovation and Trade, Philip Dalidakis. I note that a piece in the *Herald Sun* on 3 November reported that Australian manufacturing is the strongest it has been for five years, with four consecutive months of expansion thanks to strong performance by exports. I ask the minister to update me on the government's efforts to expand the export opportunities for Victorian businesses, including those in my electorate of Western Metropolitan Region.

Northern Victoria Region

Ms LOVELL (Northern Victoria) — My question is for the Minister for Housing, Disability and Ageing, and it is regarding the home and community care (HACC) program. I have recently been contacted by a number of constituents who receive HACC funding to assist them with their day-to-day living. These constituents and their advocates are particularly concerned about reductions in funding and the hours of care they receive.

The City of Greater Shepparton has stated that recent changes to the Department of Health and Human Services funding allocations have resulted in the number of funded hours provided by the state to the City of Greater Shepparton for the provision of HACC services being reduced by approximately 13 136 hours. The reduction in state-funded hours is unsustainable for the council and has resulted in a reassessment of and reduction in respite hours. My constituents advise that this reassessment has resulted in the hours of respite they receive being reduced by between 66 per cent and 75 per cent.

My question to the minister is: will the minister commit additional funding to the City of Greater Shepparton to ensure that there is no reduction in respite hours for recipients of HACC funding? I ask this particularly in

the context of Shepparton being amongst the last communities to be included in the NDIS rollout.

Western Victoria Region

Mr PURCELL (Western Victoria) — My constituency question is to the Premier. Will the Premier make certain that future parliamentary sitting schedules do not include sitting on Remembrance Day?

I spent yesterday away from my electorate, and along with many other country members I was deprived of the privilege of commemorating Remembrance Day with my local community. That this did not go without notice. I will quote from the local Warrnambool paper:

An absence of state MPs at the Warrnambool Remembrance Day service has angered local RSL members.

Warrnambool RSL president, John Miles, voiced his frustrations during the service on Wednesday to a crowd of about 300.

Mr Miles said he was disappointed regional and rural MPs were unable to attend local services because Parliament sat in Melbourne.

'They can have a public holiday on grand final day eve but on Remembrance Day they're sitting in Parliament', he said.

'I'm disappointed ...'

The 11th hour of the 11th day is hugely significant to us, and we would like to spend it with our communities.

Western Metropolitan Region

Mr FINN (Western Metropolitan) — My constituency question is to the Minister for Local Government. The minister is aware of the long struggle of the Sunbury people to be liberated from the control of Hume City Council. She is aware of the vote of the residents of Hume to grant Sunbury its municipal independence. She is aware of the gazetting by the previous government of the Sunbury City Council to begin operation on 1 July of this year and the guarantee by the then ALP shadow minister and the candidate for Sunbury before the last election to respect and support the process. The minister is aware of establishing a so-called audit review conducted by at least one individual who went into that process with a preordained position and her use of this audit to justify killing the Sunbury council, a decision that she now tells us she is proud of. I ask: how can the minister take pride in this outrageous lie to and deception of the people of Sunbury?

Eastern Metropolitan Region

Mr LEANE (Eastern Metropolitan) — My question is directed to the Minister for Education, James

Merlino. Norwood Secondary College and Mullum Primary School are neighbours. They were awarded \$6 million to build a joint facility, basketball courts and assembly area. Since being awarded that money in last year's budget, the two school communities decided they would prefer to break that money up and have separate facilities, which I understand the minister is aware of and is happy for them to do. Obviously there are some actions that his department needs to take for this to occur, so if the minister could keep me regularly updated on how that process is going, I would appreciate it.

South Eastern Metropolitan Region

Mrs PEULICH (South Eastern Metropolitan) — My constituency question is for the Minister for Roads and Road Safety, and I ask: can the Minister for Roads and Road Safety advise if bridge work will commence on a freeway-style flyover interchange at the Western Port Highway and Thompsons Road intersection before January 2018?

Eastern Metropolitan Region

Ms DUNN (Eastern Metropolitan) — My constituency question is for the Minister for Energy and Resources. A constituent of Ringwood East in Eastern Metropolitan Region had a smart meter installed at his property along with a 3.2-kilowatt solar system and various other energy-efficiency measures over two and a half years ago. To this date and after numerous requests, electricity provider AusNet Services still has not activated the smart meter to allow this constituent access to cheaper time-of-use tariffs. During this time the constituent has had no choice but to pay higher electricity costs and be left out of pocket. When contacting AusNet recently, the constituent received no firm commitment on when the smart meter would be enabled and was notified that it could be sometime between now and May 2016, with the possibility of this time line being further extended.

I am happy to provide the minister with the constituent's details. Will the minister intervene and find out why there has been such a long delay in getting their smart meter enabled and ensure that the smart meter is fully operational and the constituent placed on the reduced tariff immediately?

Western Victoria Region

Mr RAMSAY (Western Victoria) — I refer to an article in the *Geelong Advertiser* headed 'Grand final holiday not worth it, tourism operators say'. On the basis of the article, my question is directed to the Minister for Small Business, Innovation and Trade. The article begins:

Four in five regional tourism businesses do not support the grand final eve public holiday, according to a survey by the Victoria Tourism Industry Council.

'Regional tourism businesses throughout Victoria are sending the Andrews government a clear message that this holiday must be retracted', council chief Erin Joyce said.

'The majority of tourism operators are small, family-run businesses under significant cost pressures already. They have been hit hard by the additional expense of this ... holiday'.

...

Tourism Greater Geelong and the Bellarine executive officer, Roger Grant, said there were a lot of people around the region during the holiday, but many businesses had relied on family members to open.

'We had comments made also that even though businesses were busy and open they were hardly profitable —

given the high penalty rates.

I have also made commentary about the chamber of commerce's concern about this. My question is: will the minister consider rescinding the decision to gazette the grand final eve public holiday next year?

Southern Metropolitan Region

Ms CROZIER (Southern Metropolitan) — My constituency question is for the Minister for Planning. Significant work is being undertaken at the McKinnon railway station as part of the level crossing removal program. So-called consultations have taken place with traders and residents. However, no feedback has been provided. Traders and residents are yet to see building and development plans, and given that works have been brought forward to just over six months time, which will have a greater impact on the businesses around that area, they have concerns regarding the scale of the project, the size and scope of the retail and apartment complex and how this development will affect both parking availability and their ability to conduct their business. I ask the minister to immediately provide residents and traders with the final plans for their information and consideration.

Sitting suspended 12.51 p.m. until 2.03 p.m.

JUSTICE LEGISLATION AMENDMENT (POLICE CUSTODY OFFICERS) BILL 2015

Second reading

Debate resumed.

Ms PENNICUIK (Southern Metropolitan) — I am happy to speak today on the Justice Legislation Amendment (Police Custody Officers) Bill 2015. This bill establishes a legal framework for civilian police

custody officers (PCOs), who will be employed as public servants by the chief commissioner. They will not be able to use guns or tasers, but they will be issued with oleoresin capsicum (OC) spray, batons and handcuffs. Under the bill police custody officers will have defined custody management duties, whereby they will supervise and manage certain people who are in police custody. That will include persons in police cells; persons being transported to or from police stations, the courts, mental health services and hospitals; persons detained in custody at court, or who surrender to the custody of the court in answer to bail; and offenders who are in hospital.

Police custody officers will have the power to search prisoners and visitors; to use reasonable force to maintain the security, safety and good order of police cells; to take all reasonable steps to ensure the safety and welfare of prisoners; and to prevent the commission of an unlawful act. They will be empowered to apply an instrument of restraint to a person if it is reasonable to believe it is necessary to prevent the escape of a person or the assault of or injury to any other person. PCOs will also be able to supervise offenders while they take their own swabs for DNA samples and help with breath and drug testing in some police stations.

These are quite wideranging powers and functions that this new class of public servant called police custody officers will have. It is worth saying that the supervision and management of prisoners involves a high level of responsibility. It ensures not only the safety of the public but the safety and welfare of prisoners. That is particularly significant when we realise that up to 55 per cent of prisoners may be at risk of self-harm, and that up to 42 per cent of prisoners, and perhaps more, have some level of mental health concern or issue. At present these matters are the responsibility of sworn police, protective services officers, prison guards and police escort officers — all those persons who come into contact with prisoners. This bill creates a new class of public servant, employed under the Public Administration Act 2004 but answerable to and directed by the chief commissioner.

In the second-reading speech and in media releases the Minister for Police has said that this bill will free up police to do the job they were trained to do, such as tackling crime and keeping the community safe, and that it is part of the government's commitment to ensure that Victoria has a well-resourced police force. But that raises a point about the job police have been trained to do. Until now that has included the supervision and management of prisoners in jails and

police cells, the guarding of prisoners in hospital and the supervision of prisoners during transport to and from police stations. I do not necessarily accept the assertion that these tasks are somehow above and beyond normal police duties, when they have always been part of police duties.

In part you could say that the seminal question here is that if the government is investing \$148.6 million to recruit, train and deploy 400 custody officers in 22 police stations in Victoria over the next three years to help address concerns over the need for an increase in police numbers, why does it not just invest whatever the cost would be to train and deploy 400 more police officers, who could do duties above and beyond those of the police custody officers (PCOs) that are being created by the bill? That really is the seminal question. If the issue is that we need to create a new class of persons called police custody officers and train and deploy 400 of them, why does the government not simply employ 400 more police? Nevertheless that is what the bill does.

We are told the bill was developed in collaboration with Victoria Police, the Police Association and the Community and Public Sector Union (CPSU), to whom I have spoken briefly. I asked the CPSU its views about the creation of police custody officers, who because they will be employed as public servants will be covered in terms of union coverage by the CPSU, as are prison officers currently, particularly with regard to training, and I will refer to training in a short time.

I note the minister is sitting near the departmental adviser's box. I know the union has been in consultation with the government with regard to remuneration and conditions for police custody officers. When I spoke most recently with the CPSU, I understood there were a couple of outstanding matters. I wonder if the minister could outline whether they have been resolved — that is, those issues related to remuneration and conditions of employment for police custody officers. In particular it was in regard to the taking of breath samples and perhaps DNA samples as directed by the chief commissioner or his or her delegate.

Victoria Police will maintain responsibility for implementing all activity relating to the recruitment, training and deployment of PCOs. The minister says that PCO applicants will be appropriately vetted prior to employment, including being subject to standards and testing for character and reputation, psychological and medical fitness and cognitive ability as well as communication skills. They will be subject to initial and ongoing training, which will be customised for the

particular role and responsibilities of police custody officers. This is based on components of the training currently provided to police, protective services officers, prisoner escort officers and, I understand, corrective services officers or prison guards.

We raised these issues with the minister's office, and I take this opportunity to thank the minister's office and the department, because there was quite a bit of to-ing and fro-ing over the weeks with regard to some of the issues raised by my colleague, Sam Hibbins, the member for Prahran in the other place. When he spoke on the bill a little while ago he raised some of those issues related to training and to the liability of police custody officers, which I will return to a little later in my contribution. I thank the minister's office and the department for getting back to us about a number of the concerns we raised about the bill; we are now more knowledgeable about it than we were at the time it went through the other place.

We were concerned that the training may not be sufficient, and this has been raised by a number of stakeholders, as it was raised with regard to protective services officers at railway stations when that legislation was first introduced. We understand there will be eight weeks of training. We got quite a detailed response about training. I will not read it all in, but I thank the minister's office and department for that comprehensive outline of the training. I spoke to the minister earlier about that and I think the minister could reiterate some of it for members of the public and other organisations, particularly the level of training police custody officers would receive, given their very important responsibilities for the welfare of prisoners et cetera.

Briefly and without going into too much detail I have been informed that the training of PCOs will comprise a blend of online, classroom, workplace and scenario-based training, covering topics such as safety and security; person-in-custody wellbeing; court assistance, including escorting prisoners to court; custody administration and professional practice; and in particular, initial, ongoing operational safety tactics training tailored to the role and function of the PCOs. As mentioned PCOs will not have access to firearms or tasers. However, they will have access to OC spray batons, covert protective vests and handcuffs, so there will be training on how to deploy that equipment. The training will also include demonstrations of appropriate behaviours and sessions dealing with vulnerable persons. There are quite a few other aspects to the training, which I hope the minister will be able to elaborate on in his summing up of the bill, because this is a particular area of interest to the community.

In terms of the eight-week training, the first three weeks will be about custody administration. The fourth week will be a workplace placement, but without direct contact with detainees. Weeks five to six will be more about wellbeing issues, and in week seven there will be a workplace placement with direct contact with detainees. Week eight will be incident management, self-awareness training and offender wellbeing simulation. An operational learning framework is included in weeks 9 to 20, which includes on-the-job activities to consolidate learning with workplace coaching and support. But there is still a bit more detail that the minister could go into. While that training program looks reasonably comprehensive, it is a lot of stuff to squash into eight weeks. As well as the initial training, we need to be very sure that ongoing training is involved.

In terms of oversight, PCOs will be subject to appropriate oversight, discipline and management, including Victorian public service performance management; the requirement to comply with the chief commissioner's instructions provided under section 60 of the Victoria Police Act 2013 (VPA); random and critical incident drug and alcohol testing; the offences and other safeguards against disclosure of personal and sensitive information contained in the VPA and the Privacy and Data Protection Act 2014; and the obligations of public authorities under the Charter of Human Rights and Responsibilities. IBAC can also receive and assess complaints against PCOs and police.

The bill establishes statutory powers to manage persons in police jails and to transport detained persons to and from police jails and various places. Another issue the Greens wish to raise is that we need to be careful about the issue of liability. Clauses 7 and 21 of the bill refer to the liabilities of PCOs. Sam Hibbins, the member for Prahran in the other place, raised the issue of the liability of police custody officers should a member of the public suffer an injury or damage. We were concerned about this and received advice from the department that PCOs will not be personally liable for injury or damage if the use of force was reasonable and proportionate and necessary in the circumstances. As public servant employees, the same liability that applies to Victorian public sector employees will apply to PCOs. The state — in this case, the chief commissioner — will be vicariously liable for PCO conduct in the same way an employer is liable for the conduct of an employee under section 23 of the Crown Proceedings Act 1958.

For the benefit of the Victorian public, could the minister reinforce that this liability issue is a different situation than the one that applies to Victoria Police

officers under the Victoria Police Act? I am advised that it is consistent with the arrangement for prison officers, who are also employees and not police officers. The Scrutiny of Acts and Regulations Committee raised this issue and stated that:

... the committee observes that Victoria's Court of Appeal has recently held that a statutory 'privative clause' may have the effect of preventing a Victorian court from hearing and determining an injured person's claim for declarations that a use of reasonable force is contrary to the obligation in ... section 38 for public authorities ...

Could the minister clarify that? This is a very important area and one that I have talked about many times in the Parliament with regard to the still not full liability of the police commissioner for the actions of police officers. Some changes were made to the police act which went almost as far as we need to go, in that a person injured by a police officer would in the first instance take up proceedings against the state. But the state still has the ability in some circumstances to say that the activity of the police officer was not done in good faith and was outside the scope of their duty. My view is that the state should always be liable for the actions of police officers because they have such wide powers — they are armed — and they also have discretion to use those powers. This is an issue that needs to be clarified for the public.

Another reason to clarify this issue is that in a 2014 report into deaths and harm in custody the Victorian Ombudsman found that police cells were being used as de facto prisons, at times holding in excess of 350 detainees, and that the resources to supervise high numbers of detainees in police custody placed a significant burden on police resources and led to less police on patrol. It also placed a burden on those people who were detained in the prison cells.

For example, the Ombudsman said:

the resources required to supervise higher numbers of detainees in police custody has placed a significant burden on police resources ...

detainees are being held at the Melbourne Custody Centre for extended periods of time without access to fresh air or natural light in breach of the Victorian Charter of Human Rights and Responsibilities;

detainees are frequently transferred to police cells across the state limiting their access to family and legal representation;

detainees in police cells do not always have access to clean clothes;

some detainees are being held in police cells for in excess of 14 consecutive days at the same location, contrary to gazetted requirements;

the Melbourne Custody Centre is often full meaning that Corrections Victoria has been unable to ensure that some prisoners attend scheduled court appearances, resulting in disruption to the criminal justice system.

These impacts on detainees as well as on the courts and the police are big concerns, so we need to know that all these issues are being covered off.

I have covered most of the issues I wanted to cover, but I want to say, as I said before, that the issues we are facing here are as a result of changes to sentencing introduced by the previous government, which has meant that more people are ending up in police cells, more people are ending up in the Melbourne Custody Centre and more people are ending up in prison when they could in fact be better off on community correction orders. We have seen restrictions introduced on bail and parole, which are aimed at serious violent offenders and which everybody in the Parliament and everybody in the community completely supports but which are in fact impacting on other offenders who are not serious offenders and are creating this overcrowding problem.

We need to see more investment in justice reinvestment, restorative justice and a range of mental health and rehabilitation programs. We need more support for prisoners post-release so that they do not become recidivists and end up back in the corrections system. We need to make sure that people have access to housing and other supports after they have left prison and that they have access to rehabilitation programs when they are in prison so that we do not have these overcrowding problems. Having said all that and having asked the minister to go through some of those issues in his summing up, the Greens will not be opposing the bill.

Mr BOURMAN (Eastern Victoria) — I am pleased to rise and speak on the Justice Legislation Amendment (Police Custody Office) Bill 2015, which we will support of course.

Putting 400 or so police custody officers into the various police stations will relieve 400 police officers from doing custody duty, but there is a bit of a depth to being in the watch house which is not just about custody. There is equipment and property that come in and out and there are other things, so I actually wonder what the tangible end result is going to be. Is it going to mean that 400 extra police will be available to staff the vans or 300 or 200? I do not know. I do not know what the limits of the police custody officer's role will be, so it will be interesting to see. Anything that helps the police or helps to recruit more police is good, and I agree with Ms Pennicuik on that one. More police officers would have been better, but police custody

officers are certainly better than what we have got now, which is nothing.

Having more police available would give us a wider pool of suitably trained people to attend such things as demonstrations and events while police custody officers are stuck at the station. The issues faced by the custody officers inside the cells will be the same as those faced by the police. I worked in the Melbourne Custody Centre for a few months back in the 1990s. It was full back then, but it is generally full of people who are going to court. However — and surprisingly I agree with the Greens again — a lot of people are just being moved around the system. My fix for that is not to let them out though; my fix for that is to build more prisons. If we are going to put more people in jail, they should be in a proper jail and not being moved through police cells every 13 days, or whatever it is, in order to fiddle with the numbers.

I have no doubt the role of police custody officers will be a very challenging one. They will be dealing with all sorts of prisoners. There are the very benign prisoners, who will do what you want them to do when you want them to do it. There are the drug-affected prisoners, who are generally quite high maintenance but do not cause trouble. Then there are a lot of very troublesome people. Hence officers need capsicum spray and the ability to deal with them, because when things happen — and there was quite a brawl just after I left the custody centre in the 1990s — those police custody officers will be in exactly the same position as any police officer. I do not think they should be denigrated. They are not going to be at the same level as the police, but they are certainly going to be doing probably one of the harder parts of their job and, I believe, one of the least appreciated.

As members know, I do not make long speeches. I commend the bill to the house.

Mr HERBERT (Minister for Training and Skills) — I thank everyone for their contributions to this debate. The Justice Legislation Amendment (Police Custody Office) Bill 2015 provides a legislative framework to meet the government's commitment and, it is important to say, to train and deploy 400 custody officers in order to relieve 400 police officers from custody duty to enable them to return to frontline duties. The 400 custody officers will form part of over 600 extra police personnel the Andrews government has funded since coming to office. At the same time we have increased the police budget to \$2.5 billion, which is the largest budget in the force's history. We are trying to make sure that those resources are used appropriately and that they meet some of the needs, as

Ms Pennicuik outlined, of the growing number of people in our prisons and that they assist the way we make various decisions about incarceration or about the court system.

There are a fair few questions out there. It has been a bit of a duelling battle of questions between the Greens and the opposition. I do not want to promote that sort of contest, let me tell you, but I do thank members for the cooperation they have shown in terms of making sure that we have a smooth process. I hope I can outline answers to many of those questions.

I might just start with the point Mr Bourman made in his contribution with regard to custody and police officers and the way stations operate. I put on record that of course ultimately it is up to police command and the police to decide, depending on the nature of the risk. There will be times when police officers, not custody officers, are assigned to these duties in terms of escorting to cells. There is a vast difference in terms of risk in relation to the people who end up in our prisons or police station cells. That is still an important point. Obviously we would not want to say it is clear cut, because it is never clear cut. There will be times when police are assigned those duties rather than custody officers because of the risk that is deemed appropriate.

I begin by talking about the issues the Greens have outlined, and I will try to provide some clarity on some of the issues that have been sought. There is an issue of the definition of 'detained person'. The term 'detained person' I am advised is defined in section 104A of the Corrections Act 1986 and means any person who is detained in a police jail. A detained person would include a person under lawful arrest or people subject to an order of imprisonment issued by a court authorising their detention, such as remandees and prisoners who are detained in a police jail.

The classification of powers to take photographs is an issue the Greens have raised. New section 104AF(1) takes an existing power from the Corrections (Police Gaols) Regulations 2005 and inserts it into the Corrections Act 1986. The power relates to detained persons, which includes a person under lawful arrest. The photographs are taken for identification and custody management purposes. They are not taken as mugshots or for other investigative purposes. Photos are uploaded into the Victoria Police dedicated custody management system and they are used to ensure the safe management of a person while in custody — for example, the police will use a photograph and other identification information to ensure that the right medication is administered to the correct person.

On the clarification of police custody officer functions and the Crimes Act 1958 forensic procedures, which was another issue raised, the ability of the Chief Commissioner of Police to determine other duties of police custody officers does not provide custody officers with additional or discretionary statutory powers. The other duties envisaged will be administrative in nature, including property management and holding items that may come into the police station et cetera. The power for a police officer to take fingerprints or supervise the taking of DNA swabs under the Crimes Act is only enlivened when a police officer causes these to be done. It will not be an individual choice of police custody officers. Police officers will continue to decide when these procedures are lawfully able to be performed under the Crimes Act. Police custody officers are operating in delegation, not as an authority.

In terms of police custody officers (PCOs) supervising persons, the powers granted to PCOs are defined under the bill and may only be exercised in accordance with the legislation that we have before us today. In relation to the meaning of 'police station', a police custody officer will be able to operate at a police station, so this term has its common meaning. In relation to the meaning of 'police gaol', as set out in the bill, as with police officers, the powers of PCOs to manage a police jail will be confined to the demarcated areas appointed as a police jail by the Governor in Council and published under the *Government Gazette*.

With regard to the clarification of training programs compared to other jurisdictions, Victoria Police, I am advised, assesses the key areas of learning required for the PCO roles and will build an ongoing training program based on the custody management role police currently undertake, so it is keeping it within that defined purpose. Victoria Police also examined the training programs from custody-specific roles and other settings and jurisdictions including Victoria Police officers and similar civilian custody management positions in the Queensland and Western Australian police forces.

The training foundation program will be eight weeks, as mentioned in the debate, comprising six weeks in theory and practical classes at the Victoria Police Academy and two weeks of field placements at a police station. Ongoing workplace coaching and supports are included to ensure learning is transferred into the workplace, with training weeks 9 to 20 dedicated to on-the-job activities to consolidate learning with workplace coaching by an academy online portal or staff visitations. These programs, I am advised, provide the solid benchmark and, based on the assessment of

protective services officers training programs, draw on the necessary and selected elements of these programs that were required for the PCO role. Basically the training is linked to what their role actually is and will be ongoing. If it was in my portfolio area as Minister for Training and Skills there would be a training package and that would be clearly defined, but in this area it has been developed specific to the roles of police custody officers.

There was an issue raised with regard to conditions of PCOs. I understand that Victoria Police has signed a memorandum of understanding with the Community and Public Sector Union and PCOs will be covered by the existing Victorian public sector workplace determination. In regard to liability arrangements for PCOs — and I think I have almost reached the end of the Greens' questions — the same liability scheme that applies for Victorian public sector employees will apply to PCOs. The state will be vicariously liable for PCOs' actions or omissions in the same way as an employer is liable for the conduct of their employees, and that is under section 23 of the Crown Proceedings Act 1958.

Similar liability provisions for the use of force that apply to prison escort officers will apply to PCOs. PCOs will not be liable for injury or damage if their use of force was reasonable, proportionate and necessary in the circumstances. These are the same provisions that basically apply to police escort officers. Prison escort officers have specific protections related to the use of firearms. However, as PCOs will not use firearms, these provisions will not apply to PCOs. They will have handcuffs, capsicum spray and other measures they can get access to, but they will not have firearms.

I turn now to the queries raised by the opposition, in particular by Mr O'Donohue, and I will try to go through all five of them — or there might have been seven of them. I think there was a bit of double up. I will not do them one at a time; rather, I will try to encompass them in my response.

In regard to the deployment time line, which was one of the first questions Mr O'Donohue asked, I can advise the opposition that the first custody officers will commence training, as members know, on 7 December, with training at stations during December. They will formally commence in January, although they will have been in stations as part of their training for the on-the-job components. I note that when the previous government rolled out protective services officers, that did not commence until late February 2012. I do not think there has been a delay; I think it is roughly in line. Basically our brand-new police custody officers will commence before the previous government managed to

commence its PSO program. But I am not suggesting they are identical; I am just making the point that I do not think they are being delayed at all.

PCOs will be deployed at 22 police stations and will initially work at Sunshine, Dandenong, Heidelberg, Ballarat, Geelong and Broadmeadows. At this time there is no intention to deploy PCOs to the Melbourne command centre, Moorabbin Justice Centre or the Ringwood Magistrates Court cells.

I am also advised that, in regard to whether they have been selected, offers for the first round of training have gone out, but to be honest I am not quite sure whether they have been accepted by those people. The offers are out there so presumably they will all be there on time. If you apply and you get an offer, unless you win Tattsлото tonight if you get lucky with Powerball, you are probably going to take up the job you applied for.

The first PCO squads will be deployed to the six locations. The forward deployment schedule is a decision for Victoria Police in line with 2010. However, I am advised that the 400 should be rolled out by mid-2018.

As the shadow Minister for Police noted, the deployment of the freed-up police officer resource is a matter for the Chief Commissioner of Police, and he will determine the best use and deployment of those police officers freed up by the PCOs.

Police have confirmed, however, that the freed-up police resource will remain within the division, in response to that particular question, and that 400 police will be released. It is fair to say that, given many of the stations we are talking about are the large stations, there is all likelihood that those officers will remain at those stations but technically they are in the division and at the discretion of operational command.

In regard to the relationship between custody and police officers in terms of decision-making in these facilities, the custody officer resources will become an integral, integrated part of the police team at the police stations. However, the officer in charge of the police station and the police jail will continue to have a supervisory role over the work of police custody officers. They will be part of it, and the police officers in charge will make those decisions.

The shadow minister asked what police custody officers will do when numbers in cells are low. Depending upon work priorities and the number of detainees in custody at the time, PCOs can assist with back-of-house administrative duties, such as property management and other support functions. But as the

shadow minister would be aware, even when prisoner numbers are low or the cells empty, police currently need rostered staff on for custody management and that is because there can be quick, unexpected surges in the number of detainees. Events can happen and suddenly there is a whole lot of people in there, which is difficult to predict and roster for. Arrest rates and police operational focus obviously will have an impact on that decision.

I think I have answered most questions. Lastly, rostering of police custody officers will occur pursuant to the current Victorian public sector enterprise bargaining agreement. I hope I have managed to answer as best as possible the vast majority of questions that were asked. They were very good questions. I think it is been a good debate, and I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr O'DONOHUE (Eastern Victoria) — I thank the minister for the answers he provided in his summation. I just want to tease out a couple of points, which should only take a couple of minutes. The minister said that the Chief Commissioner of Police will determine the allocation of police custody officers (PCOs) to other stations after the six priority stations that have been identified. I mentioned that in my second-reading speech as well. I fully respect and appreciate that it is a matter for the chief commissioner. My question is: when will that decision be made? Has the government been made aware of or had any advice about what the rollout locations will be? If not, when is that likely to be received from the chief commissioner?

Mr HERBERT (Minister for Training and Skills) — In regard to the question from Mr O'Donohue, I am advised that, as he knows, six have been allocated. There will be another 16 allocated, which means there are 22 in all. I expect that the chief commissioner will advise on those shortly. The rollout will be by about mid-2018, but I do not have details of exactly what stations — that is, when and where.

Mr O'DONOHUE (Eastern Victoria) — I thank the minister for his answer. I just want to clarify with the six priority stations, I notice that in media releases of the minister and from public commentary there are

20 PCOs in the first group. They are being allocated to the six priority stations. That will only partially relieve the police officers at Ballarat, for example, or Sunshine, of that role. I assume that the second squad will be used for the six priority locations as well. I just want to get a better understanding of the model, because those 20 PCOs will not do the full job for the six stations.

Mr HERBERT (Minister for Training and Skills) — So you are asking, will the six be separate and then we will do the others, or will they be included in the future rollout in the earlier part of the scheduling?

Mr O'DONOHUE (Eastern Victoria) — Yes, and with subsequent stations do you envisage that a full complement will be provided to an individual station?

Mr HERBERT (Minister for Training and Skills) — I thank Mr O'Donohue for that question; it is a good question. I guess the way I would answer it is that in terms of the best way to roll it out, it is our expectation that instead of filling each station fully with its complement and then rolling through stations, we will spread the PCOs out across all the stations. That will put some people into the job early, and they will provide good advice and mentoring support for another tranche, which will roll out during the process. I think the aim is to spread them out and then fill the stations up.

Mr O'DONOHUE (Eastern Victoria) — Can the minister advise when the government expects the second intake to take place, noting what I said and what you confirmed — that 7 December is the first intake? When is the second intake?

Mr HERBERT (Minister for Training and Skills) — I would like to be able to answer the question but I cannot; I do not have that information. I am happy to advise you of it once I find out. It will just take a bit of time to find that out.

Mr O'DONOHUE (Eastern Victoria) — If the minister could take that on notice, it would be appreciated.

Mr HERBERT (Minister for Training and Skills) — It will take a bit of time, relative to the debate.

Mr O'DONOHUE (Eastern Victoria) — I thank the minister very much. I also thank the minister for his advice about the enterprise arrangements, pursuant to which the PCOs will be employed. Just for greater specificity, could the minister advise whether there will be casual part-time PCOs and also in that context give a bit more detail in relation to a station like, as I

mentioned in the second-reading debate, Bairnsdale, where the court may only sit a couple of days a week. For example, on a Monday night in the middle of winter in Bairnsdale you are unlikely to have prisoners, I would imagine. What are the rostering arrangements going to be like in those sorts of locations?

Mr HERBERT (Minister for Training and Skills) — Probably a bit different, given that public servants usually tend to be employed full-time, if we are looking at a figure, but I guess rostering arrangements may be a bit different in each police station. Let me get some advice.

The DEPUTY PRESIDENT — Order! Minister?

Mr HERBERT (Minister for Training and Skills) — Sorry, I am not quite ready to answer. It will take a few minutes, and I beg your indulgence. There was a very famous YouTube video featuring a song by Charity Brown, involving a building fire in America. The song was *Ain't Nobody Got Time for That*. We will find time to get this answer, but it might take a little bit of time.

Can I just go back to the last question? I have advice now — we have managed to find that. The second intake we are anticipating into the training program will be on 18 January.

In terms of employment arrangement for PCOs, new section 200D inserted by clause 7 of the bill provides that the PCO bill does not create a new category of Victorian Police employee or set the employment terms or conditions for PCOs. The bill will allow the chief commissioner to authorise an existing Victoria Police employee to act as a PCO and provides them with the necessary powers and functions. As with other Victoria Police employees, PCOs will come under the Victorian public service workplace determination. PCOs will be employed on a permanent basis. There are no plans to employ PCOs on a casual basis.

In relation to part-time employment, I do not have that answer. It is a good question, but I am not sure I have the answer. I guess there are circumstances where it would make sense to employ people on a permanent part-time basis, but they will all be permanent. I guess there could be circumstances where people are employed on a permanent part-time basis, but the 400 will not be numbers; the 400 are full-time equivalent, including if they were to be some employed part-time in circumstances such as you outlined, such as at Bairnsdale or other stations.

Mr O'DONOHUE (Eastern Victoria) — Again, referring to those more remote stations, will there be an

on-call capacity for PCOs? To put forward a hypothetical scenario, if in Warrnambool, Mildura or Bairnsdale there is an unexpected incident on what is otherwise a relatively quiet night, would there be a pool of PCOs from the Gippsland region or the western region on call? How is that going to work in practice? Will it be left to Victoria Police?

Mr HERBERT (Minister for Training and Skills) — I do not think there will be pool arrangements, but, as I said earlier, police will make these decisions on a risk basis. I guess if there was a circumstance where there was a flood of arrests in a small country town — there might be an outlaw bikie gang, or one of a number of circumstances such as a special event that means more people are arrested — police command would then make a decision about the allocation of the resource. Custody officers could be asked to go there in the short term, or, more likely, more police officers could be put there.

Mr O'DONOHUE (Eastern Victoria) — I want to move on to the deployment rollout. I thank the minister for his advice that it is expected at this stage that the 400 officers will be deployed by mid-2018; I think that is what the minister said in his summation. Is the minister able to provide any greater detail about the numbers expected to be rolled out in 2015–16, 2016–17 and 2017–18 — the current financial year and the next two years?

Mr HERBERT (Minister for Training and Skills) — On the specifics, I am advised that I do not have that information right now. We are happy to give it to the member as soon as we can get it. I am not sure whether it is in defined numbers or broad targets, but we will give the member what we have. If we have the numbers exactly, we will give those to the member.

Mr O'DONOHUE (Eastern Victoria) — I appreciate that. In his summation the minister mentioned that police custody officers will undertake training from week 9 to week 20 in the station remotely. Can the minister just confirm that they will undertake training until the end of week 20?

Mr HERBERT (Minister for Training and Skills) — I thank the member for the question. They will have their formal training, and they have some workplace training while they are doing their formal training, and then they will do further workplace training. I will just confirm that.

It is a bit different to the training system for which I have ministerial responsibility where there are formal workplace training components. We have been through

weeks 1 to 8 in terms of the various things officers undertaking the training will do. Weeks 1 to 3 will involve custody and administration duties, including an observational shift on Friday. Week 4 will be a workplace placement, with no direct contact with detainees. Weeks 5 to 6 will involve persons in custody, wellbeing issues, summarising assessments et cetera. Week 7 will be workplace placements with direct contact with detainees. Week 8 will involve incident management, self-awareness training, offender wellbeing and simulations. That is part of the formal training package.

At the end of that they will then become police custody officers. However, clearly with people going into prisons there needs to be further support and further training. I just make it clear again that at that point they will be police custody officers, but then they will do further workplace training. Weeks 9 to 20 will be about an operational learning framework, which includes on-the-job activities, consolidated learning and workplace coaching, and they will be supported by an online academy portal and staff visitations. Basically it is ongoing. Weeks 9 to 20 will involve ongoing workplace coaching, supervision and support, which are included to ensure learning is transferred to the workplace.

Recruits with a custody management background or current Victoria Police employees can have their prior competency and skills recognised. These applicants will have a more targeted initial training program of five weeks. That first part will provide two weeks of field placements and three weeks of theory and practice. So they will be, I guess, in the training sense qualified, but in terms of the reality of having people working in the police stations, weeks 9 to 20 will have support, ongoing coaching, mentoring and staff going out and making sure that any issues they need to address in terms of optimal performance continue to be addressed during that 20 weeks.

Quite frankly I think it is a good scheme. It is probably something we should look at in terms of formalised training, so that after people get their certificate perhaps there needs to be a little bit more induction and support when they go into their jobs.

Mr O'DONOHUE (Eastern Victoria) — I thank the minister for that additional information. I noted the minister's point that up until the end of week 4 there is no contact with the prisoners per se. That will not begin until week 5?

Mr HERBERT (Minister for Training and Skills) — No, it begins in week 7. In week 4 they will

go in and have a look around, but they will not have any direct contact. During weeks 5 and 6 they will be back into the training, involving persons in custody; there are a range of issues they will learn about. In week 7 they will have another workplace placement, where they will have some direct contact with detainees. The first time they go in it is observation; then there is more training; then they go back in for some contact; and then back to more training.

Mr O'DONOHUE (Eastern Victoria) — I drew on the Minister for Police's comments in May about the deployment timetable. In his summation the minister referred to the protective services officers rollout, which I do not think is necessarily analogous, given the work at the academy required and also the training regime being more extensive, particularly around the use of firearms. In his media release on 5 May the Minister for Police said that the first appointment would begin this year, and on 12 May at a Public Accounts and Estimates Committee hearing he said:

... recruitment and training ... will commence as soon as possible in ... 2015–16 ...

I will just make the point to the minister by way of a statement that training is beginning in December and although there might be custody officers in some stations as part of their training, they will have no contact with any prisoners until week 7, according to what the minister has just said, which puts us well into mid-January. I will just make the point that on any assessment we are behind time from that given back in May.

Mr HERBERT (Minister for Training and Skills) — I will not engage in pointscoreing. What I will say is that I think this is a pretty good rollout. We beg to differ on how quick it is, but I think we are in agreement that while we might have differences on the initiative — and there might be different rollouts — it is a good initiative and we will try to do it as quickly as we can. We will have differences of opinion over whether we have been quick enough or whether we have been slow.

Mr O'DONOHUE (Eastern Victoria) — My final question is: what is the starting salary for a PCO?

Mr HERBERT (Minister for Training and Skills) — I do not have an exact figure, but I am advised it is a VPS 2 position.

Mr MORRIS (Western Victoria) — I was hoping the minister might be able to tell me when the Ballarat police station might have its full complement of PCOs.

Mr HERBERT (Minister for Training and Skills) — Its full complement? Like my answer to an earlier question from Mr O'Donohue, I would love to be able to give the member that information. A full complement will be rolled out across the system. I do not have that information; I do not think we have exactly locked it in. We have the training, but I would have to seek advice from the police commissioner as to whether we have the exact details of the full complement. I do commend the member on his representational role.

Clause agreed to; clauses 2 to 6 agreed to.

Clause 7

Ms PENNICUIK (Southern Metropolitan) — I have some brief questions on clause 7, which inserts new part 11A. New section 200B, which is on pages 4 and 5 of the bill, refers to the duties of police custody officers to, firstly, assist with the management and operation of police jails; secondly, supervise and transport persons in accordance with the act; and, thirdly, undertake any other duties determined by the chief commissioner from time to time. The minister talked about that a little in his contribution when he mentioned things such as dealing with property et cetera. I am just wondering how those duties that may be determined by the chief commissioner from time to time may be limited? The definition of 'any other duties' could be quite broad, so I am just wondering how they may be limited to the sorts of duties the minister mentioned.

Mr HERBERT (Minister for Training and Skills) — I am advised that there are a whole heap of duties in the legislation. There would be saliva swabs or DNA swabs and things like that. In relation to the specific issue, these will be administrative duties and not duties that would require further legislative arrangements. I said earlier in response to a question that there will be times when the number of people in custody is none or very few. It is envisaged that officers would then do other administrative duties while they are there rather than just sitting around and not having things to do. There is always a lot of work to do in police stations, so basically it will be administrative duties.

Ms PENNICUIK (Southern Metropolitan) — I hear what the minister is saying, but I do not really see anything in the bill that limits the scope of those duties, so it still stands as quite a broad power of the chief commissioner. I am presuming the chief commissioner is not going to be assigning duties for which people are not trained, but it does not necessarily say that.

I will go to the next question I want to ask, which is about new section 200D(1) on page 5. The minister mentioned this earlier in answer to a question from Mr O'Donohue. New section 200D(1) states:

The Chief Commissioner, by instrument, may authorise a Victoria Police employee to act as a police custody officer.

New section 200D(2) then states:

An authorisation may be given subject to any conditions or limitations that are stated in it.

That does in fact limit it. What type of employee would be given that sort of authorisation — —

Mr Herbert — Police employee?

Ms PENNICUIK — Yes — what type of police employee — given that we have just spent a long time, as the minister would know, talking about the issue of training. Not everyone who is a Victoria Police employee is going to have gone through that training, so I think that needs to be explained as well.

Mr HERBERT (Minister for Training and Skills) — I think I can clarify that point. Anyone who is undertaking the role of police custody officer will have had to have done the training. That particular section allows the chief commissioner to basically recruit people, but it also means that police officers who have done the training and who may wish to become custody officers have to be vetted and undertake various things before they can go and take on the role. There are also cases where someone may have done the full training to be a custody officer and then gone for another job at the police station. They could still do custody on short-term notice. They will have had to have done all the training and fulfilled all the requirements.

Ms PENNICUIK (Southern Metropolitan) — I have one further question. In terms of the training, is the minister specifically referring to the 8-week training or the 20-week training?

Mr HERBERT (Minister for Training and Skills) — You are making it hard on me!

Ms PENNICUIK (Southern Metropolitan) — I think it is an important issue, Minister.

Mr HERBERT (Minister for Training and Skills) — Okay, so I will try to answer this question for Ms Pennicuik. Just as with a police officer, who will do, I think, 13 weeks training and then a year when they do it, the time frame of the formal training is to enable them or to enliven them to undertake their jobs legally.

Then the rest of it is part of their on-the-job training, before they formally assume the role.

I am advised that, in regard to your question, should those circumstances arise, no-one will undertake a police custody officer role if they have not had the experience or training. So it could be a police officer, you see, who then transfers through, but they would have experience of the role. I guess in my way of thinking they would have recognition of prior learning; they will have that broader experience and knowledge of how the operational matters work and their requirements in terms of rights et cetera.

In short, I would not envisage that it would be the case that people who had not done the eight weeks plus the other time in there would at some point be appointed by the chief commissioner to do police custody duties.

Ms PENNICUIK (Southern Metropolitan) — The reason I am asking this is the fact that the employees are public servants, so I am assuming this particular provision applies to that type of person, rather than a sworn police officer. A sworn police officer is not referred to as an 'employee', so we are talking here about someone who is not a police officer. In terms of a sworn police officer, they already have the role of being a police custody officer; it is already part of their role to this day, so that would not be an issue. It is really a Victoria Police employee, so I suppose I am just looking at the possibility of the chief commissioner saying, 'We do not have enough police custody officers. So and so over there does other duties, but we are just going to have them do the work of a police custody officer because we do not have one at the moment'. That is the issue.

Mr HERBERT (Minister for Training and Skills) — That will not happen. Basically, they will have to have done the training and fulfilled all requirements. They will have to have done the training and be enlivened to operate as a custody officer. As I say, moving forward into the future, I would imagine there will be cases where custody officers might do other jobs in police stations. They might want a raise or want to do other types of work once they are in there, but they will have to have done the training if they are needed to backfill — if they are needed, in short, for emergency circumstances. They will have to have had that training.

Clause agreed to; clauses 8 to 30 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

**GAMBLING LEGISLATION AMENDMENT
BILL 2015**

Second reading

**Debate resumed from 22 October; motion of
Mr HERBERT (Minister for Training and Skills).
Section 85 statement made 10 November.**

Mr O'DONOHUE (Eastern Victoria) — I am pleased to speak on behalf of the opposition on the Gambling Legislation Amendment Bill 2015. This bill does a number of different things. It amends the Casino Control Act 1991 in relation to interstate exclusion orders and training requirements for special casino employees; it amends the Gambling Regulation Act 2003 in relation to compulsory training requirements for certain gaming industry employees and to provide that under the new precommitment system the precommitment information cannot be disclosed to a court or tribunal or certain other authorities and persons except in certain prescribed circumstances; and, perhaps most importantly, it amends the Victorian Responsible Gambling Foundation Act 2011 to confer new policy and advocacy functions on the Victorian Responsible Gambling Foundation (VRGF), to empower the foundation to impose and collect fees and charges in relation to education and information programs, and to empower the board of the foundation to appoint and dismiss the chief executive officer. On that final point I have some background, and I think it is a sensible amendment to clarify the governance structures of the VRGF.

This is a relatively discrete bill in the sense of gambling regulation in Victoria, and I wish to focus my brief comments on this bill on the Victorian Responsible Gambling Foundation. Let me say at the outset that the opposition will not be opposing this legislation. We have some concerns, but fundamentally we do not oppose the bill that is before us.

Let me start by commending Michael O'Brien, the member for Malvern in the other place, who was the shadow minister for liquor and gaming regulation for the coalition in the period between 2006 and 2010. He took to the 2010 election a comprehensive gambling policy, and there were two elements of that comprehensive policy. One was the creation of the Victorian Responsible Gambling Foundation. Michael

believes, and I believe as well — and I was fortunate to see this as the gaming minister for a period — that the gaming market, the gaming landscape, is changing extensively. It is changing rapidly. The role of the internet, the role of offshore gaming operators makes it harder and harder in a regulatory sense, in an education sense and in a prevention sense for a government to respond. Michael thought, and I agreed with him, that establishing a separate independent organisation that was given a charter to be responsive and nimble to those challenges was a way forward.

In the 2011–12 budget the coalition government provided \$150 million over four years — a 41 per cent increase in comparative funding on that which was provided under the previous five-year strategy of the previous government. So there was a significant increase in resourcing, independence for the foundation and removal from the justice department into new, independent offices in North Melbourne. Having a physical independence and statutory independence was an excellent move, and I am pleased the new government has fundamentally accepted what was a significant change at the time. When I say it has fundamentally accepted it, I will put a couple of caveats on that.

One is that the government has cut funding for the foundation. The foundation had a budget allocated to it of \$150 million over four years. The government has cut that to \$148 million over the next four years, which, when you take into account inflation, represents about a 10 per cent cut in real funding, dollar for dollar. I think that is a retrograde step. When we have real challenges with problem gambling and, as I said before, the proliferation of sporting bet advertising, online gaming and a range of other challenges associated with the gaming landscape, the gaming environment, for the government to cut funding I think is a real mistake. It demonstrates wrong priorities, and the foundation needs additional resources.

That cut also needs to be seen in the context that the \$150 million over four years was back-ended towards the second two years of that founding period. The first 12 to 18 months was principally about start-up, so many of the programs from the department were continued, rolled over, and there was a lot of work done by the foundation to establish its governance structures, its operational structures, and, as I said, the relocation from the then Department of Justice into separate offices and premises in North Melbourne, so it was only the back half of that four-year cycle where we saw the significant funding. To have a 10 per cent cut in real terms, in rough figures a \$2 million cut in actual dollars, does not tell the story of the way that funding

was back-ended towards the final two years of that funding profile. I can only assume there has been some funding reduction for the programs undertaken by the Victorian Responsible Gambling Foundation.

The principal thing that this bill does in relation to the foundation is introduce an advocacy function. That was an election commitment of this government, so by doing what it is doing with this bill, it is implementing an election promise, so partly on that basis the opposition will not oppose it. But I have some concerns about what that may do to the focus of the foundation. In the context of resources, it will take resources from what is already a scarce set of resources provided by the government, so it will increase the resourcing pressures.

The foundation was intended to deliver services, to promote responsible gambling, to assist problem gamblers and to support research to reduce the incidence of problem gambling. It was not meant to be in essence a policymaking advocacy-style body. I suppose time will tell what impact this legislative change will have on those other core functions that the previous government saw as central to the role and function of the VRGF. There are plenty of advocates out there; it is a very dynamic space. There are some very capable, intelligent people who are advocating a range of positions with regard to gaming. I suppose I just make that observation. I hope the introduction of an advocacy function does not mean less money being available to assist problem gamblers, to tackle a problem they may have; that it does not mean less money into research; that it does not mean less money into those three core functions of the VRGF.

I mentioned that the Gambling Regulation Act 2003 is being amended in relation to compulsory training requirements for certain gaming industry employees and to provide that precommitment information cannot be disclosed to a court or tribunal or certain other authorities. Just in the context of talking about precommitment, I need to put on the record again what the then gaming spokesperson for the opposition, Martin Pakula, the member for Lyndhurst in the other place, said in 2013. An article in the *Age* of 19 September this year by Bianca Hall headed 'Labor backflip on gaming loyalty card' reports him as saying at the time — and I recall reading the quote in *Hansard*:

... it would be 'completely inappropriate if precommitment technology is used for loyalty programs, and the minister should immediately rule this out'.

The article goes on to say:

Mr Pakula's office referred Fairfax to Ms Garrett's office for comment. Ms Garrett is on leave, but a spokeswoman said research showed players would — —

Blah, blah, blah, it goes on to say. Labor has not been consistent in relation to this point. Mr Pakula was very clear about this in opposition, but he has said one thing in opposition and done a completely different thing in government.

Let me just conclude my remarks by saying again that I have some knowledge in this area from being the gaming minister previously, and I think the changes around empowering the board to appoint and dismiss the chief executive officer are sensible, prudent changes. I note the amendment to the VRGF act that will empower the foundation to impose and collect fees. I do not think that can be seen in isolation from the funding cut the government has dealt the foundation through the budgetary process.

The coalition does not oppose this bill. I again pay tribute to Michael O'Brien, who had the vision to set up an independent statutory authority modelled on VicHealth and to take these services, these functions, this research from the department and give them to an independent organisation with a mandate to deliver best practice and be nimble and agile in responding to a very dynamic gaming environment. The foundation has made a great start. It is a pity its funding has been cut by the government, but I wish it all the best as it continues what is a very challenging task in such a changing, diverse and open landscape, with online bookmakers, horse bet advertising and the like.

Mr MULINO (Eastern Victoria) — It is a pleasure to rise today to speak in support of the Gambling Legislation Amendment Bill 2015. The bill includes a number of important reforms to the way gambling, and problem gambling in particular, is regulated and the way problem gamblers are supported in this state. In particular the bill will provide the Victorian Responsible Gambling Foundation (VRGF) with a more clearly defined and stronger advocacy and policy role. It will amend the relevant act to provide for improved governance arrangements in relation to the board of the foundation. It will also make amendments to the Casino Control Act 1991 in order to clarify the operation of interstate exclusion order provisions and the Gambling Regulation Act 2003 in order to strengthen training provisions.

I want to make a couple of very broad contextual statements about the challenge that problem gambling represents in our community. There have been many studies undertaken in relation to this social issue. A 2008 study that surveyed 15 000 Victorian adults found that something in the order of 73 per cent — clearly a significant proportion of Victorian adults — participated in some form of gambling every year. In

terms of the proportion of the Victorian population, that is around 3 million adults. Of that group, around 28 000 were defined as problem gamblers and around 95 000 as moderate-risk gamblers. While in proportional terms those numbers are quite small, there are clearly large groups of people who not only represent a disproportionate share of gambling losses but who suffer extreme individual pain, dislocation and stress from their gambling addiction. These are people whose families, friends and workplaces are often affected very negatively as well.

It is also worth noting that as a society we are facing an evolving and ever more difficult environment in which to try to manage this social problem and help the people affected by this addiction. In particular we can look at the fact that modes of gambling are constantly evolving. They are constantly expanding if anything. We see gambling now available on the internet. We see gambling available in relation to an ever wider set of events. We see gambling available in ways that are more immediate and interactive, ways that probably heighten addiction problems. We see all sorts of gambling within event periods. These are things that were probably less possible, and certainly less available, years and decades ago. We also see advertising of gambling. On the one hand, gambling is more controlled in some forums than it has ever been. On the other hand, it is more available, and more widely available — not just to adults but also to minors — in all sorts of other forums. The social and policy problems we are facing are getting more and more difficult. It is important that we clarify and strengthen the overall regulatory environment, in particular the role of the foundation.

It is important that the advocacy and policy role of the VRGF is supported. The foundation has a broad remit. Its strategic goals include preventing problem gambling, promoting responsible gambling, providing help services to individuals and building a more participatory community. In doing so it works with individuals and on research projects. This bill will strengthen the way that work can feed into government policymaking and the minister's consideration of what policy needs to be developed and implemented. It will strengthen that already very important role. The foundation's governance arrangements will be improved and bring it more into line with similar bodies. I, like the previous speaker, wish the foundation well in the future in building on its already strong track record.

As I mentioned earlier, the bill changes and clarifies the definition of interstate exclusion orders to make it absolutely clear that the reciprocity between

jurisdictions is strong and all-encompassing. That is an improvement in the regulatory arrangements. There is also a strengthening of training arrangements, which is directly in response to a number of recommendations from reports prepared by the Victorian Auditor-General's Office and the Responsible Gambling Ministerial Advisory Council. Clearly the training of people working in the sector who provide gambling opportunities to people in our community is critical. It is important that the recommendations arising from those two reports are being responded to.

Finally, the bill amends precommitment provisions. This is something I believe is very important, not just for problem gamblers but for gamblers right across our community. It is really important that people have the opportunity to take some time out and set limits for themselves before they get into the heat of the moment.

This is really important in that it will enable people to do so knowing their privacy will be respected. These provisions are particularly important. I know from personal experience that precommitment is a very simple device that can help people who are only casual gamblers but who might need to put limits on themselves.

I recommend the bill to the house. It contains a number of elements, all of which I believe are going to strengthen the regulatory arrangements for a very important social issue, one that, if anything, is becoming more complex and more urgent for our society.

Ms HARTLAND (Western Metropolitan) — I also rise to speak on the Gambling Legislation Amendment Bill 2015. The bill provides for a range of small reforms. It allows the Victorian Responsible Gambling Foundation (VRGF) to have an advocacy and policy role as part of its functions. This is a positive step and makes it more consistent with the role and responsibilities of VicHealth, a comparative body in many ways. It also allows the VRGF to recommend its own CEO, with approval from the minister, and gives it the ability to charge directly those with gambling licences for the cost of its services in limited circumstances. The bill also reforms the legislative arrangements for the training of workers in gambling venues to make sure that the training is more flexible in relation to improvements in content over time. Finally, the bill closes loopholes and ambiguities in the enforcement of interstate exclusions of problem or unlawful gamblers.

That is all well and good. There are some positive reforms in the bill, but the Greens' ongoing concern is

that it is just tinkering around the edges while the meaningful reforms to limit the harms of gambling remain ignored. It is good that the Victorian Responsible Gambling Foundation can provide policy advice to government, but realistically that expert advice has already been given in the Productivity Commission's 2010 report. The government does not need more advice; it just needs to take action. Many of the key recommendations in the Productivity Commission's report to reduce problem gambling, such as mandatory precommitment and dollar bets, have been ignored by successive Victorian coalition and Labor governments as well as by federal governments.

Let us look at some of the things that continue to this day. Over the last few weeks there has been a huge amount of advertising on trains for the spring racing festival. We often see gambling ads on public transport, which normalises it for children. How about we do something about that? Billions of dollars are lost every year by problem gamblers, causing immeasurable hardship, family breakdown and even suicide. Instead of implementing simple, effective solutions recommended by experts, the government proceeds with piecemeal reforms such as these and policies that it knows are deemed to fail, such as voluntary precommitment. It is clear that the government knows voluntary precommitment is going to fail as the budget papers reveal that the government does not expect any reduction in losses as a result of this initiative. In fact it expects the losses to increase in this and the coming financial years. Spending by problem gamblers makes up an estimated 35 per cent of revenue from pokies machines, so if voluntary precommitment were effective, we would see a drop in poker machine tax revenue, not an increase.

Successive Victorian governments have tried very hard to look like they are doing something while doing virtually nothing about problem gambling. It has got so bad that the past two governments have tried to claim credit for a number of the successful Greens reforms that we negotiated, such as having ATMs banned from pokies venues. When will we have a government that has the guts to cop on the chin a slight dip in revenue from pokies, stand up to the hotel industry lobby and take some meaningful action to assist people who are profoundly affected, especially by pokie machines?

Motion agreed to.

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

Third reading

The ACTING PRESIDENT (Mr Morris) — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority. I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! The Acting President has indicated that in respect of this bill, given the section 85 statement, it requires an absolute majority. The question is:

That the bill be now read a third time.

In order that I can determine whether an absolute majority has been obtained, I ask those members in favour of the motion to stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

ADOPTION AMENDMENT (ADOPTION BY SAME-SEX COUPLES) BILL 2015

Second reading

Debate resumed from 22 October; motion of Mr HERBERT (Minister for Training and Skills).

Mr DAVIS (Southern Metropolitan) — I rise with pleasure to speak on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. This is a bill brought to the house by the government, and I believe the bill has come about in a timely way. It is time in my view that same-sex couples were in a position to adopt children. This is an important bill for our community and in essence the bill's objective is one that I support. I make the point that there are clauses in this bill, and one particular clause which I will deal with later, which the opposition does not support. But I also want to be clear that there has been widespread consultation on this bill, and in a moment I will put on the record my thanks to a number of individuals for the work and consultation they have undertaken.

The decision by the government to put a clear position in clause 17, one which has elicited a broad negative response in many parts of the community, is a difficult one. The government has sought to shackle two issues together in a way that is both unhelpful and unfair. The opposition has taken the decision that for our Liberals

and Nationals members of Parliament there will be a free vote on this bill, and I put that on the record at this point in the debate. The opposition — the Liberals and Nationals members — has also made a decision that clause 17 is a clause that it will oppose and its members will work as a group in opposition to that clause. But consistent with the views that have been enunciated here, the rest of the bill will be subject to a free vote, and I am very happy to put on the record my support for the rest of the bill.

The bill amends the Adoption Act 1984 to enable the adoption of children by same-sex couples. It also seeks, as I said, to amend the Equal Opportunity Act 2010 to remove the exception to the prohibition against discrimination in relation to religious bodies providing adoption services, and provides for other purposes. This is one of those occasions where there is a clash of genuine values that relate to the treatment of people in a fair and even-handed way, and that is a very important value that I personally strongly support. At the same time there is the matter of religious belief and matters around an international covenant on religious beliefs. It is a longstanding practice and there are longstanding views in the community that people ought to be free so far as is possible and reasonable to practise their religion and to put in place steps and live by a code where their religion is honoured. That is not an absolute thing — absolutely not — but it is an important value nonetheless.

I make the point that the Adoption Act currently discriminates against same-sex couples based on their marital status and sexual orientation by only permitting couples in heterosexual relationships to make joint applications to adopt. It also discriminates against couples in which either party does not identify as a specific gender. The Adoption Act discriminates against children in same-sex families based on the gender identity, marital status and sexual orientation of their family members by preventing them being adopted by those family members. I make the point that single people of whatever sexual orientation can adopt, so it is incongruous that married people of whatever gender and whatever arrangement cannot adopt. In those circumstances I strongly support the essential principle in this bill.

One key purpose of the bill is to remove discrimination against same-sex couples in relation to adoption. Clause 7 of the bill amends section 11 of the Adoption Act to allow partners in domestic relationships, regardless of the sex or gender identity of the partners, to have adoption orders made in their favour. As I said, clause 17 of the bill inserts a new section 82(3) into part 5 of the Equal Opportunity Act to remove the

exception to the prohibition to discriminate in relation to religious bodies providing adoption services. The Adoption Act rules and conditions as they exist apply to all couples seeking an adoption order, and there are no other changes to the Adoption Act or Equal Opportunity Act other than those that I have set out.

There are a number of points to make here. There has been broad consultation with organisations, including the Rainbow Families Council; the Human Rights Law Centre; a number of in-vitro fertilisation providers; a number of church-based groups, including Anglicare, the Anglican Church, the Uniting Church, Jewish church groups and a range of other churches; the Victorian Assisted Reproductive Treatment Authority; the Victorian Gay and Lesbian Rights Lobby, and I pay tribute to some of the important material that group has presented to me and to a number of Liberal and Nationals backbenchers; the Australian Christian Lobby; the Catholic Church; CatholicCare Melbourne; the Islamic Council of Victoria; and Jewish Care Victoria.

My point in listing these many groups is to show that the opposition has undertaken very broad consultation with a significant range of groups. I want to particularly put on record my thanks to Corey Irwin and Anne Brown and others who have provided significant information to the opposition. Their good grace, enthusiasm and determination to ensure that a good bill comes through is met.

I also want to put on record the advocacy of my friend Peter de Groot, Kevin Ekendahl and others who have been strong advocates. They are good people who are focused on achieving a good outcome. The issues contained in this bill go right across community. They cross our parties, they cross our religious groups and they cross our different community organisations, and that is as it should be. I know a number of individual coalition MPs have significant faith-based objections to aspects of the bill, and in this area it is incredibly important to respect the genuine views — religious, humanist or other — of people on these matters and to begin from a position where we attach goodwill to all who may speak on this bill or who may wish to make a comment.

I also note the significant work by Eamonn Moran. Many of us in this chamber know Eamonn well as a former chief parliamentary counsel, and I note the work that he has done for the government on these issues. I commend to members his document *Adoption by Same-Sex Couples Legislative Review* as a very useful guide in this area.

I place on record my thanks to the department and indeed to the minister for the briefings that were provided. In those discussions with the department it became clear that there are of course relatively few adoptions in Victoria these days. There was a time when there were many adoptions, but there are in fact relatively few that occur now. There were about 48 adoptions last year, most of them are what are called 'known adoptions'. About 20 are so-called stranger adoptions but the majority are known adoptions.

It is my understanding, certainly through talking to many people about this bill, that there is likely to be an increase in known adoptions because of those in situations with same-sex couples where one of the couple has children who are parented by both partners. In those circumstances known adoptions will occur and should occur, because in those circumstances, subject to the proper checks, as they are with heterosexual couples, the best interests of the children should be the determinant of the way forward. That is the guiding principle that has been a central one for me and for many others looking at this bill.

I know many people who are in same-sex relationships and have children who are parented by both partners in that relationship, and it is important that we acknowledge the angst and the sadness that comes with not being able to have a proper adoption arrangement and the potentially sad outcomes for some children when one partner might perhaps die and the other partner, who has effectively been a parent, is not able to adopt in a straightforward manner, or where medical care is sought or other parenting issues arise and the effective parent is not able to legally act as the actual parent in that sense. This is wrong, and this bill will right that wrong in many cases. That is an important point. I know many of those couples and I know many of those children, and I welcome the opportunity for those known adoptions to occur in a properly structured way as with heterosexual couples.

There are around 20 stranger adoptions a year, and I note that those adoptions will occur in the way that would occur with heterosexual couples as well.

I know that the Catholic archbishop and the Catholic Church, the archdiocese, has expressed a formal position, and they have expressed that to me and to others in the coalition. I am respectful of their religious views. I understand that they have sincere religious views. That has weighed on the position of members of the opposition and on their view that genuine religious views are reflected.

I make the point that stranger adoptions and known adoptions can occur through other agencies, and those other agencies have indicated to me and other members of the opposition that they will undertake those adoptions. Services in that sense are able to be provided. I believe, as does the opposition, that the exemptions that exist in the Equal Opportunity Act 1995 should remain. A similar exemption was inserted in the New South Wales act by a Labor minister, and it is important to put that on the record here today. The opposition has the view that Victoria need not be out of step with other states, and in that sense it is time to ensure that these same-sex adoptions can occur and that there are sufficient organisations in place to provide those services in the interests of the couples, but particularly the children.

I also want to put on record that the opposition is intending to oppose clause 17 and will do so in the committee stage. I know that there is a diverse range of views within the opposition and the government and in the community, but I think there is enormous goodwill. There is also enormous determination to see that these arrangements are put in place in a fair way that sees the set of arrangements that exist in the Adoption Act 1984 modernised and brought forward.

Mr LEANE (Eastern Metropolitan) — I, along with many Victorians that I am lucky to represent in this house, believe that someone's sexuality is just part of their make-up as a human being, as much as the colour of their hair, the colour of their skin, the size of their feet, the size of their nose or the colour of their eyes. So I find it outrageous and appalling that we should keep in place a state-condoned form of discrimination against people because of a small part of their make-up as a human being. I am so grateful that this piece of legislation has been brought to the Parliament, and I am so grateful to my party, my whip and my leader for the opportunity to voice my personal opinion on this bill. I have had correspondence from and discussions with people who are hell-bent on telling me that the best way for them to succeed, the best chance for a young person's future, is if they have a male parent and a female parent. The best chance for them is that scenario, which I personally have found offensive. I have found that offensive for a long time.

I am one of eight children. In my family the three youngest children are boys and the three oldest children are girls. My father died when the three youngest were not old enough to be able to remember him. He was an ex-soldier who returned and passed away from the effects of his service. We grew up with a mother, which was all we knew. We grew up with elder sisters who supported us. Out of the three young boys who hardly

knew their father, one has run a successful building business, the second is an assistant commissioner of police and the third, you could argue, lost his way a bit and ended up as an MP in here. That is why I find offensive the argument that we need male and female parents to give us the best chance of becoming a fulfilled and helpful member of society.

People who are homosexuals experience different types of discrimination in different jurisdictions. I think there are around 77 jurisdictions — countries around the world — where it is illegal to be homosexual, and there are varying penalties that go with that. Penalties can range from a year in prison to up to 14 years imprisonment in some countries, depending on what part of the world you are in.

Ms Mikakos — And death!

Mr LEANE — I will get to that. Members in this chamber would be horrified at the extent of such discrimination. We would be saying, ‘That is not for this jurisdiction’. However, we have our own special discrimination in Victoria. We have this little bit of discrimination that some of us here want to cling to. It is an abhorrent form of discrimination for something like your sexuality to be illegal when it is part of your make-up, just like the size of your feet is part of your make-up. The more I look into this, the more absurd I discover our world can be. If you go to TripAdvisor and type in ‘Morocco’, you find that it advises same-sex couples not to show any affection on the street.

This is the level of discrimination people face — do not show any level of affection on the street because you will possibly be confronted with the penalty that goes with that behaviour in that jurisdiction. But in our jurisdiction we would say that is appalling and that we do not agree with it. Some of us are happy with our own form of discrimination — ‘We can live with that’. I would be saying, ‘No, we cannot’. We cannot live with any form of discrimination, especially when it is state-condoned discrimination which we have lived with in legislation, but hopefully only until tonight when we will vote to remove it.

Under our current legislation same-sex couples cannot adopt children. We have been happy so far — until tonight — with the penalties that go with that, because there are penalties in all types of state-condoned discrimination, as we know. Someone cannot be a legal parent in a medical or school situation; they will not be acknowledged. That is an amazing penalty that we have imposed on parents just because of a small part of their make-up as human beings. It is completely outrageous.

If we want to compare our own little piece of discrimination which we have clung to for a long time with that in other parts of the world, we see that in some Middle East countries while it is not illegal to be homosexual, sharia law kicks in and a sharia judge can condemn someone to death if they believe they have been practising homosexuality. We would not agree with that; it is not a level of discrimination that we would agree with. But we have our own piece of legislation which discriminates and that we have clung to for years, and it has to end tonight.

If clause 17 is taken out of this bill, if there is an amendment that allows a certain group to discriminate against another group, we will still have our own little piece of state-condoned discrimination. People in this chamber need to think about that and to think about whether they want to be a party to that, because I do not. I do not think people in this chamber do. Today is the day to stand up and say that we will not discriminate against a person in any form, despite what any group thinks, because of a part of their make-up as a human being.

I struggle to comprehend why anyone would want to debate against this bill. I struggle to comprehend why people would support a group being allowed to discriminate against another group because it believes it should be allowed to discriminate against a group that I think in all fairness believes it should not be discriminated against. I want someone to argue against that — that this group should be discriminated against because it deserves to be discriminated against and because there is another group that wants to discriminate against it. It makes no sense at all. This is 2015 and this is the day this discrimination in state legislation is removed. Today is the day that we acknowledge this piece of legislation was wrong and has always been wrong. It is as wrong as the harsh discrimination and the harsh penalties in other parts of the world that we would be aghast at. It is just as wrong. Let us not pretend that we are better if we keep this appalling piece of discrimination in our legislation.

I spoke to a young man at a festival on Sunday who asked me what my position was on this particular subject. I think I gave him the same 10-minute spray I have just given the house. He offered to me that he is a gay man and said that if he had a choice of who he was, he probably would not choose to be in a group that is discriminated against. He probably would not choose to be in a group that has been treated appallingly. When I was a young man that treatment was appalling. It is better now, but it has to be much better, and we can do that today. Who is going to choose to be in a group that is being discriminated against? Who is going to choose

to be in a group if that means that if you are the parent of a child, you will not be legally acknowledged as such by us in this grand place? It is just a part of who they are. People do not deserve to be discriminated against for anything that is part of their make-up as human beings. I hope and I believe that this chamber will do the right thing tonight and finally get rid of this little piece of discrimination forever.

Ms BATH (Eastern Victoria) — As I begin my contribution to the debate on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015, I wish to acknowledge the depth of feeling that many in the community have in regard to the issue of adoption and the lifelong pain that forced adoption policies and practices caused many, many mothers in the past. I remind this chamber that in 2012 the Victorian coalition government formally apologised to the mothers, fathers, sons and daughters who were profoundly harmed by past adoption practices in Victoria.

I recognise that the rights of the natural parents, the relinquishing mother or father, should be considered as part of the adoption process. I also state that in my opinion a child is well served by having two loving parents, and that is the most ideal unit in which a child can be raised. But in life often we do not work in perfect scenarios. There are many wonderful, loving households made up of combinations of, firstly, single-parent families. We heard from Mr Leane that he grew up in largely a single-parent family with the help of his sisters. Often single parents have to carry the burden of extra duties. There are other combinations such as mixed-generation families, heterosexual and same-sex parents.

Unfortunately we do see today examples of toxic parenting. Parenting is a serious and weighty responsibility. It should not be taken lightly but with care, love, patience and an ongoing commitment to protect the welfare of the child at all times. As a mother I know that my children are an incredible blessing and one of the most enriching parts of my life.

I am proud to say that at The Nationals state conference earlier this year we proposed a motion:

That this conference supports current efforts to review Victoria's open adoption processes, with a view to making adoptions more accessible.

Though not carried unanimously, the motion was supported by an overwhelming majority. I am proud that The Nationals supported this view. I also want to state that we, The Nationals, have a free vote on this issue.

In researching for this debate I read the many emails I received and consulted widely with gay and heterosexual couples in my party and in my electorate and also with adoption agencies, religious leaders and the Rainbow Families Council. I thank them for their interest and the information provided to me.

We have heard that in 2013–14 there were 48 children adopted in Victoria. Of these, 20 were local or stranger adoptions where the adoptive parents had no knowledge of the child's birth parents. The remaining 28 were known adoptions; for example, adoptions by a relative, step-parent or foster carer.

Statistical information from the Australian Bureau of Statistics indicates that in 2011 there were 8700 couples living in same-sex relationships in Victoria and almost 2700 children under the age of 25 were living in same-sex couple households. These include natural children, stepchildren and foster children.

I believe the intention of the bill is to provide a mechanism to make legal what exists in many same-sex households. Often one parent may be the birth parent and the other wishes to adopt the child. As the law stands now, it is legal for gay couples to foster a child and lesbian and single women to access assisted reproductive technology. The law also allows same-sex couples to raise a child. If we are applying all the correct practices within the law it seems only right, just and appropriate to allow same-sex couples to adopt.

I turn to the adoption regulations. The one I want to go through involves quite a long list, so I might edit it. Regulation 35 outlines the requirements to be satisfied by applicants for approval as fit and proper persons to adopt a child. These are that the health of the applicants, including emotional, physical and mental health, is suitable; the age and maturity of the applicants are suitable; the applicants have suitable skills and life experience; the applicants' financial circumstances are suitable; the applicants have the capacity to provide a stable, secure and beneficial emotional and physical environment during a child's upbringing until the child reaches social and emotional independence; the applicants have the capacity to provide appropriate support to the maintenance of the child's cultural identity and religious faith, if any; and the applicants have suitable appreciation of the importance of contact with the child's birth parents and family and exchange of information about the child with the child's birth parents and family. I could go on. The point I am wanting to make in referring to this regulation is that everyone who seeks to adopt a child must meet these requirements.

I do have one major exception in my support for this bill, and that is clause 17. I do not support this clause. I will consider why later in my contribution. It is useful at this time to repeat that section 9 of the Adoption Act 1984 requires that the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Framing this debate from a state perspective, since 2002 successive state governments of Western Australian, New South Wales and Tasmania and the ACT have passed legislation which in essence allows persons in same-sex relationships to apply for adoption orders. I recently had a conversation about this bill with a gay man in my community. He and his partner would make wonderful parents; they are fine, upstanding people in the community. He expressed a desire to keep clause 17 in the bill as his opinion was that matters of law should not be tied to sexual preference. I understand this view. While I support the bill as I do not believe we should discriminate on the basis of sexual preference, I cannot support the inclusion of clause 17 as I also believe we should not discriminate on the basis of religious belief.

I have talked with the CEO of CatholicCare, Father Caddy, who believes it is unnecessary to remove the exemption. When we spoke he told me that CatholicCare and other religious agencies happily work with people in heterosexual and same-sex relationships and that the most important consideration is: will the child be raised in a loving and stable home? Father Caddy commented that the exemption would affect only a very small number of adoptions and would probably be rarely required and used. However, religious adoption agencies should still have the right to operate in accordance with their beliefs. In consulting with other religious adoption agencies, I have found that that view is fairly consistent.

For same-sex households this bill allows for the best legal protection, with children being brought up in an economically and psychologically stable environment. It solidifies the best legal position to suit the child. In many cases one parent is the natural parent and with the implementation of this legislation the other parent will be able to adopt a child in their care.

This bill enables same-sex parents to adopt children with disabilities, giving them a stable and caring home as well.

I note the comment made earlier in the year by the CEO of Anglicare, Mr Paul McDonald, who stated:

The bottom line for us isn't about gender, race, religion or sexual preference. It's about the ability to provide a loving and caring home for the child.

In May this year Mr Eamonn Moran, QC, conducted a review of adoption by same-sex couples legislation. His report includes recommendation 1, which refers specifically to a de facto relationship and states:

Replace reference to a 'de facto relationship' at section 11(1)(c) of the Adoption Act with 'domestic relationship' and define 'domestic relationship' as a relationship between two persons who are not married to each other but who are living together as a couple on a genuine domestic basis (irrespective of sex or gender).

I concur with Mr Moran's recommendation.

From July 2014 to April 2015 there were 15 adoption agencies in Victoria and 14 of them were faith-based organisations. The submissions to the Moran review from faith-based organisations expressed concern about the potential for breaching the Equal Opportunity Act 2010 if they refuse to provide adoption services to persons on the grounds of their sexual orientation. I respect the right of religious groups to work within the bounds of their faith. It is correct and appropriate to maintain the current exemption for religious entities that conscientiously object.

Finally, I comment on the rights of relinquishing natural parents. The wishes of natural parents are currently considered in the adoption process, such that the department secretary or principal officer gives consideration to any wishes expressed by the parent of the child in relation to the religion, race or ethnic background of the proposed adoptive parent or adoptive parents of the child when placing the child. I have received a number of emails outlining the importance of considering the wishes of the natural relinquishing parents by the courts in the adoption process. I understand and respect these views.

In New South Wales natural parents are specifically able to express a wish in relation to the domestic relationship of any prospective adoptive parents. This is an important issue and should not be overlooked.

In conclusion, I wish to acknowledge that there will always be a variety of views on this considerably weighty issue, but I also indicate that I support the intention of the bill on the grounds I have outlined in my contribution this afternoon. As I said, The Nationals have a free vote and I am pleased to support this bill. However, I cannot support clause 17. I believe that in the whole scheme of the bill that is in the best interests of the child.

Ms PENNICUIK (Southern Metropolitan) — I am very pleased to speak today on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015, both in a personal capacity and on behalf of my fellow Greens in the Legislative Council. In the last sitting week our colleague Mr Sam Hibbins, the member for Prahran in the other place, also spoke strongly in favour of this legislation and that was supported by our colleague Ms Ellen Sandell, the member for Melbourne.

The bill is a long overdue reform in Victoria to allow for adoption by same-sex couples. It reflects longstanding Greens policy. It has always been Greens policy to remove discrimination wherever it exists in our statute book. Those members who have shared time with me, Mr Barber and Ms Hartland in the previous parliaments and with our new members of Parliament will know that we have been advocating for this change both inside and outside the Parliament for a long time.

In fact on 30 October 2008, more than seven years ago, we were debating the Assisted Reproductive Treatment Bill. That debate took a very long time — a number of weeks — and also time while it was considered by the legislation committee. I then referred to the lack of a change to the Adoption Act that could have been made when we had that bill before us.

The Assisted Reproductive Treatment Act 2008 allowed for equitable access to assisted reproductive technology, including donor insemination, in vitro fertilisation and related procedures, and surrogacy. It ensured that legal recognition was given to the relationship between non-biological parents in same-sex-parent families and the children and that same-sex partners of biological parents were able to adopt the children born into the family. But I did say that there was something missing in the bill, and that was the ability for same-sex couples to adopt children. Even way back then same-sex couples were able to foster children, and I said that this was discrimination and should be removed from the law. It is good that we are here today to finally fix this situation.

This bill has very simple purposes: to amend the Adoption Act 1984 to enable the adoption of children by same-sex couples and to amend the Equal Opportunity Act 2010 to remove the exception to the prohibition to discriminate in relation to religious bodies that provide adoption services. The bill is reasonably simple in that the vast majority of it goes to the definitions in the bill. For example, it removes the term ‘de facto’ and changes it to ‘domestic partner’ and talks about a ‘domestic relationship’ and a ‘registered domestic relationship’, with terms such as ‘de facto

relationship’ and ‘de facto spouse’ being removed from the act. Where the act refers to a ‘man and a woman’, it will now refer to ‘two persons’. These are the major changes to the act that will allow for the adoption of children by same-sex couples.

Children who are in permanent care with same-sex and gender-diverse parent families will now have the security of being adopted if the other circumstances are right for adoption. This is the overwhelming majority of children who will be affected by the bill. There will be gender-neutral language throughout the Adoption Act 1984, and again that will facilitate same-sex adoption. Associated changes in the Relationships Amendment Bill 2015 also mean there will be similar residency requirements and mutual recognition for same-sex couples in registered domestic relationships to those for married couples.

I would like to briefly raise a point here that was raised by the Scrutiny of Acts and Regulations Committee with regard to clauses 7 and 9 of the bill, and I have mentioned this to the minister. I refer to the different living arrangements that are preconditions for adoption depending on whether the applicants for adoption are married, in a registered domestic relationship or in an unregistered domestic relationship.

The Scrutiny of Acts and Regulations Committee (SARC) raised an issue as to the compatibility of clauses 7 and 9, which require different living arrangements as preconditions for adoption depending on whether applicants for adoption are married, in a registered domestic relationship or in an unregistered domestic relationship, and whether this accords with the Charter of Human Rights and Responsibilities Act 2006 when it comes to discrimination on the basis of marital status.

A registered domestic relationship or an unregistered domestic relationship can of course refer to a same-sex couple or any two persons living together. The difference in this instance is whether they are married or unmarried. I would like the minister in her summing up, or one of the other government speakers, to explain why that anomaly has been allowed to remain in the bill.

Of course this just raises another argument in favour of marriage equality. Adoption equality is being introduced by this bill, but if there were marriage equality, then less people would be affected by that anomaly. Some people may still be affected by the anomaly because not everybody wants to be married. Some people are happy to be in a registered domestic relationship and some are happy to be in an

unregistered domestic relationship, so it is an anomaly in the bill.

I note that the Scrutiny of Acts and Regulations Committee points the Parliament to similar laws that have been enacted in the ACT and New South Wales which impose identical conditions on all couples who seek to adopt, whether they are married, in a registered domestic relationship or an unregistered domestic relationship. I think the anomaly in this bill is perhaps an oversight and is something the government could look at correcting when it has an opportunity to do so.

I note that the minister has written back to SARC. I saw that letter only a couple of hours ago. Basically the minister is saying that this was not in the terms of reference of the review conducted by Mr Eamonn Moran. I take this opportunity to commend Mr Moran on his report and recommendations. However, just because it was not in the review does not mean it is not something the government could address.

According to the census, in 2011 there were around 2700 children and young people in rainbow families, and the bill before us will now enable those children who have not been adopted by the parents in those families to be adopted, and that will create legal certainty.

The parents named on a birth certificate have legal rights with regard to, for example, medical decisions, decisions about inheritance and other legal decisions that are very important for the people undertaking the parenting roles — the day-to-day, close, loving parenting roles with those children — and this provides that legal certainty. We know that same-sex foster families have existed for many years, and some of those families may in fact be first to take advantage of this new law.

I take the opportunity to pay tribute to the Rainbow Families Council and the Victorian Gay and Lesbian Rights Lobby, which have worked very hard for years and years. People have also supported them for years, including the Greens. I have worked closely with those groups on this issue, particularly with Rainbow Families. As I say, I pay tribute to the people of that organisation for their work, and I feel very happy for them today. For all the other families in the community who may be watching this debate today and who have been waiting for this for a long time, I also feel very happy.

I note too that many years ago, in the lead-up to the Assisted Reproductive Treatment Bill 2008, which I mentioned before, the Victorian Law Reform

Commission also recommended providing not only for same-sex adoption but also for adoption by single people, which is another issue we should be looking at and which could have perhaps been included in this bill.

The Human Rights Law Centre and the Law Institute of Victoria are also very strong supporters of this legislation, as are some of the religious organisations, such as Anglicare which has come out in support of the legislation and in support of clause 17 in the bill. Clause 17 will repeal the exemption that religious organisations that supply adoption services have under the Equal Opportunity Act 2010. Going back as far as 2007, on many occasions in this Parliament I have moved to remove all religious exemptions from the Equal Opportunity Act. I agree totally with what Mr Leane was saying, that there should be no basis in the law — and our laws are secular laws which should apply to all persons in the community equally — on which any religious organisation should be able to discriminate against persons in the community.

I also make the point that there still is residual discrimination in our Equal Opportunity Act. I congratulate the government on putting clause 17 in the bill, which will repeal that exemption in the act, but I would encourage the government to go further and take out all religious exemptions which exist in the act. I point out that those exemptions allow for widespread discrimination, based on not just sexuality but also marital status and parental status. These forms of discrimination still exist under the act, and the relevant exemptions should be removed. All citizens should be treated equally, and no organisation should be able to discriminate against certain people based on a religious belief. Nobody should be subject to discrimination from other persons. Everybody is entitled to the same respect and dignity as everybody else. The Greens will therefore not be supporting any amendment or attempt to remove clause 17 of the bill, which we are strongly in favour of.

I want to raise another issue. I know that other members will have received correspondence from the group VANISH. Ms Bath mentioned forced adoptions. An apology was undertaken in this Parliament in October and November — the motion was on the notice paper for quite a few weeks as people spoke to the motion. Quite a while before that I had, by way of a question to the minister, asked that the Parliament of Victoria make that apology. That was one of the other great times in the Parliament where we came together and apologised for what had happened in terms of forced adoptions. We know that forced adoptions caused a lot of damage to the women who were forced into that position. I said

at the time that many of them were teenagers, they were powerless, they were helpless and they had no economic support. Unless they had strong family support, they were basically forced into relinquishing their children, in some cases never to see them again.

We also had myths perpetuated in the community such that some children who were adopted believed that their mothers had relinquished them willingly, which was another form of damage done — to the adopted children. We made that apology, and with what we are doing we need to make sure we do not again go down the road of creating any of those problems in the future. We know the number of adoptions is much lower now because parents get support, even though I have to say that under the previous federal government some of that support was wound back. Certainly the Greens opposed that. But there are economic and other supports available so that people can keep their children.

One outstanding issue that I have pursued in the Parliament — and it is one of the issues that was raised by VANISH — is the right of all children to know the truth about their birth. This is an issue that I pursued with regard to donor-conceived people. On 23 June 2010, which was the 30th birthday of Candice Reed, the first person born in Australia under in-vitro fertilisation, I moved a motion in this Parliament seeking that the issue of access to information by donor-conceived people be referred to the parliamentary Law Reform Committee. That committee reported on the issue in 2012. We had different rights for donor-conceived people as to the information they could have about their birth or biological donors depending on when they were conceived. In August last year some changes were made, but they did not go far enough, and there are still some gaps in terms of access to information.

The question that I would like the minister to answer — and I have given her notice of this — relates to the fact that while we are supportive of people looking after children being regarded as the legal parents, we wish to see that all children have access to all the information they need about their birth in terms of their biological parents, not only the people who are known to be the legal parents — as they will be under adoption — but also the donors, because children may be the result of donor conception.

During the 2008 debate I moved an amendment to the bill that enabled Births, Deaths and Marriages Victoria to attach a note to any birth certificate where a child has been donor-conceived to show that there is more information about that birth. I am seeking an assurance from the minister that all children will have the right —

as they should have and as is expressed in the United Nations Convention on the Rights of the Child — to full information about their genetic heritage to make sure that this legislation that we are fully supporting also upholds that right for all children.

As I said, I am very pleased on behalf of the Greens to support this bill. I congratulate the government for bringing it in. There are a few queries I have about it, but overwhelmingly we are very supportive of it and wish it a speedy passage through the Parliament.

Ms PATTEN (Northern Metropolitan) — I am very pleased to rise today to speak on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. I feel very privileged to be in the house on this day, when I hope to see this bill pass in its entirety. Obviously I support this bill. Removing discrimination on the grounds of sexuality that still exists in our legislation is one of the reasons I founded the Australian Sex Party. It is one of the reasons I am here today, so I am very pleased to see another step towards equality and another piece of discrimination being removed from our statute books.

Families come in all shapes and sizes. We heard about Mr Leane's family. We have single-parent families, we have adoptive parent families, we have grandparent families, we have aunts and we have uncles. I know it is a cliché, but the thing that families are really about is love; this bill is about that love. This is what I have seen among those families we are speaking about today. I have a personal position on this. My niece Bonnie — my sister's daughter — is part of a same-sex family and they are one of the happiest families I know. My other niece, Saskia, is part of a single-parent family and she is happy as well. These are all families and we should reflect that in legislation. We should not discriminate against people.

There are hundreds of children in same-sex parented families across Victoria who face legal uncertainty. They do not have the same protection for their relationships with their parents as children in heterosexual families have. These children live in a diverse range of family situations. Some of them are under permanent care orders, some are in step-parent families, some are in foster care. But generally only one of the two parents can be legally recognised, and I am very pleased that today we are changing this.

For the number of people who are concerned that this will be to the detriment of these children, I would like to allay their fears. There has been significant research in this area, and I hope this allays the fears of the numerous people who have emailed many of us over

the last few weeks opposing changes to the Adoption Act 1984. These people held that children in same-sex families were somehow lesser than others, that they would not have the same social cohesion or get the same benefits as children in heterosexual families.

As I said before, not all families have two parents — a mother and a father. We have single parents, we have parents who do not spend a lot of time with their families. My father was barely at home; he was in the navy. My mum raised us for most of my childhood. This is diversity. To say that children can only prosper with a mother and a father is completely false, and the research backs me up on that.

In 2013 the Australian Institute of Family Studies conducted a large-scale research and literature review on same-sex parented families both in Australia and internationally. It found that not only do children in these families do well emotionally, socially and educationally but quite often they actually do better than children who were not raised by lesbian couples. Children who were raised by lesbian couples were found to experience higher quality parenting, their sons displayed greater gender flexibility and both their sons and daughters displayed more open-mindedness towards sexual, gender and family diversity.

I found a particular part of the Australian Institute of Family Studies research that specifically looked at children's wellbeing very interesting. Guess what it found? The wellbeing of children in same-sex parented families was the same as it was for children in heterosexual families — it was affected by conflict between parents and divisions of labour. Those were the things that affected children's wellbeing. Worries about wellbeing did not come from what was happening within the family; they came from what was happening externally. These included things like getting bullied and teased at school, or that stigma and discrimination that I hope this bill is about to remedy.

When I mentioned this research to a number of people, there was criticism such as, 'Oh, it's just lots of small samples'. I am very pleased to say that in Australia a number of academics looked at 315 different families with a total of 500 children. That is a significant cohort. The study, titled *Parent-reported Measures of Child Health and Wellbeing in Same-sex Parent Families — A Cross-Sectional Survey*, found that children with same-sex attracted parents do not just meet positive expectations, they in fact score higher across a number of parent-reported measures of health than children in other communities. Despite the legalised discrimination and despite the number of legislative and social barriers, these children are thriving, and this bill will

help them thrive more. It will hopefully remove some of the stigma that those children have been experiencing.

I am very pleased that we are seeing the removal of that discrimination through clause 17 of the bill, where the exemption that exists under the Equal Opportunity Act that denies these children access to loving families and does not allow us to recognise some families will be removed. I think this is quite right. I agree with Ms Pennicuik; I would like to see all religious exemptions removed from the Equal Opportunity Act, and I hope I will see that in my time in this place.

While I understand that the opposition is opposing clause 17, I am saddened, because there are not many people out there who are opposing it. In fact it seems to me that CatholicCare is the only agency that is opposing it. All other adoption agencies are supporting the removal of this discrimination under the Equal Opportunity Act. In essence what is being suggested is that an organisation that is set up to facilitate the formation of new families should be entitled to deny a child what could be their perfect home based on their religious views. That is not about freedom of religion, I am afraid; that is just discrimination. And worse, we are sanctioning it in this state. It continues to perpetrate the idea that it is okay to discriminate against someone on the grounds of their sexuality — on the grounds of who they love. That is not freedom of religion; that is discrimination.

I think that was very well captured by Katie Miller, president of the Law Institute Victoria, when she said:

The purpose of the Adoption Act is to facilitate children being placed with parents who will care for and protect them and to recognise those who are already giving that care. Allowing discrimination on the basis of sexual orientation would undermine those purposes.

Carving this out of the Equal Opportunity Act will affect very few people, but it sends the clear message that this is about the best interests of the child. Because it impacts on a small number of people should not be a reason not to remove that section and that discrimination. We do not want to perpetuate — I repeat — this discrimination. This perpetuates the notion in our society that is okay to discriminate on the grounds of sexuality, and it is not.

I would like to finish off by thanking and commending a number of people and legal organisations that have pushed for law reform in this area. I note that this bill has recognised the work they have done, and this includes the Human Rights Law Centre and the Victorian Law Reform Commission as well as Eamonn

Moran's Adoption Act review. I also commend those adoption agencies that, regardless of their value-based background, are excited about and supportive of these changes. They are excited that we are changing the legislation and that we are allowing these new families to come out and be legally recognised.

I commend those activists who have been working so hard to make this happen. It was wonderful seeing those families this morning — including the children — and the love and the commitment in those families. The work that the Rainbow Families Council and the Victorian Gay and Lesbian Rights Lobby have done has been wonderful. In relation to this campaign for adoption equality, I say, 'Well done'. It has been an amazing campaign, and I know it has been long fought. The stories that these groups have brought to all of us have been personal, they have been special and they will be remembered.

I commend all those families who fought for this. This has not been easy. They have had to live with these outdated, archaic laws that fail to recognise that all citizens are equal. I also commend the children of those families, who will now see another step in having the value and importance of their relations recognised by the rest of Australia. The truth is that we already know they are in a family, but now the law will acknowledge that as well. Families come in all shapes and sizes, and it is time this one was recognised. I feel privileged to be here today.

Ms CROZIER (Southern Metropolitan) — I am very pleased to be able to rise this afternoon to speak on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. As I have been sitting in the chamber listening to various contributions by members, it is evident that this is a very important issue to many members in the chamber, like it is a very important issue to many people outside this chamber. As Ms Patten has just highlighted, when you speak on issues that are very important to people or when you are making legislation, it is a privilege. A variety of views are brought to the debate, as they have been in our consideration of this piece of legislation today. It evokes some emotion for a number of people.

At the outset I would like to acknowledge all those people who have contacted me with a view either supporting the government's position or not supporting the government's position. Whilst I personally support the ability of same-sex couples to adopt, I am also supporting the coalition's position for the exemption of clause 17 — that is, for the ability of religious bodies to be exempt in relation to clause 17. I will come to my point in relation to that further into my contribution.

I have a strong belief that when we are reviewing legislation like this we are dealing with vulnerable people, in many instances children, and I look at this piece of legislation through that prism. It has been highlighted that families come in various shapes and sizes nowadays. There is no format that means that a man and woman must be parents to a child. I think same-sex couples can provide a nurturing, caring, loving home, and that is what is so important. When you look at the statistics, when you hear of the thousands and thousands of children who are in out-of-home care or are homeless, I cannot see any reason why that should occur when there are people who want to provide a loving, caring, nurturing home for children.

I have very strong views about that. I have seen in my former professional life, having worked at the women's hospital, many same-sex couples undergoing pregnancy. They, like heterosexual couples, experienced the same joy in having a baby and showed extreme emotion, just like any other couple, at bringing a new baby into the world. In many instances, as has been said, you cannot judge what a family environment will be like, and many heterosexual family environments are not the best places for children, as we know.

I heard last night that in 2014 there were 15 000 children in out-of-home care in Australia and only 203 adoptions took place. This is quite an imbalance and, as I said, those thousands of children could be better placed within loving families. I note that Australian Bureau of Statistics figures of 2011, which have been previously quoted, indicate that here in Victoria there was a reported total of 8722 same-sex couples living in Victoria and 2699 children and young people under the age of 25 living in same-sex couple households in Victoria. These children include natural children, stepchildren and foster children.

As I said, a family can be a traditional heterosexual family, if I can call it that, same-sex couples and single parents. I think there is a variety of means, but if you can provide a loving, nurturing, safe environment for children, surely that is the best place for children to be placed and to be brought up.

To get to the point made by a number of the organisations that actually spoke to members — they certainly spoke to me, and I know they spoke to other coalition members — as it stands, there are a number of adoption agencies in Victoria that are registered. They include Anglicare, Connections UnitingCare, child and family services and CatholicCare, and a number of those deal with stranger adoptions — that is, those adoptions that are unknown to a natural parent. We

understand there are a number of children in same-sex couple households where there is legal recognition for one parent but not for the person, who is known as a parent to them. This is an anomaly that I think this bill addresses.

Coming to the issues around the stranger adoptions, from 1 July 2014 to 30 April 2015, based on figures from the adoption agencies, there were five stranger adoptions from Anglicare, five from Connections UnitingCare, one from child and family services and four from CatholicCare.

It has been spoken about — the element of religious organisations having freedom of religion, if you like, or having their view known. CatholicCare certainly expressed its views to me personally. I met with Fr Joe Caddy, and I appreciate his point of view and CatholicCare's point of view in relation to this element around clause 17.

It is my understanding that CatholicCare has been providing adoption services in Victoria since 1935 and has quite literally provided support to thousands of women and children throughout that time. As it is a relatively small number that CatholicCare deals with in terms of stranger adoptions, I still think the representatives of that organisation have a right to have their religious beliefs held to be paramount. I do believe we have a number of other agencies. I understand when members are saying that this is about equality, but when you have things like cultural plans within our Indigenous community that need to be adhered to and respected, and of course we do, and we look at other faiths that have various views, I think we need to understand that these various religious or faith-based organisations do have strong views, and in this particular instance if they do not agree with same-sex adoptions, then that is their right.

With the number of stranger adoptions that are undertaken throughout Victoria, which is not as many as in other places, same-sex couples have got various agencies that they might be able to access services from. I do not want to demean that in any way. I want to just try to express or put forward the point of view of religious organisations, which have a strong faith and believe that to be a part of how they operate. Whether you disagree with that or not, it is important to those particular religious-based organisation, and I think that needs to be respected.

So all of those people, should this legislation be passed through the Parliament this evening, will have the ability to have that recognition in relation to those children that they have brought up either in their same-

sex couple or foster relationship, have their legal rights understood and have that ability to be recognised legally in this state. This is a very positive move for all of those individuals who may be impacted by this legislation.

As I said at the outset, I strongly support the ability of same-sex couples to be able to adopt. I think it is the right thing for them to be able to do that. There are same-sex couples who have brought up children very effectively in the most loving environment and one in which any couple would want to bring up their children.

With those few words, I would like to conclude my remarks and again indicate the coalition's support of a free vote on the intent of this bill. I am pleased that we have been able to have a free vote on this. I know our party has a broad range of views. It is a very healthy aspect of our party that members are able to put their points of view through this debate. Colleagues of mine will not necessarily agree with what I have to say, and I think that is why we are in this place — to be able to express those views. Again I say I support the intent of this bill. I support the ability for same-sex couples to adopt, and I equally support the coalition's position on clause 17.

Mr HERBERT (Minister for Training and Skills) — It is really with great pleasure that I rise today to contribute to the debate on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. It is a bill that comes following an election commitment that we made to remove discrimination against same-sex couples wishing to adopt, and in this bill we are keeping our promise and we are putting equality fair and square on the agenda. It is a pretty straightforward bill. It basically amends the Adoption Act 1984 to allow same-sex couples to formally adopt children in Victoria, and it removes religious exemptions from the provision of adoption services.

Having said the bill is straightforward, it does remove that legal grey area that exists with same-sex families in Victoria, but I do acknowledge that whilst it is a straightforward bill, there are very many deep issues that concern people and very many different viewpoints that exist within this chamber.

It is a bill that follows a strong government legacy in terms of equality. It comes after we became the first government to feature a Minister for Equality. It comes after Victoria became the first state or territory to appoint a gender and sexuality commissioner, Rowena Allen, who will undoubtedly do a fabulous job. I know her personally. She is committed, she is talented and

she will do a great job in engaging and supporting LGBTI people in Victoria.

This bill is long overdue. We have been dragging our feet while similar legislation has been enacted in New South Wales, Western Australia, Tasmania and the ACT. They have all legislated for adoption equality. They have done that because there is a simple point in this, which others have made — and I commend them for that. It is that when it comes to parenting, it is not the gender that counts. It is not the social status, the race, the culture or the ethnicity that counts. It is how you raise the child. It is very simple: what counts in raising a child, and many here have done that, is how you provide love, how you nurture them, how you advise them, how you support them, how you help them with their education, how you keep them safe, how you help them through the often rocky road of childhood, how you support them and how you enable them to grow and blossom. That is what is really important.

This very simple fact applies to either natural or adoptive parents. That is the principle enshrined in this bill. Ms Patten alluded to the fact that there is no ideal type of parent. There are many successful roads, if you follow that basic principle in terms of supporting your child. There are many different ways of raising them. It is not whether you are a single parent, adoptive parent, married parent, surrogate parent or parent in a same-sex couple that is the defining factor in how a child is raised. It is how you provide that support, that love, that nurturing and that security.

There is no doubt that there is a difference between raising a child legally and not legally. We know that in Victoria there are many informal arrangements in place that enable people to raise children outside the formal adoption processes. I do not think that is good enough, and I say that from personal experience. I was one of those children. My father felt he could not raise me as a child, and my aunty and uncle informally adopted me. That was when I was about seven. He probably could not raise me; he was a pretty rough sort of guy, really. He was a decent fella. He was a hard worker, he was a wharfie. But he could not raise a child by himself.

I was lucky; I had fabulous parents. My aunty and uncle raised me and gave me all the support I needed, and I am eternally grateful for that. Quite frankly, I would have had a different life if it were not for that. They were terrific parents. But having said that, as I reflect on this bill, the points of tension in my life were those times at school I had to write down on an official document who my parents were, for an excursion or anything like that. It kind of felt strange putting my

aunty and uncle's names down when my father was still alive. These are points of tension for children. There is no doubt about that. That is why I support this bill. Children need security in the relationships they have. Whilst they may get all that love, having that security helps them. It takes away questions such as, 'Are they my real parents? Are they not? What is the status?'. I am a bit sorry that my father did not do that formally for me.

I support this bill. It really is important. It is important for children to have legal status in their relationship with their parents. It is not so important whether the parents are same-sex, single or in any of the whole range of different relationships that exist. It is that security that is important. For that reason, and with those brief comments, I indicate that I fully support the bill.

Ms FITZHERBERT (Southern Metropolitan) — I am really pleased to have the opportunity to speak in this debate on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. I want to comment on a couple of aspects of the bill. I feel that previous speakers have covered what is really a lot of common ground between us in this chamber, and I just want to record a couple of my own views. I am pleased to have a free vote on the major part of the bill. My party has a long history of free and conscience votes, and I am grateful for that.

I first want to address the issue of exemptions for faith-based organisations under part 3, clause 17 of the bill, the amendment to the Equal Opportunity Act 2010 and the explicit removal of the existing right of religious adoption agencies to be exempt from certain provisions of the act. I note that there are five adoption agencies in Victoria, with only CatholicCare opposed to same-sex adoption. Last year, out of 20 stranger adoptions in Victoria, CatholicCare facilitated five. CatholicCare has a position on same-sex adoption that is based on the doctrine of the Catholic Church. To date, the Equal Opportunity Act has been based on the premise that if discrimination by a religious body occurs because it conforms with the church's doctrine, it is allowed. One reason for that is that in our community there is an implicit and explicit right to religious freedom.

On this point, I note that relinquishing parents, who are in what I would imagine would be the enormously confronting and awful situation of contemplating giving up their own child, may want to express some views on the kind of upbringing they want that child to have. I am sympathetic to that idea.

In terms of same-sex adoption, my view is that there is scope in this area to create a balance of sorts and amend the Adoption Act 1984 to allow for same-sex adoption while allowing the Catholic Church to not participate. I acknowledge and respect the views that have been put counter to this during this debate, but I think there is scope to create a degree of balance. This would potentially affect only a handful of adoptions each year, while making a world of difference to same-sex families who seek legal recognition of their own family arrangements. The government has, however, decided not to take this approach — unlike, for example, a previous Labor government in New South Wales. I note that the other faith-based adoption agencies do not oppose same-sex adoption.

In terms of the broader issue of same-sex adoption, my primary concern is for the children. In fact that phrase and phrases similar to it have been used in countless emails I have received in recent weeks. According to 2011 census data — and that is a few years ago now; I imagine this has changed and probably increased — there are 8722 same-sex couples in Victoria and 2699 children and young people under 25 years in same-sex homes. They are stepchildren, foster children or biological children, and these are the people who matter most in the debate we are having this evening.

In deciding how I will vote I am very mindful of the correspondence and direct comments I have received. Some people in the gallery this evening have told me their thoughts on it, and I am very grateful to have received them. I have taken into account the views of Liberal Party members and also the views of many constituents in my electorate. I note there is already same-sex adoption in Western Australia, Tasmania, ACT and New South Wales. The Family Law Act 1975 includes provision for parenting orders for same-sex couples and the Children, Youth and Families Act 2005 includes provision for same-sex couples to be given permanent care orders.

We know there are many same-sex couples who are committed foster parents, but these couples are not allowed to adopt, which seems to be a fundamental and unfair inconsistency. I am very conscious that the main effect of the bill, if passed, will not be on stranger adoption — that is, babies who are offered for adoption by relinquishing mothers, for we have few adoptions of this kind today. But it will have an important effect on children who are growing up right now in same-sex families. I believe it will diminish discrimination. It is fundamentally wrong to stigmatise children because of views we may have on their parents or their lifestyles. It will give greater protection to children, particularly at times of loss and trauma. For example, it means that

when couples are dealing with an emergency health issue it will not be critical that one parent, the legally acknowledged parent, be there to deal with permissions and the difficult aspects of decision-making in what is already a traumatic situation.

I can think of heterosexual couples I know of my parents' generation and my own who married not because it made any difference to their relationship but simply and explicitly because of the legal protection it would give to any children of their marriage. The most fundamental example of this is what happens when, very regrettably, one spouse dies in a case where a couple has a child or children who are minors. In that instance there is no suggestion in a heterosexual marriage of any further change to parenting arrangements. The surviving parent simply continues as the sole guardian of the child. Today there are an estimated 2700 children in Victoria who do not have that protection, and I think that is unreasonable.

One of the many points made in the emails I have received in recent weeks suggests that we should be insisting that children who are the subject of adoption should have a mother and a father — a man and a woman — as their adoptive parents. I do not know that governments can ever guarantee that that is what children will end up with. People's lives are complex. Their circumstances change and their decisions change.

I am reminded a lot of the adoption of a member of my family; in fact it is my father-in-law. He was born in the 1920s, and he was given up very shortly after birth by his unmarried mother. He lived in a children's institution until he was two years old and then he was fostered by a woman who is usually referred to in the family as Mrs Williams, who fostered and adopted children simply to earn an income. A number of children passed through her little house in Richmond. Harold grew up and went to Melbourne High School; he got a good education. Around the time of the Second World War, when he was about to join up, go off and possibly be killed in action, he and the woman he knew as his mother decided it was time to formalise their relationship. It had been a pretty difficult upbringing that involved a lot of material hardship, but to all intents and purposes she was his mother, and at the time when he was going off to war he needed a next of kin, and he wanted his next of kin to be the woman he identified as his mother. He also told me that he was conscious that if he died, he wanted any benefits to go to her. So at the age of 18 years, when he was about to sign up to go off to war but was still legally a minor — because the age of majority was 21 years — he and his mother went through a formal adoption, and she became his mother legally.

It has always been a really interesting thing to note with my father-in-law that a child who never knew his own father and, in fact, never had any father figure in his life grew up to be an outstanding father to his four children. What it showed me was that, as we have discussed tonight, families come in all shapes and sizes, but adoptions come in various circumstances and different ways. This is a very good example of that. I think my father-in-law's experience, which happened decades ago, has some parallels with the circumstances we are looking at today. It is people wanting to formalise an existing parent-child relationship and give it the legal standing and protection that goes with it — that is, the legal standing and protection that some of us take for granted simply through the sheer accident of birth. We have an opportunity tonight to change that.

We talk a lot in here about supporting families, and to me that is what this bill is about. Its main effect will be to support and protect children in same-sex families and their parents, and I will be voting in favour of the bill.

Ms LOVELL (Northern Victoria) — It gives me pleasure to rise to speak on the bill before the house. I see it as being a bill about the rights of children — their right to live in happy, stable, supportive and loving families. Historically the complexion of what a family may have looked like has been quite different to what families look like today. In reality the stereotypical complexion of a family from the first half of the 20th century, a family unit of a married couple, a mother and a father, and children has changed greatly over the past 50 years. Prior to the 1970s it was almost unheard of for a family consisting of a couple who were not married to have children or for a single parent to have a child or children, particularly a single mother.

Times have moved on and thankfully these families are no longer subject to the prejudices of the past. The reality of today is that families are made up of many varieties: a mother and a father, married or not, with children; single-parent families; grandparents raising grandchildren; aunts and uncles raising nieces and nephews; and same-sex couples raising children in very happy, supportive, stable and loving families.

The families that are supported by this legislation actually exist today. So far the debate has been caught up in a discussion about stranger adoptions, when the reality is that the vast majority of adoptions that will be enabled by this legislation will be families where one member of the couple is the birth parent of the children. The legislation provides for the best interests of those children to be enshrined in law.

I have seen the need for this change to the law firsthand. I have a very good friend who is in a same-sex relationship. She and her partner have two children, of which the partner is the birth mother. Both of their children were conceived through a gift of sperm donation. These children have only ever known my friend and her partner as their parents, and yet if something had happened to their birth mother, my friend — the only other parent they have ever known — would have had no legal rights to continue to care for, love and raise these children. Their birth mother's parents, her sister, the natural father or even the state could easily have taken the children away from the only person they considered to be their parent. That certainly would not have been in the best interests of those children.

The children have now grown into adults and so this piece of legislation is probably no longer of relevance to that particular family, but I know that during the years the children were growing up it was a very important thing to my friend and her partner. They wanted to know that if something had happened to the birth mother, the other partner would have been able to continue to raise those children. So I have believed for a very long time that same-sex adoptions should be allowed.

In this state we have had arrangements in place for same-sex couples to be foster parents for a very, very long time. I remember former Premier Denis Napthine saying to me many years ago, he was the minister who introduced that change into this state allowing for same-sex couples to be foster parents, that many of the best foster parents were same-sex couples looking after children who were wards of the state. I am proud that the Liberal Party introduced that change and allowed for children who were wards of the state to be cared for in loving and stable families.

As I said, this debate has been caught up in the stranger adoption concept, so that people have been concentrating very much on where those children will be placed. The reality is that very few of those happen in Victoria today. I know that one of the religious organisations is against having to be compelled to conduct adoptions where it involves a same-sex couple. I respect the rights of religious organisations to have their beliefs, but we see that this is only one of those organisations, and of the 20 adoptions that occurred in the state last year, it conducted only 5 of those adoptions. I believe that the best interest of the child should be put first and that is why the legislation should pass. I also believe that we need to respect the rights of the church to choose to participate in conducting these adoptions because it has its own belief. We know that

two of the religious organisations will facilitate same-sex adoptions and one of them wishes to opt out. Therefore I will support the removal of clause 17 from this bill, which compels religious agencies to participate in same-sex adoptions.

But regardless of whether that clause is removed or not, I will vote in favour of this bill because I believe in the rights of children who are in same-sex families. I also believe that children must be raised in the best families that they can be raised in, and they are loving, stable and supportive families. It does not matter whether it is a married couple looking after those children, a non-married couple looking after those children, a same-sex couple looking after those children or a single parent looking after those children. We must respect that families now are made up of many, many different varieties. The best interest of children is that they are in families that are loving, stable and which look after the children. It will give me great pleasure to vote for this bill, but I will vote not to include clause 17.

Mr ONDARCHIE (Northern Metropolitan) — I rise today to speak on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. I will pick up where my colleague Ms Lovell finished up, and I say this because I feel I am qualified. The needs, the care and the nurturing of the child is absolutely paramount in this debate; it is first and foremost. I say that I am qualified because I have five children — three born to my wife and me and two not of blood, and I love them all equally. Two not being of blood make no difference to me; they are all the same. One of the reasons that they came into our family was that these children needed a family that would love, care for and nurture them, and they got unconditional love in my house. I ask that for every child — that every child has the opportunity to have unconditional love, care and nurturing. If there is a family that wants to do that — whatever that means, whatever the mix of that family — it gets my support.

Parallel to that belief, I do have a view about clause 17 in the bill. I fashion this argument the same way I did when the previous government put through legislation to allow faith-based schools to make appointments based on faith. If an organisation has a religious belief that does not sit with this bill, then we should not force it to do that. It should choose to do whatever it wants. As I said in the debate around faith-based schools, which allowed faith-based organisations to appoint members of staff that are of their faith, I support the view of faith-based organisations to make decisions based on their own faith, so I will be voting against the inclusion of clause 17 in the bill. As for the rest of the bill, if a family — whatever it is, heterosexual or same-

sex — presents in a valid and appropriate way an opportunity to love, nurture and raise a child, it has my support. I commend the bill to the house.

Ms PULFORD (Minister for Agriculture) — I could not be prouder to be supporting the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015 in the house this afternoon. As the bill stands, intact with clause 17, it carefully balances and considers competing rights, and that is an important thing for us to keep in mind.

This is a reform whose time has absolutely come for Victoria. This is a reform that has already occurred in other states, and it is well due. This is about real Victorian families. It is about practical things that real families deal with each and every day, including things like school excursion forms, things like the decisions parents have to make about the medical care of their children and things like the already very complicated business of organising a passport for a child. At the moment we have so many families — beautiful, loving rainbow families with same-sex couples — and children, including children from previous relationships, children conceived through in-vitro fertilisation and children born via a surrogate, and of course we know that members of our LGBTI community play such an important role in supporting foster parenting and providing care to children in extraordinary numbers right across the many and varied communities in Victoria.

But these families have sleepless nights because the law is deficient, and the law is deficient because it unfairly discriminates against them. For families for whom everything else that can be done has been done, from registering their relationship to making sure their wills are absolutely clear on all matters relating to the care of children, there are limits to their enforceability. This is what is not fair, and this is what this legislation seeks to fix today. We cannot judge parental capability on sexuality, nor should we. We know that members of our LGBTI community have children. We also know that members of this community have faith and participate in any number of the other communities in which they live.

I would like to share with the chamber the experience of a family I know very well, that of my very dear friend Megan, her partner, Julie, and their daughter, Ramona. Megan and Julie have been together for a bit over 10 years now. Their relationship is a beautiful thing. Their daughter, Ramona, is a beautiful person. She finished her year 12 exams this week. She will be an adult in 17 days, and it would be really lovely if this Parliament could recognise the legitimacy of that

relationship and that family in time for Ramona's 18th birthday.

I know we are cutting it fine, but for Megan, Julie and Ramona, who have taken every possible measure to ensure that there is legal certainty that protects their family arrangement, this is such an important piece of legislation because if something happened to Megan, the law currently says that Ramona — 17 days short of her legal adulthood — could be taken from the home she has lived in and removed from her family that has been in its current form now for more than a decade. This is something we should fix for Ramona and her family and for the many rainbow families across Victoria. The extension of rights to adoption are absolutely fair, absolutely reasonable and absolutely legitimate. They are no threat to other rights; they just are not.

I will conclude by paying tribute to the many people who have campaigned long and hard for this reform, and I particularly mention Jamie Gardiner, who played a significant role in the development of this policy in the lead-up to the last state election. This is a change that we said to the LGBTI community in Victoria we would bring to the Parliament, and it was my very great pleasure during that period to work with Jamie on the finalisation and development of that policy.

For so many people, for so many families in Victoria, we have an opportunity here to make a very important but really modest change to a piece of legislation to remove discrimination against a number of families in the community — beautiful families providing beautiful homes to children — and we should get on with it. Clause 17 is completely reasonable and entirely proportionate, and no-one should feel threatened by it. I commend the bill to the house wholeheartedly.

Ms WOOLDRIDGE (Eastern Metropolitan) — I am very pleased to rise today to speak on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. One of the biggest honours I had in my life was the opportunity to be the minister for Community Services and, as part of that, to be responsible for our child protection system, which also included adoption responsibilities. I have to say that every single day I was horrified and shocked by what some people are prepared to do to their children — the neglect you see, the abuse you see and the extent of how widespread it is. You just have to see the numbers of children who are in our child protection system, from the early stages — we are getting close to nearly 100 000 notifications — through to those who are in the out-of-home care system, to know that being in a biological or

natural family is no determinant for a child having a safe, loving and nurturing upbringing.

I am very clearly, through the experience of that role and more broadly, of the view that a child's best interests are served where they are cared for by people who love them and who can provide a stable home for them. I believe permanency is a very important part of that stable environment that can be created. I genuinely believe that can be provided by natural parents, it can be provided by step-parents and it can be provided by same-sex parents. Everyone has the capacity to provide that loving, nurturing, caring and permanent environment.

I saw that very much through the foster care system where the coalition supported — in fact it encouraged — same-sex couples to become foster parents. I met many same-sex couples and had many reports of the wonderful, stable, supportive environment that was provided by same-sex couples to their foster children. As we have also supported same-sex couples in a permanent care environment, it is anomalous that we would not go further and enable them to take that level of permanency and stability to its ultimate end in making an ongoing commitment in relation to adoption. The fact that we had this distinction in terms of our laws has been unfair. The fact that we can now — and I am optimistic about the support of the house — allow adoption by partners in a domestic relationship of at least two years to be able to go ahead is a very important and positive step going forward.

One of the issues in terms of permanent carers is that those formal relationships ended at the age of 18. We all know — even many of us in this chamber who are fortunate enough to still have our parents around — that the need, the support and the love that is provided by our parents continues well after that age. Allowing adoption for children who are being parented by same-sex couples affords that level of stability and permanency for their lifetime. That is a very important addition for the children, for the parents and for our community as a whole.

Many members have acknowledged same-sex couples who have had an influence on them in terms of their views on these issues and whom they respect. The person I want to acknowledge is Rowena Allen, who has been a long-time friend and professional associate for around 15 years. Of course she is now the gender and sexuality commissioner and lives with her partner, Kaye, and their daughter, Alex. I will not forget the joy of them having Alex and the experiences of going through exactly the same challenges, hopes and fears

that we all have as parents. I am hopeful for them, as representatives of thousands of same-sex parent families across the state, that the passage of this legislation will remove those last vestiges of discrimination in relation to the relationship between Kaye and Rowena and their daughter, Alex.

In terms of relationships we should look to the evidence. While it is not surprising, the evidence shows that there are few, if any, differences between children raised by same-sex attracted parents and children raised by heterosexual parents. Where there are differences, they are often connected to the stigma that parents have experienced because of their relationship and their family environment. The fact that we can remove one further element of discrimination in this area is very important. I am pleased that for many years Victoria has had a good track record in relation to addressing issues of discrimination for LGBTI communities. I am proud that the coalition government was able to take further steps in its last term, and I want to touch on a couple of those. Of course expunging the criminal records of people who had been prosecuted for engaging in consensual homosexual sex was a very important step forward and was widely welcomed by the community. The work that the former Minister for Health, David Davis, did in relation to rapid HIV testing has been reported to me widely as being exceptionally positive not only from a Victorian perspective but also from an Australian perspective and internationally.

On a personal front, I was very pleased to introduce and fund a program which has been continued by this government in relation to the Healthy Equal Youth project focusing on LGBTI youth suicide prevention initiatives. We also supported grants in local communities. It was always a wonderful process to get feedback on which initiatives were recommended to be funded because of local initiatives by young LGBTI people in communities right across the state who wanted to take positive action on being included in their communities, their schools, their sporting environments and so on. Also more broadly we supported groups like Gay and Lesbian Health Victoria, Transgender Victoria, Minus18 and a number of others. There is a proud record across successive governments and parliaments in relation to thoughtful consideration of these issues and progress on the removal of discrimination on this front.

I support the suggestion that the bill should maintain the religious exemptions in the Equal Opportunity Act 2010 in relation to adoption. I think it is fair that religious groups can continue to work within the bounds of their faith. It is interesting that many

religious organisations are comfortable supporting same-sex adoptions.

In fact I know of only one agency that will not support same-sex adoption, and if clause 17 were to be removed from this bill, one agency for adoptions in the last year would be affected by the retention of those religious exemptions. Practically, I think it maintains an important ability for religious organisations to conduct their matters consistent with their faith, and, as I have said, there will be varying views and approaches in relation to religious organisations. However, I think practically it will mean that every same-sex family who wants to adopt will be able to. I do not think it will limit the capacity of same-sex couples to make a positive decision in relation to either a child they have in their care or the choice of a stranger adoption going ahead. I think the bill achieves the balance we are weighing up in terms of this debate.

As I said at the beginning, I am optimistic that this bill will pass. The thing that is so significant — and Ms Pennicuik obviously talked about this, as have a number of others — is that this will make a difference to thousands of children living in same-sex households and also to same-sex couples who are making choices about their families and having children and young people as a legal part of the family that they make up, and so it should.

I too want to congratulate all those who have been involved. There have been campaigns for a long time in relation to this. I want to particularly acknowledge JOY FM. I recall that back in November last year I was asked directly when I was on JOY about my position on this, and I was very pleased to be able to personally declare my support for same-sex couples adopting. It is a position that I obviously continue to hold, but so too do many others — rainbow families, LGBTI organisations and members of Parliament. There has been a widespread expression of support in relation to this bill.

I am very pleased to be able to contribute to the debate on the bill, and importantly I am very pleased to be able to support what I am optimistic will be the ability of same-sex couples to adopt the children in their care to provide that stability and permanency that they deserve and that they should be afforded.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — It is my absolute pleasure to follow that contribution to the debate from Ms Wooldridge because there are very few things that we as members of Parliament we get the opportunity to do that have such a positive effect and impact on

society. One of the reasons I stood for Parliament, one of the reasons I wanted to avail myself of the opportunity and one of the things I remain ever grateful for, is the ability to ensure that wherever we can we eradicate discrimination throughout society.

Earlier this year I spoke on an issue that was very dear to my heart in relation to child abuse in institutions and the impact that the royal commission has had in my own community, the Jewish community. In relation to this issue before us, I think back to the discrimination my grandparents experienced in Germany for being nothing other than Jewish, so to move forward to 2015 and be part of a society where people are discriminated against on the basis of the fact that they happen to love somebody of the same sex is something I find truly strange and abhorrent, and I am glad to contribute to the debate to ensure that we remove that from our statute.

The ability for same-sex couples to have an adoptee is nothing less than an affirmation of love. The ability for two people to provide a loving home for a child should always be the very first port of call for us as legislators and members of Parliament. That is why it is my great honour to contribute to this debate, and that is why it is my great honour to ensure that as part of what we do in this Parliament we see to the eradication of this type of discrimination and that we support the ability of same-sex couples to participate fully in any activity that a heterosexual couple has the opportunity to participate in. I do not see any reason that in 2015 we should not be able to provide people who wish to look after a child with the ability to do so simply on the basis that they happen to love somebody of their own sex rather than somebody of the opposite sex.

I wholeheartedly endorse this bill. I look forward to supporting this bill when the vote takes place. I endorse all of the comments, including those from Ms Wooldridge and from other members of Parliament who have spoken in relation to supporting this legislation. This is why I became a member of Parliament — because social change, change that is for the betterment of society, change that eradicates discrimination in society, is change that makes us as a Parliament what we are, and is what we are about. I look forward to participating in the vote on this bill. I absolutely endorse the bill to the house.

Mr FINN (Western Metropolitan) — I find it difficult to speak on this bill. I find it difficult because I do not want us as a society, as a community, to go back to the bad old days when people were persecuted for their sexuality. I do not want to go back to the bad old days of, if you will excuse an expression that is probably very unfortunate but was used, poofter

bashing. I do not want to go back to that. I do not want to go back to the days when people were dragged before the courts or locked up because of their sexuality. That was wrong and is not something I would ever support. I certainly do not want to go back to the days when we would have that sort of persecution of anybody for that matter, but particularly on the basis of somebody's sexuality.

We are talking today not about the rights of an interest group, and we are talking not about the agenda of an interest group. What we are talking about first and foremost is the welfare of children. I spend a fair bit of my life fighting for the rights of children of various ages. The rights of children and the welfare of children are issues I get very emotional about, and I think that as a legislator my first priority is to defend those who are in no position to defend themselves and to protect those who cannot protect themselves.

I am not convinced that same-sex adoption is in the best interests of children. Now that is not to say that many same-sex couples are not superb parents — I have absolutely no doubt they are — but many studies, many surveys and many academic considerations have shown that children do best when they have a mother and a father. I do not think there would be too many who would argue about that.

We have, as has been pointed out in this debate, very few adoptions in this state. I think the latest number I heard the other day was 48 last year. We know why there are few children up for adoption. It is because most of the children who would normally have been adopted have been killed. We know that. That is sad in itself, because that leaves an inordinate number of couples desperate for children who cannot adopt. They are desperate to adopt. That in itself is a problem, and I am not sure how we address it.

One of the issues that has been raised with me over the last month or so by one such couple is their concern that if this bill is passed, one or more same-sex couples seeking to adopt may move above them on the list as a sign that the government is serious about this matter. That is something I do not think we can rule out. We have to take into consideration the views of people who have been on the list for some time and are very keen to adopt.

As I said, I do not want to treat same-sex couples badly — I do not want to treat homosexual people badly at all. I do have and have had over the years many gay friends. When I think about some of the more enjoyable gatherings over the years they have often been as a result of the input of one or more of those

friends who are quite often very talented, have a certain flair, a way with words and are generally speaking very funny. I have to say that I do not back away from my friendship with them at all.

I should say at this point that if this bill was just about parents, foster parents or same-sex couples who already had children or custody of their children, I may well have a very different view to the one that I come to this debate with because I can see the argument that has been put forward, particularly by Ms Pulford, who I thought put forward a strong argument for that particular case. But I think what we are really talking about here is stranger adoption, as it is called. That is almost an unfortunate term, but that is what we are talking about, and I am very hopeful that nobody will take offence at my stand on this issue.

I do not hold the view that just because somebody has a different view that makes them a bigot or a redneck or whatever; I think that in a debate such as this it is very important that we have respect for everybody. I know we are talking about very few adoptions indeed, but with each adoption we are talking about a child, and each child is extremely important. As a matter of principle I cannot vote to deny any child a mother or a father.

Children, as much as possible, need a mother and a father. I know in this day and age that is almost a rarity, with the divorce rate the way it is and the number of single parents there are, many of whom are just amazing. I can think of one off the top of my head who is a single parent, and I am in awe of what she does and what she has done for her kids. I know that families, as we have known them, have changed over a period, but I still stick to the principle that I will not vote — I have thought this through many times, and I have actually stayed awake at night thinking about it — and I cannot vote to deny a child a mother or a father. I cannot vote to deliberately deny a child a mother or a father.

We cannot say that all heterosexual couples are great parents, just as we cannot say that all homosexual couples are bad parents. There are good and bad on both sides, as we know. It is ridiculous to try to generalise about these things, but that is a principle. It is unfortunate that we cannot legislate for individual cases. It is unfortunate, but we cannot, so I will state that principle now: I cannot vote to deliberately deny any child a mother or a father.

I will go on to clause 17 of the bill, which I will be voting against when we get to the committee stage. This is just another example of this government's attack on religious freedom in this state. It has been going on

for some years, and I think, quite frankly, it has got to stop. This is probably as good a place as any to stop it. As we know, there is one religious agency which is opposed to this bill. It happens to be the biggest, but it is opposed to this bill, and some people might say that that does not matter — it is only one. Religious freedom is of paramount importance to our society. Just as freedom of speech, freedom of expression and the freedom to live the way we want to are paramount to our society, so is religious freedom. I will be voting against clause 17, and I will, after much thought, also be voting against the bill.

Mrs PEULICH (South Eastern Metropolitan) — I also wish to make a contribution on this bill. Can I say that 15 minutes for such a complex and important bill is very difficult. It is going to be a truncated argument. Like Mr Finn, my views are not intended to offend or cast judgement on other people or the choices they make. Like Mr Finn, I also have many friends who are in same-sex relationships.

I see this bill, first of all, and other pieces of legislation that this government is bringing forward, as a disingenuous tool to try to cause chinks or divisions within the opposition, when indeed the greatest concern has been the unity of the opposition. It trots out these pieces of legislation, which place at odds important principles and important rights. The comments I make are made to bring to the debate on this bill a range of very unique experiences — the experiences of my family.

My grandmother had five children in a concentration camp. She lost two babies, who were never recovered. My grandmother died at the age of 85. She had never overcome the grief of having lost two babies. Her third child was adopted, unbeknownst to her. She had thought that that child had also died. Despite the ultimate reconnection and the return of her daughter to the family, that family relationship had been broken beyond repair, and even though my grandmother and my grandfather passed away some years ago, my aunt is a broken woman. My father saw his father killed in front of him, leaving behind his mother, pregnant and with four children in tow in the middle of the war. My father's loss of his father was something that he carried around as a wound all of his life.

I have come across many people who have been adopted, who did not know who their biological parents were. When I was in the Assembly, I argued for birth documents to be protected to allow voluntary reconnection of children who had been adopted out, and I can proudly say I was instrumental in arguing that case in the party room; that position carried the day.

These issues for me are therefore very complex. For me this issue is about the rights of the child. In my view the practice of adoption represents a very vexed and difficult issue, and I think it should really be an instrument of absolute last resort. I think that is reflected in part by the low numbers of adoptions that occur. This is not passing judgement on the choices made by the individuals in same-sex couples — and as I said I have many friends who are in same-sex relationships, and I do not pass any judgements on their choices.

First of all, then, in relation to the rights of the child, I do not need to lecture people about the universal Declaration of the Rights of the Child. The protection of the interests of children is a *parens patriae* responsibility of the state, and the law of the land should always promote those circumstances that are most likely to achieve that protection. It has obviously long been considered, and it echoes the ideal world, that children do best with both male and female parental role models in their lives. Children need a relationship with a mother and a father, even though they may not live together, and the examples of female and male identities. Obviously sometimes this ideal becomes fragmented by death, illness, choice, the cruelty of life or because individuals are less than ideal in fulfilling their responsibilities to each other and to their children, but the ideal remains and should always remain.

In the current situation, under the Children, Youth and Families Act 2005, it is already possible for same-sex couples to be given permanent care orders. Under the Family Law Act 1975 parenting orders can already be made in favour of same-sex couples. The issue, as I said, is a complex one. In the instance where a child is conceived with the intention of somehow completing a same-sex family consisting of, say, two homosexual men, my difficulty is that that child is denied the right to a mother. I cannot come to terms with that. I cannot endorse it as a principle. In the instance where the existence of a child precedes the relationship, because the child has been the product of a heterosexual relationship, and either of the parents has come into a single-sex relationship, there are difficulties. I would hope that the current laws make the lives of such people easier.

There are other options this Parliament should have and could have considered. In particular I think permanent legal guardianship for children would have been a good alternative. Legal guardians can be extended family members, such as grandparents, older siblings, aunts and uncles. They can also be friends or strangers appointed by the child's parents or by the courts. While guardianship provides children with stable, loving

homes, just as adoption is intended to do, it is in my view much more respectful to the child involved. Guardians are able to make important decisions for children in their care, but they are not the recipients of an amended birth certificate or parental status under the law.

In relation to clause 17 and religious freedom, how can anyone declare one right to be more important than another right someone else treasures? I was born under communism; we had no rights. You had no right to freedom of speech. You had to whisper in your family home for fear that you would be reported by informants to the state. My grandfather was regularly taken away by the police for cursing the communist government at the time. In our own family home as a five-year-old I ran around asking my mother, 'Who do you think is worse, Tito or Hitler?'. I was subjected to some very stern corporal punishment. Why? Because if anyone had heard, my mother or father, or perhaps both, would have been imprisoned. I was baptised in secret, because religious observance was seen to be something that was detrimental to the interests of the state and a subversive activity, and therefore people were discouraged — actively discouraged — and all of the laws of the land and all of the protocols worked in favour of extinguishing that freedom. It became very precious to us, in Eastern Europe in particular, because in many instances the churches led the revolution and saw the demise of communism.

I cannot understand how anyone can declare freedom of religious observance to be any less important than any other freedom that is declared in the Universal Declaration of Human Rights. I believe that a relationship with biological parents should never be extinguished. As I said before, the adoption of children unrelated to adoptive parents leaves lots of consequences, and many of them have been well documented by research. This Parliament would have been well instructed to make a reference to an all-party committee to look at the practices of adoption. I do not wish in 50 years time — I probably will not still be alive in 50 years time — or in 30 or 40 years time, for this state, for this Parliament, to have to make an apology to children who were denied the right to retain a connection with their biological parents, and in particular their mother. Every single person has a mother. In my view they have a treasured and important role. Any arrangement which denies a child an opportunity to have a relationship with their mother, I think, is a bad law.

With those few words, I say that religious freedom, freedom of movement and freedom of speech should never be extinguished or considered to be of lesser

importance than the rights of others. Who can determine that my right to one of these is less important than that of others?

I want to remind people of the Declaration of the Rights of the Child. It says, under principle 6:

... a child of tender years shall not —

not —

save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support.

Principle 4:

The child shall enjoy the benefits of social security. He shall be entitled —

note the sexist language —

to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate prenatal and postnatal care.

And principle 10:

The child shall be protected from practices which may foster racial, religious and any other form of discrimination.

I do not see this bill as being about discrimination; I see this bill as being about the protection of rights.

I come back to, in particular, relinquishing mothers. This Parliament made an apology to relinquishing mothers for past adoptive practices. Mothers who lost their children to adoption have consistently reported feeling coerced and pressured by several sources, including their family members, social workers and so forth. Adoption today is, I believe — as has been indicated by the numbers — not a popular alternative for many. Evidence also exists indicating that adoption is not a psychologically healthy option for children any more than it is for their mothers. Adopted people are over-represented in psychological treatment in general as well as in residential care facilities. They also become more likely than their non-adopted peers to abuse drugs and alcohol and participate in criminal activities during their youth.

Rather than linking these common causes to abuse in the original home, I think time spent in foster care and other factors are in fact often seen as contributing factors rather than adoption itself. Nonetheless I think this Parliament should have been more diligent in reviewing these practices and looked at how we could better balance the needs of children, relinquishing parents, adoptive parents and same-sex relationships.

I intend to vote against clause 17, and I will also be voting against the entire bill for the reasons that, as I said, I do not believe this mechanism protects the best interests of children, nor does it protect the right of individuals to religious freedom, which is absolutely at the epicentre of our democratic society.

Sitting suspended 6.25 p.m. until 7.04 p.m.

Dr CARLING-JENKINS (Western Metropolitan) — I rise today to speak on behalf of the Democratic Labour Party on the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. This bill seeks to change provisions in the Adoption Act 1984 and to amend the Equal Opportunity Act 2010. I wish to state from the outset that I will be voting against this bill as a whole. This bill is an extraordinary attack on freedom of religion, on freedom of conscience and on freedom of speech, and I begin to wonder when this attack will cease.

The problem I have here with this bill is that this government has decided to use children in this way. I have four main points: firstly, that this bill should not be about equality for adults, but about the rights of the child — adoption should be about the needs of vulnerable children, not about creating a market for children; secondly, I am going to speak about the needs of relinquishing parents, particularly relinquishing mothers, which should be taken into account and are not through this bill; next, I am going to talk about clause 17 and religious exemptions, where I believe freedom of religion has been curtailed when it should not have been; and finally, I am going to talk about children having a right to know who their biological parents are.

To my first point: this bill is about equality for adults, not about the rights of the child. I believe the debate for LGBTI equality is misplaced in this context, and it is clouding the rights of children. No-one has a right to a child. When a child is born and a mother finds that she is unable or unwilling to raise that child, she as a biological parent should have the right to choose who her baby is raised by. This bill denies this right.

This bill is not about love. It is not, or should not be, about adult desires. This bill, and any adoption bill, should be about the rights of the child. There are precedents for this. The United Nations Declaration of the Rights of the Child speaks to this point. Our previous Adoption Act, of 1984, and the Children, Youth and Families Act 2005 state that the welfare and best interests of the child are, or should be, the paramount consideration. There is to my mind no evidence that this has been considered in full in the bill,

which focuses almost exclusively on the rights of adoptive parents — not on the rights of the child.

I refer to the work of the Women's Forum Australia, which sent me a submission on this bill. I could not word it better, so I am going to quote from what they sent me. They said:

Currently the evidence to support same-sex parenting as being in children's best interests is not conclusive. A review of a number of studies supporting the no-difference consensus of same-sex parenting undertaken by Dr Andy Mullins, adjunct professor at the University of Notre Dame Australia, found the studies to be methodologically flawed, based on subjective perceptions and inconclusive.

In 2015 one of the largest studies of same-sex parenting, undertaken by Paul Sullins and published in the *British Journal of Education, Society and Behavioural Science*, found a significant increase in serious emotional problems in children of same-sex couples. The American College of Pediatricians stated the alleged scientific consensus that having two parents of the same sex is innocuous for child wellbeing is almost wholly without basis. It believes the natural family is the single greatest pro-child institution in the history of mankind.

It is clear that the debate about the long-term consequences of same-sex parenting is still far from being resolved. Until it is resolved, it is irresponsible of the Victorian government to introduce legislation that enables and promotes this practice. More evidence-based research is required, as well as comprehensive public consultation that invites and respectfully listens to perspectives from all members of the community. This must be the basis for creating positive adoption legislative reform, and this is not a process that was undertaken prior to bringing this bill to the house.

I believe that children are best brought up by a mother and a father. This ideal I know only too well, having been a single mother for many years, is not always possible. Where it is not possible, the child's rights must be preserved above all. I want to repeat again that no-one has a right to a child, but a child has a right to the best home life possible. A government should never be complicit in deliberately placing a child in a home without their mother or father. Same-sex couples may well do a better job than some dysfunctional traditional families, but they are still a far cry from the ideal. Children deserve the closest to the ideal that we can get. I am speaking mainly about the issue of stranger adoption, a point this bill covers.

Prominent Australian ethicist Professor Margaret Somerville writes against the deliberate destruction of a

child's biological identity as a child of a real mother and a real father. She says:

It is one matter for children not to know their genetic identity as a result of unintended circumstances. It is quite another matter to deliberately destroy children's links to their biological parents, and especially for society to be complicit in this destruction.

The United Nations Declaration of the Rights of the Child affirms that a child must not, save in exceptional circumstances, be separated from his mother. This legislation is in a premeditated way making sure this will occur.

The Australian Marriage Forum puts it this way:

It is often stated that it is better for a child to have two loving same-sex carers than a dysfunctional pair of biological parents. However, neither of these scenarios is in the interests of a child ...

Neither gives a child what she needs: her very own mum and dad. We must restrain dysfunctional parents who would abuse their children, but we must also restrain dysfunctional legislators who would deliberately create, through legislation, motherless and fatherless families. Any legislation regarding children should not be caught up in the rhetoric of equality for adults. We must have regard for the child's interests, which far outweigh the interests of adults.

I turn now to comments made by Adelaide paediatrician Dr Rob Pollnitz, who talks at length about the child's interests, not adult interests:

Homosexual activists claim that gay and lesbian parenting is as successful as that of heterosexual couples. I have read the studies they quote and find they are either inconclusive or subject to major methodological flaws. In contrast, there is a large body of social science evidence to support the view that children are best raised by their own mother and father. This is not a new concept — for at least 5000 years enduring societies have valued traditional marriage between a man and a woman as the social nucleus in which children are best born and raised.

I believe that no-one has 'the right to a child', and I would urge that the focus in this area should be genuinely on the best interests of the child. My views on this issue are shaped by over 30 years experience as a specialist paediatrician. Throughout this time I have found that children develop best, both physically and emotionally, when they are reared in a stable heterosexual mum-and-dad family. Without criticising single parents or making judgements about people's situations or experiences, when families fracture we see large increases in health problems, emotional imbalances, learning disorders, defiant behaviours, drug use, sexual promiscuity, and criminality.

I believe that our children are too important to be treated as social guinea pigs to appease the demands of a tiny if vocal minority.

Australian human rights lawyer Frank Brennan, AO, former chairman of the National Human Rights Consultation Committee, is an expert on discrimination. Mr Brennan also believes we should uphold the rights of the LGBT community in all civil matters. However, in a debate such as this he claims that the greater right of the child to have both a mother and a father outweighs civil rights.

Now I would like members to listen to the voices, just for a little while, of children of same-sex couples. This is what some of them have said. Heather Barwick, who was raised by a loving lesbian couple, stated in March this year:

A lot of us, a lot of your kids, are hurting. My father's absence created a huge hole in me, and I ached every day for a dad.

Same-sex marriage and parenting withholds either a mother or father from a child by telling him or her that it does not matter, that it is the same. But it is not.

Millie Fontana was in Australia recently, and I had the privilege of meeting her. She was also raised by a loving lesbian couple and she is very clear about the fact that she loves both of her mums, that she was donor conceived and that she always felt that left a hole. This is what she said:

There's all this talk about equality for women, for gay people, for everybody, but where's the equality for children when it comes to this? I am in a position to explain to you the kind of damage it does to a child.

Katy Faust, who was also raised by a loving lesbian couple, said in February this year:

Our cultural narrative becomes one that tells children they have no right to the natural family structure or their biological parents, but that children simply exist for the satisfaction of adult desires.

Robert Lopez, who was raised by a loving lesbian couple, said this in January of this year:

I experienced a great deal of sexual confusion. I had an inexplicable compulsion to have sex with older males ... and wanted to have sex with older men who were my ... father's age, though at the time I could scarcely understand what I was doing.

Adoption should be about the needs of vulnerable children, the voices of the people that I have just read out, not about creating families for infertile couples. My fear is that the right of the child is being replaced and we are setting ourselves up for another apology in 20 years time, like the national apology for forced adoptions in the federal Parliament on 21 March 2013 and indeed the apology made in this very Parliament.

I cannot support a bill that has not sought to learn from our history. Brenda Coughlan, spokesperson for Independent Regional Mothers, describes it this way:

Late 1950s–mid 1970s brutal era of our nation's history was about infertile couples who could not have children of their own — newborn babies and children stolen to fulfil infertile couples' wants and needs. We now face history repeating itself with the unfavourable intent behind the bill for same-sex couples whose domestic relationships, by choice, cannot reproduce children, so their wants and needs are fulfilled ...

She says we are going back to forced separations and adoptions.

Adoption must be a response to the needs of the child, not a means of creating a market for children. This is how the Women's Forum Australia has described it:

In 2014, Women's Forum Australia published *Adoption Rethink* — a comprehensive, evidence-based review of adoption practices in Australia and the experiences of the most affected: children, birth parents and adoptive parents. Based on the findings of our research, we are firmly of the view that the optimal situation for women and their children occurs when children are raised in a safe, loving and stable environment under the care of their birth parents. However, the sad reality is that this is not always possible. Therefore as a community we do need to provide viable alternatives.

Open, respectful and regulated adoption provides an appropriate response to the situation of vulnerable children in need of a loving, permanent and stable home. Adoption also provides an appropriate response to the situation of women who feel unable or unwilling to parent their own child.

Adoption should, first and foremost, be a response to the needs of the vulnerable and not simply a means by which families can be created for those who are unable to have children. While prospective adoptive parents should be encouraged to open their homes and hearts to those in need, children are not commodities and we must avoid any situation that leads to the creation of a 'market' for children.

I turn now to the point on the needs of relinquishing parents, particularly the needs of relinquishing mothers, which should be taken into account but are not fully taken into account under this bill. I seek to look at the Scrutiny of Acts and Regulations Committee (SARC) report on this bill in *Alert Digest* No. 13. It references section 15 of the Adoption Act 1984, which currently enables a relinquishing parent to express preferences around religion, around race and around ethnic background for the prospective adoptive parents of their child.

I can only imagine how hard it is to relinquish a child. I have an adoption record here, and I will quote from it — it was in the 1980s — on the desires of the mother. It says:

The natural mother had the following to say about her reasons for having —

her baby adopted —

I think that he would have a better chance with two parents because I feel that I couldn't give him enough security and I also think that a child should have a mother and a father. That's what I want my baby to have.

...

If possible, I would like him to go to parents who share my religious beliefs and also ... similar —

to the way she has been brought up —

to what I am used to. And, of course, parents who will give him heaps of love.

The effect of clause 17, as highlighted through the SARC report, is to prevent an agency from acting on the wishes of a parent such as this parent who sent me their adoption record. It prevents an agency from acting on the wishes of a parent of a child as to the sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity of the proposed adoptive parents. This will come into effect when this bill does. At a time when mothers are at their most vulnerable, making a very difficult decision, this makes that decision that much more difficult.

Adoption appropriately managed can work out well in a majority of circumstances and should be a realistic choice for women if that is their choice. Research around open adoption processes, such as what they have commonly in the United States, can be carefully and sensitively managed where the birth parents feel they have some control over the decisions and the process to place their child for adoption. It has been found that this results in the most favourable long-term outcomes for all involved in the adoption process.

Yet irrespective of religious views, there will be birth parents who want their child to be raised by a mother and a father, and they should not be forced to place their child in an adoptive situation that is contrary to their personal beliefs. The experiences of earlier decades, as I have referred to before, left many women psychologically and emotionally scarred because they felt forced or coerced into giving up their children in a closed adoption process over which they had little control. History is set to repeat itself if birth parents are allowed no say in whether the child goes to a traditional married couple or a same-sex couple.

Moving on to my fourth point around clause 17 and religious exemptions, I truly believe that freedom of religion in this context should not be curtailed. Birth parents have a right to work with an adoption agency of their choice, including an organisation that aligns with their religious preferences. Removing exemptions for faith-based organisations means that these adoption agencies which do not support same-sex marriage will

be forced to close, narrowing the options of birth and adoptive parents.

As many of my colleagues in this place have already covered, this will affect CatholicCare in particular and the work of Fr Joe Caddy, who places anywhere from four to five children per year, so we are not talking about a lot of children, but every child is important. CatholicCare is by no means a monopoly in the adoption space; there are other agencies for stranger adoption, and they focus on high-needs children with disabilities. CatholicCare provides financial support to adopting parents — twice what the government provides. It holds records dating back to 1935. It provides counselling and support for birth mothers seeking news of their child. It would be forced to hand these records to the state to administer if CatholicCare were to close.

Freedom of religion is a human right. It is not extinguished if people assemble to form an organisation. Archbishop Denis Hart made a very strong statement on this bill. On 6 October he urged the Parliament to protect the Catholic adoption service that has been operating for 80 years, CatholicCare, as it prepares to deal with a bill that he rightly claims is changing the Adoption Act 1984 to permit the adoption of children by same-sex couples. The statement says:

The Catholic position on marriage and family holds that the wellbeing of the community and children are best served when they experience the love of both a mother and father in a safe, secure and stable relationship.

He said he completely understands that some people will disagree with the Catholic position but has appealed for fair play to ensure that many children, Catholic and non-Catholic, who continue to benefit from the outstanding work of CatholicCare are not unnecessarily disadvantaged. The archbishop said he acknowledges the alternative point of view and, while not agreeing, is asking for the mutual respect of those arguing for same-sex adoption, so that any changes in the law will allow CatholicCare to continue its outstanding work in the community, within the tradition of the Catholic Church. I think that is something we could respect.

I would like to refer now to an article that was published on 21 October in the *Age*. It was an opinion piece by Dan Flynn, who is the Victorian director of the Australian Christian Lobby. It was a particularly good article, I believe, about the fact that this government backs diversity for most but not for believers who shun same-sex parenting. He said that the Department of Health and Human Services:

... and some private adoption agencies will be happy to cooperate and facilitate adoption of children by same-sex couples. The Catholic adoption agency won't.

But we could all agree to disagree and respect each other's positions. Same-sex couples could use the government agency and the agencies who don't have any objection, while faith-based adoption agencies could stay true to their faith and culture by not offering same-sex adoption ...

It seems simple. But, no:

The government isn't giving faith-based adoption organisations the choice to practise their faith. The bill goes out of its way to change the anti-discrimination law to remove the freedom of religious organisations to act in accordance with the doctrines, practices and beliefs of the religion.

Faith-based adoption agencies and their individual employees will be forced to act contrary to their faith and culture or either lose an expensive discrimination lawsuit or shut their doors.

Dan Flynn admits that:

Same-sex adoption is controversial. But even if the government considers it right to allow it, the government has no compelling interest to force everyone to agree with its views and put them into practice regardless of faith, culture or conscience. That is trampling on, not celebrating or defending, Victoria's multifaith and multicultural diversity.

This is a diversity, I should note, which our Premier has been known to describe as our greatest asset. But apparently that does not apply to some legislation.

Finally, I would like to talk about children having a right to know who their biological parents are. This is perhaps an issue slightly separate from this bill. However, in my private members bill, which I introduced earlier this week, it is taken into account. The biological identity of children should not be lost through the adoption process. Amending birth certificates denies children their identity. Every child is born with blood heritage, with their own identity, with their culture, with their ancestors and with their genetic make-up, and this should not be ignored.

Alternatives should have been explored. In her contribution to this debate, Mrs Peulich talked about permanent guardianship. This gives children security and rights without the need to amend birth certificates. This alternative is focused on the child in a way that this bill is not. I find it disappointing that the government did not take this bill to a committee and that we were not able to explore these options more generally.

In conclusion, I believe we need adoption reform here in Victoria. But we need reform that is based on best practice and evidence-based research. Reform should be based on, as a first priority, the child.

This bill is not based on anything more than emotive arguments about equality. It may well be based on good intentions — I do not doubt that — but again I believe it is misguided and ignores the rights of the child.

Simply to restate the points that I have been making tonight: firstly, this bill should not be about equality for adults but about the rights of vulnerable children; secondly, the needs of relinquishing parents should be taken more fully into account; thirdly, around clause 17, freedom of religion should not be curtailed through any bill; finally, I believe that children have a right to know who their biological parents are and, again, this adoption reform ignores that fact.

Mr RAMSAY (Western Victoria) — I appreciate the opportunity to make a small contribution to the debate on this bill, the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. In doing so I put on the record that my first reaction was not to speak on the bill at all — in fact to let my vote do the talking in relation to my position. But then I gave it considerable thought and realised that that would not do justice to the many constituents who had contacted my office both directly and through email to express their views in relation to this bill, so I thought it was only fair and reasonable that I canvass their views myself and, as part of this contribution, at least put their arguments forth. The trouble I have, of course, is that the constituents who contacted my office are somewhat divided in their positions in relation to what impact they believe the bill would have if it passed. It was at that point that I decided to go through the bill clause by clause.

When I was a child life was far simpler. There was a man and a woman, and there were children if the couple so desired and was able to have them. That was the upbringing that I had through my family, and I provided that same upbringing to my own children — I have three. I was a bit confronted by the fact that some clauses of the bill even remove the words 'a man and a woman' and substitute the description '2 persons'. Others also replace the wording 'de facto relationship' with 'domestic relationship'. I felt that a part of that generational upbringing was being somewhat removed by the changes in terminology in the clauses of the bill.

I then had to refer to my own children in respect of their views on the bill and about same-sex couples being able to adopt children. Firstly, I thank the Liberal Party for the opportunity to have a free vote in this chamber tonight. I also thank all members in this chamber for their contributions, which I thought were extremely sensible in their own point of view. They added to the debate and were quite rational and very thought-

provoking. I thought it was important to listen to the debate over the last 1½ hours and then make a small contribution.

My view has actually done a 180-degree turn. When the bill was introduced to the lower house, I was not going to support it. In fact I will not support clause 17, and we will see where that ends up in the chamber, because I certainly do, from a religious point of view, believe that faith-based organisations should have choice in respect of the freedom and civil liberties that attach to their faith, and clause 17 does take away that opportunity.

But in respect of my own position, I thought it was important to say in my contribution that I had a fixed position some weeks ago, yet from hearing some of the debate I gained an understanding that a loving couple, regardless of sex, providing that love to an adopted child is probably one of the most important things a child can have. However, that works very hard against my philosophical position on the importance of a man and a woman having a significant involvement in a child's life — so forgive me if some people are a bit perplexed about that changing position, but that is perhaps part of the ethos of someone's being.

My daughter made me very aware that certainly in her generation this has become somewhat of a non-issue. The important thing is about the love and caring for a child, regardless of the sex of the parents. She noted that many carers of children are now single and that through in-vitro fertilisation and a whole lot of other technological advances in childbirth the strength of the union of a man and a woman as parents has probably dissolved over time and we need to get back to the basic root of a loving and caring relationship — that is, a couple devoted to the upbringing of a child.

It is on that basis that I have done a 180-degree turn in relation to this. There are a couple of clauses that I would like to hear a little more definition around to understand what impact they might have, so I will reserve some judgement for the committee stage if it gets to that stage — and I understand it will. My position in relation to a vote will be based on what happens to clause 17.

I thank the chamber for this opportunity, and I appreciate the contributions made by other members. I appreciate the opportunity the Liberal Party has given me for a free vote on this legislation, and I look forward to the ongoing debate on the bill.

Ms TIERNEY (Western Victoria) — I rise to speak on the Adoption Amendment (Adoption by Same-Sex

Couples) Bill 2015. I am most pleased to speak on the bill because it is an election commitment that is being fulfilled. The Andrews Labor government promised to put equality back on the agenda, and prior to last year's election we promised to abolish every bit of discrimination from Victoria's law books. This bill is just part of our broader equality agenda. On this side we believe that equality is not negotiable. Discrimination against same-sex couples is anachronistic. Let us call it out for what it is: it is prejudice. There is no basis in science for it, and it is a hangover from less enlightened times.

The Andrews Labor government has a vision of a community where children in same-sex families suffer no harm because of the discriminatory attitudes and behaviours of their peers at school or in other parts of their lives. Righting the wrong of excluding same-sex families from adoption will help achieve that vision, and that is why last year Labor promised to review the Adoption Act 1984. Currently the act permits only couples in heterosexual relationships to make a joint application to adopt and excludes known-parent adoptions in same-sex families. Quite simply this is ridiculous. A person's sexual orientation has absolutely no bearing on their ability to be a loving parent. As a matter of fact, discriminating against same-sex couples potentially deprives children in need of being placed with a loving family.

The bill fulfils the Andrews Labor government's promise to review the Adoption Act with a view to removing discrimination against same-sex couples and their children by legalising both known-parent adoption, where there is an existing relationship between a child and the adoptive parents, and adoption in general.

The Adoption Act 1984 currently excludes the following categories of people from adopting: same-sex couple applicants, couple applicants where one or both partners do not identify as a specific gender, and step-parent applicants who are in a same-sex relationship with the parent of the child or in a relationship where either partner does not identify as a specific gender. This is what Labor has promised to change. We do not believe there is any place for legislated discrimination in Victoria. We promised to remove discrimination in legislation. Before the last election, Labor provided a commitment to provide a safe and fair Victorian society for the LGBTI community.

This bill contributes to that commitment. In short it allows same-sex couples to adopt, and that is a fair thing. The statistics on same-sex parents report no difference or slight advantage to children raised by

these parents. It is still a fairly simple proposition. If you pass the rigorous test to be granted the privilege of adopting a child, then your gender is not relevant. It is about the love that can be provided. This bill will allow both parents to adopt. To be clear, this legislation makes no change to section 9 of the Adoption Act 1984. This is a key part of the legislation. Section 9 of the Adoption Act states:

In the administration of this act, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

This remains the most important consideration and will continue to apply under the proposed amendments, as will existing safeguards, such as the requirement that the applicants be fit and proper persons.

So there you have it: the child's welfare is paramount and only fit and proper people can adopt. Gender does not have a role in determining a fit and proper person to raise a child; character does. Gender or whom one chooses to love is not relevant in determining fitness to raise a child. This legislation will remove that outdated concept that gender or sexual orientation has some relevance to character. All credible polling shows that Australians believe that same-sex couples should have equality before the law. As a matter of fact, Western Australia, Tasmania and New South Wales all have similar legislation and — you know what? — the sky has not fallen in.

This is not a matter of politics; it is a matter of equality. It is time to make a change. Same-sex adoption is legal in Victoria, but only one parent can be recognised as the parent. This creates a number of legal grey areas, such as who can sign certain documents. Passing this bill will remove the fog around enrolling at school, accessing health care and travelling overseas. This debate has lasted for nearly a decade, and tonight, hopefully, we can resolve it and resolve it in a way that is fair and in a way that removes discrimination from the law. This debate will not go away. We need to deal with it now, and we should deal with it now.

This bill will amend the religious exemptions in the Equal Opportunity Act 2010 to exclude their application to adoption services. In relation to comments that have been made in respect of that, I wish to put on the record that religious freedom as it pertains to the charter of human rights relates to individuals, not agencies. Clause 17 does not impact on an individual's right to religious freedom. Instead clause 17 ensures that an agency contracted and funded by the state to provide a state service must service all Victorians. Faith-based adoption agencies will not be able to rely on a religious defence to discriminate in the provision

of adoption services. This is to ensure that neither same-sex couples nor children are unfairly discriminated against in the provision of adoption services.

The state is required to act in a non-discriminatory way as a secular provider of services and cannot rely on religious defences when providing public services. Access to adoption services should be provided equitably, with the welfare and the interests of the child concerned the paramount consideration. It is important to note here that three of the four adoption services in Victoria support this bill. It is expected that if the fourth ceases to provide services, the effect will be minimal. It is its right to take that position. Dare I say, as the Holy Father said, 'Who am I to judge?'

But in this place we are held to a different standard. The state is secular. We can neither advocate for nor lobby against a particular religious view. We are here to ensure all Victorians are equal before the law. Adoption agencies provide services on behalf of the state. These services must be available to all Victorians. Discriminating against certain Victorians because of their sexual preference and whom they love is not equitable.

Further to the fundamental point that discrimination in law is not what our legislative framework should do, there are the rights of the child to be considered. By discriminating against LGBTI adopting parents there is a twofold risk. Firstly, children already living in their family may be deprived of the chance to formalise the loving arrangements they already live in through adoption; and secondly, children may miss the opportunity to be placed with the most suitable adoptive parents. Neither of these is an acceptable outcome.

If we go back to section 9 of the act, the child's welfare and interests should be the paramount consideration. Denying a child the formalisation of a relationship with their parents because the state says the parents are not worthy is hardly in the child's best interests. Denying a child a loving home because of who their prospective parents love is definitely not putting the child's welfare first. That is why this bill is important, because at the end of the day it is merely about ensuring the laws of this state reflect the society that its citizens live in. There are thousands of same-sex parent families in this state. They deserve equality before the law and so do their children. The Andrews Labor government believes that too. This bill is a further step in making equality before the law a reality. I absolutely commend the bill to the house.

Mr DALLA-RIVA (Eastern Metropolitan) — I rise also to make a contribution to the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. I must say from the outset that over the many years I have been here this chamber has been one of debate. It has been one of allowing different views and opinions. It is interesting that Mrs Peulich has been reading from the Twittersphere, which is probably something that was not in existence when I first came to this chamber, but I am somewhat disappointed by the use of the word ‘bigoted’ in relation to somebody having a different view to others in this chamber. We need to be respectful of those views.

At the end of the day this legislation will pass. If you were to do a basic count of the numbers, it would be fair to say that this legislation will pass. For those who are listening, watching or tweeting, please keep your bigoted comments out of this chamber, because it is the right of parliamentarians to make contributions without either other members of Parliament or members of the general public making bigoted comments. If they wish, the public can make those comments to the individual, ring the politician — do whatever they wish — but it is a bit disrespectful. I say that in the general course of this debate, because the chamber needs to be respectful of the legislation and the legislation needs to be respectful of what has occurred. That is the argument and that is why we have debates in this chamber. People express a view, there are counterviews, there is emotion. On these particular social issues, as I have seen over many years, they always bring emotion to the chamber.

I was going to talk in particular about the Scrutiny of Acts and Regulations Committee (SARC) *Alert Digest* No. 13, because in the practicalities of the legislation before us a whole range of issues have been brought forward and I think it is important to understand from SARC’s report what was presented. I also put on the record my appreciation for the variety of submissions. We had the Australian Family Association, the Australian Christian Lobby, CatholicCare, Freedom 4 Faith and the Victorian Christian Legal Society, and they provided submissions which are provided in appendix 4 of the report.

The Charter of Human Rights and Responsibilities Act 2006 has accountability for the rights of people in this state. Victoria is one of a very few states with such a charter. I have been a chair of SARC and am now deputy chair, and I respect the role of the charter and I respect the work of the charter. The charter is unique in the sense that Victoria is one of the few states in Australia to have one. Indeed I was pleased to present in New Zealand recently on the amount of work that the charter does here. I note that — although I am not

allowed to see them — there is a committee member in the gallery. I think it is important to put that on record.

An issue that is brought up in the SARC *Alert Digest* No. 13 in respect of this legislation appears under the following heading ‘Freedom of thought, conscience, religion and belief — Approved agencies barred from discriminating with respect to adoption — Parent’s wishes with respect to proposed adoptive parents’. What it basically refers to is the effect of clause 17, and it states:

The committee notes that clause 17, amending existing section 82 of the Equal Opportunity Act 2010, prohibits approved agencies from discriminating under part 4 of that act when exercising powers or performing functions or duties with respect to adoption under the Adoption Act 1984.

It further reports:

The committee observes that the effect of clause 17 may be to bar an approved agency from acting on the wishes of the parent of a child as to the sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity of the proposed adoptive parents.

These are not my words. This is from an all-party parliamentary committee comprised of people from the major parties, and this was presented in the report. I also note that there is some concern about the following statement:

As religious bodies are organisations, not persons, in my view clause 17 does not limit any human rights protected by the charter.

This is in the statement of compatibility read by the relevant minister.

SARC reports:

However, the committee notes that existing law bars parents from making their own arrangements with a view to adoption of a child (other than by a relative); bars the secretary from approving an individual (rather than an organisation) to conduct negotiations or make arrangements with a view to adoption of children; and deems anything done by statutory decision-makers within an approved agency to be done by that agency.

That reference is to the Adoption Act 1984, sections 20(3), 31 and 122.

The statement of compatibility continues, and I will just read it in part:

Approved adoption agencies, whether faith-based or secular, are providing services on behalf of the government and these services are essentially secular services that should be available to all members of the public.

The committee then reports:

However, the committee observes that Supreme Court of Ireland has remarked that:

the internal disabilities and discriminations which flow from the tenets of a particular religion ... do not derive from the state ...

That is referenced in the SARC report.

The other point I would make is this notion that we are discriminating on the fact of clause 17. The SARC report states on page 6 — and it is important to put it on the record:

The committee also notes that all four other Australian jurisdictions that permit same-sex or gender diverse adoptions nevertheless continue to permit agencies to discriminate against same-sex or gender diverse proposed adoptive parents in some circumstances.

This refers to the ACT Adoption Act 1993, the New South Wales Adoption Act 2000, the New South Wales Anti-Discrimination Act 1977, the Tasmanian Adoption Act 1988 and the Western Australian Equal Opportunity Act 1984.

As an example, the SARC report says that the New South Wales Adoption Act 2000 provides, under the heading '45H Consideration of wishes of parents consenting to adoption':

... A general consent of the parent of a child to the adoption of the child ... may express the wishes of the parent as to the preferred background, beliefs or domestic relationship of any prospective adoptive parents of the child.

Now if there are four other states that have got this arrangement, and the argument that I just heard is that we are going to rule out all discrimination, it seems to be that it is only religious organisations that we are going to discriminate against. I started off with my original assertion that bigoted comments, because you have a different opinion, do not make your opinion right and mine wrong. I am arguing on the basis of what is presented in an independent SARC report and what is expressed in other legislation around Australia that there is clear, positive support for the wishes of parents to discriminate on the basis of areas such as the circumstances that I have just read out.

I go further because at all stages in this debate we have heard about the rights of the child, and I was interested to hear the views on the rights of individuals. As I said, I have been here long enough to see the impact of government policy over many years and the way subsequent governments have to correct the policies that previous governments thought were right. I do not have a crystal ball; I do not think anyone does. If they did, they would not be here. They would be shouting at the top of their voices because they had just won Powerball.

The reality is that governments, including the current government, make decisions based on what they believe to be right in the circumstances as they stand at the time. But time and time again in this chamber, in the federal sphere and internationally we have seen that what is believed to be a good and proper policy may not necessarily be the right policy.

I err on the side of the view that the rights of the child are paramount in respect of this legislation. As I said at the start, there is no doubt this Parliament will pass the legislation as the numbers are clearly there, but I make the point that my view may be different to what some others expect. That is my view. I hope that in 20 years time when I have finished in this Parliament I am proven wrong. I may be wrong. I hope so, but I do not know and I am not willing to take that risk. On that basis I will be supporting the amendment to clause 17, based on SARC's report and based on the fact that it is positive discrimination in four other Australian jurisdictions. I will also be opposing the legislation.

I am not opposed to same-sex relationships because I believe that is the right of the individuals in that relationship. Why do I say that? Because in 2008 I actually supported the Relationships Bill 2008. That bill was divided on, and I was on the side that supported the legislation. So before anyone tweets, I will let members know that I supported the Relationships Bill. As I said, there was a division. There were opposing views, but I supported the legislation because I had the view that it was about individuals giving their informed consent, and it was about giving those couples the right to have that relationship with all the protections that are afforded to the relationship in whatever form it may be. But I cannot on the basis of my own personal view support the legislation as it is. In 20 years time I truly, for the sake of the children, hope that I am wrong because, without doubt, the legislation will pass tonight.

Mr O'DONOHUE (Eastern Victoria) — I am pleased to speak, just for a minute or two, on this important bill. Indeed it has been a most thoughtful debate. Let me say that I am pleased to be part of the Liberal Party and the coalition, which has a conscience vote on this —

Mr Morris — A free vote.

Mr O'DONOHUE — a free vote, sorry, on this bill. Before I continue — and I am loath to do this — I just wish to defend my friend Mr Ondarchie. A previous speaker spoke about things on social media. I note that the Minister for Families and Children, who is at the table, tweeted just before Mr Ondarchie got to his feet, saying:

And now we move onto Guy's hard right faction — the people who installed him as leader & call the shots to support discrimination.

Then Mr Ondarchie went on to give a very eloquent speech about his experience in adopting two children and his support for the proposition behind this bill. That is unfortunate, and I invite the minister to apologise in her summing up.

I would just like to reflect on two propositions that inform my views on this matter. The first is in my experience as the former Minister for Corrections and some of the tragic, heart-wrenching files that one reads — as, I am sure, regrettably, the current minister has to do as well — of abuse and neglect, children who suffer because of the choice of criminality of people and the impact that has on children, the way that can devastate lives for the next generation and the consequences that flow from that. Indeed even in a parliamentary inquiry early this year we heard an account from a person who has now adopted a child. She made observations about the natural parents. Perhaps without particularising it to any individual, let me just say again that the tragic, heart-wrenching cases that I read as Minister for Corrections — as you do when things go wrong or things happen — have really left an indelible mark on me with regard to the impact that bad parents, or parents who make the wrong choice, can have on a child. I suppose the point I am making is that it does not matter whether that is a mother or a father; it is the choices of that individual that can have such a tragic and deep impact on a child.

The second thing I reflect on — and I do not tend to reflect on personal experiences, but in these situations that is what one draws upon to a degree — is seeing some friends of mine, some who are in same-sex relationships and some who are having children on their own, and some of the challenges they have faced and just what outstanding parents they are. Watching that has also informed my views around this bill and around this issue. I fully support the coalition's position in relation to clause 17, but with the exception of that clause, I support the general proposition that is before us with this bill.

Mr MORRIS (Western Victoria) — I too rise to make my contribution to the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. I begin by saying my contribution will be very short. I will not be supporting clause 17, but I will support the bill overall. I have spoken to many people about this bill. I have spoken to family members, friends and constituents. One of the most common responses I have had is one of surprise that indeed same-sex couples cannot already adopt. Many in our community were unaware of that

and have been quite surprised that this is currently the case. I truly believe that this bill updates the statute to reflect the current views of our community, and it removes the discrimination that rightly belongs in the past.

I commend my colleagues, both on this side and opposite, for their contributions. It is important to always remain respectful throughout these debates. These are difficult debates that we have on these particular issues, and it is important that we do not label anybody, that we listen intently to people's views and understand them, rather than trying to politically pointscore in what is a difficult debate but one which I feel has been done respectfully here, if not in the Twittersphere.

It is important that when we look at legislation we look at foreseeing the potential impact of that legislation. There has been discussion about ideology and family values and the like throughout this debate, but the only real impact I can see from this legislation is that there are going to be further opportunities for children to enter loving homes, and that is something that should be recognised and respected by the law. With those few words, I am pleased to be able to support the bill.

Mr DRUM (Northern Victoria) — I too am pleased to take this opportunity to put my thoughts on the record in relation to the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015. We live in a contemporary Victoria where we preach tolerance, we preach understanding and acceptance, and we can live our lives the way we want. We are free to practise any religion we wish, any religion of choice. We are free to have any political belief that we wish. We can lead healthy lives or we can live unhealthy lives. We can overeat, we can underexercise, we can drink to excess and we can effectively do what we want. Nobody really has any right to pass judgement on the way we live our lives. In this contemporary Victoria we have never had as many freedoms as we have at the moment, so the concept of changing our laws to give same-sex couples the legal capacity to adopt is one that I have absolutely no issue with.

I also have no issue with the people in this chamber who have a different view. To those who have the courage to stand up and say, 'It is simply not my belief', we should just say, 'Fine, that is your belief, that is what you think, and at least you have got the courage to stand up in this place and say it'. The concept that everybody has to have the same view is abhorrent, and the thought that you could try to shame people into thinking the same way certainly does not do anyone any justice. By giving same-sex couples the

ability to adopt, in the belief that if you are in a loving relationship, you will now have the right to adopt a child, irrespective of your sex and irrespective of the nature of your relationship, in my opinion brings the law of Victoria into step with community expectations, which is effectively what we should be doing.

Clause 17 is the issue that I wish to speak to, as I see this clause as a typical piece of legislation from the left of the political divide. What clause 17 is saying is that it is not enough for us to have a view; we need everybody to have the same view. What the Labor Party is saying with this clause is that if a religion, and in this instance it is the Catholic faith, is involved with an adoption agency and it cannot stay true to its values, then it has to change its values, irrespective of the 2000 years or whatever it is that the faith has been in existence. The Catholic faith is simply against the act of homosexuality. I was brought up in the Catholic faith. It teaches love for the homosexual but it also teaches that the act of homosexuality is a sin — it is just what it believes. It is not up to us to tell it to change its views. It is what it believes.

We can opt, as I have, not to go to church, or we can opt to go to church and be a member of that faith if that is what we believe. Many religions around the world view the act of homosexuality as a sin; it simply is what faiths do. To think that the Victorian Parliament thinks it has the power to tell world religions that they have to change their views is quite ridiculous. I think it is putting our importance in the world a little bit ahead of ourselves.

I will also make a couple of analogies. Firstly, if I — or for that matter anyone else — were to knock on the door of the Labor Party and apply for a job as its accountant, I think the Labor Party might ask me what my political beliefs were, even though my political beliefs would have nothing to do with my ability as an accountant. If the job was for an IT specialist, I think the Labor Party might ask me what my political beliefs were before giving me a job as an IT specialist, even though — I reiterate — my political beliefs would have nothing to do with my ability to be an outstanding IT specialist. Discrimination sits very easily with Labor Party members when it suits them.

If Bernie Finn had happened not to have been a radio announcer before he came to Parliament but a world-class seaman and he applied for a job on a Sea Shepherd vessel or with Greenpeace, does anyone think that Greenpeace might look at this world-class seaman and give him a job in charge of its vessel? No, it would not. Greenpeace would discriminate against a bloke who does not agree with any of its views. It would

discriminate against Bernie Finn because he is a climate change denier. Discrimination is alive and well and is accepted as a part of contemporary Victoria. I think we need to be a little bit more careful.

Opposition members believe that about a third of Victorians choose to send their children to faith-based schools. If parents are going to spend \$3000, \$5000, \$10 000, \$12 000 or \$30 000 to send their child to a faith-based school, then I think those parents have the right to expect that that school will discriminate when it comes time to picking a principal. If parents want to send their kids to a Hindu school, a Muslim school or a Catholic school, I think those parents have the right to expect that that school will discriminate in relation to who the principal of that school is. I think that is what the community expectation would be.

In my opinion the concept that there can be no discrimination in a faith-based adoption centre is ludicrous. If we are to force faith-based adoption services not to discriminate, then they will simply refuse to offer that service, which might be the endgame of the people who are pushing so hard for this reform.

I fully support the bill, but I fully oppose clause 17. The concept that members of the Labor Party and others suggest — that we cannot have any discrimination — is in itself quite hypocritical. The sooner we give the people of Victoria the bill they want, the sooner people will be happy that we have been honest with ourselves by giving the people of Victoria the bill they want.

Ms MIKAKOS (Minister for Families and Children) — In summing up this debate I will say firstly that, as the Minister for Families and Children, it gives me a great deal of pleasure and enormous pride that tonight we are moving one step closer to treating all families and all children in Victoria equally, free of discrimination.

This commitment to legislate for adoption equality is driven by the principle of acting in the best interests of the child. The only criteria for assessment of prospective adoptive parents should be their ability to be responsible, capable and loving parents. As the Minister for Families and Children I am extremely grateful for the many foster carers across our state who provide a loving, caring and supportive home to many vulnerable children in our state. I am particularly grateful for the fact that we have had in place in this state for a long period of time a policy of not discriminating against our foster carers. I know that many of our foster care agencies have actively sought people from a diverse range of backgrounds to act as

foster carers. This includes many same-sex couples, single people and people right across the community from diverse backgrounds. I want to take this opportunity to thank all those individuals for the compassion and the generosity of spirit they have shown towards vulnerable children.

Given that, it is absurd that we have simultaneously in our state a situation where we turn to people who identify as same-sex-attracted individuals to be foster carers and to provide a loving and caring home to children in crisis and to vulnerable children, but we do not afford them the same rights when it comes to adoption. It makes absolutely no sense whatsoever. It is a ridiculous situation that has existed for far too long.

Having been Parliamentary Secretary for Justice in the previous Labor government for five years I come to this debate as someone who formerly chaired the then Attorney-General's ministerial advisory committee on LGBTI issues. In that government we embarked upon a policy of removing discrimination wherever we saw it. Part of that commitment also involved a referral to the Victorian Law Reform Commission to look at issues around adoption, surrogacy and a number of other issues. The law reform commission made a number of recommendations, many of which were taken up by the then government. It was a very important moment in which we eliminated a range of discriminatory practices as they related to LGBTI people in this state.

However, I see what we are embarking upon this evening as unfinished business. That law reform commission report made recommendations around removing discrimination in same-sex adoption, and I am pleased that it is a Labor government that is finishing off that business and implementing those recommendations through this bill tonight.

I want to pay tribute to Labor's first ever Minister for Equality — the first ever minister for equality to be appointed anywhere in Australia — Martin Foley, for his leadership in developing this bill and bringing it to the house. I thank the many organisations and individuals who have been part of a lengthy process of getting us to the point we are at tonight. They include the Rainbow Families Council and many other organisations. I pay tribute to them and thank them for their tremendous advocacy over a number of years in relation to this issue. I also want to thank and pay tribute to Rainbow Labor, which has exercised enormous advocacy around these issues and played an instrumental role in the development of this policy, which Labor took to the last election.

I know we are going to go into committee and discuss the bill at some length, and no doubt I will be asked a number of questions about it. In my limited time, however, and in trying to respond to all of the issues that have been canvassed in the course of the debate, I indicate that we on this side of the chamber are very proud that we are a party that is committed to equality, that we are a party that seeks to remove discrimination, that we recognise families in all their great and glorious diversity, that we respect the fact that children should not be discriminated against and that we recognise that all children need is love.

They can receive that love through many permutations of families, and the identity of their parents should not matter as to the recognition and respect that they receive from the law in this state. Ultimately that is what this is all about; it is about the best interests of children; it is about recognising that there are in this state at the moment thousands of children being raised by same-sex couples and that many children in our state do not have the certainty of a clear legal connection to one or both of their parents because our laws currently do not allow same-sex couples to adopt, even in known parent or step-parent situations.

We have heard members speak very eloquently about the practical implications that this has for children and parents in just doing simple things like filling out paperwork for school excursions, or for serious situations around medical care or the death of a parent. We are essentially leaving these children in a legal limbo. We are letting these children down through our current laws and, as the Minister for Families and Children, I regard that as completely unacceptable. We need to ensure that all children have the same rights and entitlements in this state, irrespective of who their parents are.

The other point I wish to make in the brief time I have available to me relates to the issue of the religious exception and clause 17 in particular. I know that members of the Liberal Party have tried to portray their position on this bill as being one about respecting religious freedom. I take the view that when we find organisations to undertake services for the community, such as providing adoption services in the community, then they should do so without discrimination. Adoption agencies, whether they are faith based or secular, provide services on behalf of the government that are essentially secular and they should be available to all members of the public. An adoption policy that allows for discrimination may deprive children who are already living in same-sex families and caregivers of the right to formalise their care arrangements through adoption and may result in children missing out on the

opportunity to be placed in the most suitable family environment.

I do not believe that the argument that the opposition has been making in relation to clause 17 is convincing at all. We have seen the moderates, the wets, in the Liberal Party essentially steamrolled here. They have been rolled by the hard right in the Liberal Party — —

Mr Ondarchie — On a point of order, Acting President, I ask you to bring the member back to the bill before us. I find it curious that she would decide to play politics with people's lives, and I ask you to bring her back to the bill.

The ACTING PRESIDENT (Ms Patten) — Order! I ask the minister to keep her comments to the bill.

Ms MIKAKOS — I absolutely am commenting on the bill, because the Liberal Party seeks to portray itself as enlightened in relation to this issue, but its credentials when it comes to equality are going to be tested tonight.

The ACTING PRESIDENT (Ms Patten) — Order! Minister! We have been having a very respectful debate. Can we keep it to the bill.

Ms MIKAKOS — The Liberal Party's credentials will be tested by its members' votes on clause 17 — —

Mr Ondarchie — On a point of order, Acting President, I am sure everybody else in this place realises that you have warned the minister three times to come back to the bill and she is clearly flouting your ruling. You have options available to you. I suggest you might take them.

Ms MIKAKOS — On the point of order, Acting President, I have been listening to the debate very respectfully now for several hours and I have not interjected through some very offensive remarks that have been made in the course of the debate. As the minister summing up, I can reflect on the debate. It is clear that members opposite are very defensive about the position they are taking here. Their credentials will be tested by the vote they make in relation to clause 17.

Mr Ondarchie — Further on the point of order, Acting President, I do not know how many times you have to tell the minister that she has to come back to the content of this bill. I again find it curious that, at this hour with so many people here interested in the content of this bill, she chooses to play politics with people's lives. I remind you one more time, despite this being your fifth warning, to bring her back to the bill.

The ACTING PRESIDENT (Ms Patten) — Order! If we could have both sides pay some respect to this, and if the minister could finish what she has to say respectfully.

Ms MIKAKOS — Absolutely, Acting President. I am very keen to conclude, because we have 3 minutes left and we are about to go into committee. We are proud of the bill we have brought to the Parliament and the position we have taken. It is one that is consistent with our position in support of equality. We have taken the very strong position that equality is not negotiable. It is not acceptable to say, 'It's okay to have just a little bit of discrimination, because it is just the one provider and they provided only a small number of adoptions this year'. That is essentially the position that a number of the moderates in the Liberal Party have taken tonight. That has been a very disappointing position.

I commend this bill to the house. I urge all members to respect the government's mandate in relation to a very clear election commitment to remove discrimination in same-sex adoptions. It is a very important step forward tonight towards achieving greater equality. Can I say that there are many things that need to change in terms of putting in place a more respectful approach to people in our community, including people who are LGBTI and those who have same-sex partners. They deserve the same respect as any other member of the community.

As I said at the outset, this is about providing equality for children. This is about respecting the best interests of children and ensuring that all children in our state will be able to have their rights and entitlements legally recognised by the law of Victoria without discrimination. I commend this bill to the house.

House divided on motion:

Ayes, 32

Atkinson, Mr	Melhem, Mr
Barber, Mr	Mikakos, Ms
Bath, Ms	Morris, Mr
Crozier, Ms	Mulino, Mr
Dalidakis, Mr	O'Donohue, Mr
Davis, Mr	Ondarchie, Mr
Drum, Mr	Patten, Ms
Dunn, Ms	Pennicuik, Ms
Eideh, Mr	Pulford, Ms
Elasmar, Mr (<i>Teller</i>)	Purcell, Mr
Fitzherbert, Ms	Ramsay, Mr
Hartland, Ms	Somyurek, Mr
Herbert, Mr	Springle, Ms (<i>Teller</i>)
Jennings, Mr	Symes, Ms
Leane, Mr	Tierney, Ms
Lovell, Ms	Wooldridge, Ms

Noes, 7

Bourman, Mr
Carling-Jenkins, Dr (*Teller*)
Dalla-Riva, Mr (*Teller*)
Finn, Mr

Peulich, Mrs
Rich-Phillips, Mr
Young, Mr

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr DAVIS (Southern Metropolitan) — I want to make a number of points about the purpose of this clause and make a very short statement. I will then ask a couple of very straightforward questions. Firstly, I want to reiterate the position of the coalition that there has been a free vote on this bill. We have a party position on clause 17, but we have a free vote on all the other matters, including, as we have just observed, a free vote on the second-reading motion.

I also want to say something about the tone of this debate. It is very important, I believe, to act respectfully, and I want to very briefly put on the public record a measure of disappointment with the minister's behaviour in tweeting during the debate. I think this is a new low. I do not want to get into — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! This is the beginning of the committee stage, and I do expect some order.

Mr DAVIS — I do not want to debate, Deputy President, I just want to register my concern about that behaviour.

Secondly, I want to be quite clear about my position and the importance of supporting the option of adoption by same-sex couples and the arrangements that will be put in place by this bill. It is an important step that respects the fact that people have a range of different positions and different views and that people can hold those views legitimately in good faith. I believe the respecting of those positions is quite significant.

Importantly, too, I know our party's history. The Liberal Party's history has been very strong in this area, and I want to note some of the points that were made earlier in the debate by Ms Wooldridge and others about the party's history, including the recent history with the expungement legislation and a number of

significant initiatives that were taken during the period of the last government.

With those points made, I want to ask a very simple question of the minister and seek a clear statement on the record that there will be no impediment to LGBTI foster couples who may wish to adopt their foster children.

Ms MIKAKOS (Minister for Families and Children) — I thank the member for his question. There is no impediment under this bill for LGBTI couples to pursue adoption. Obviously the usual processes as spelt out in the Adoption Act 1984 would apply in relation to those matters. As I indicated in concluding my contribution to the second-reading debate, I am very grateful for the fact that at the moment we have foster carers from a great diversity of backgrounds who are providing in a very generous and compassionate way a loving and supportive home environment. It is important that they are not discriminated against under the terms of the Adoption Act. This bill will remove that discrimination.

Mr DAVIS (Southern Metropolitan) — I join the minister in acknowledging the remarkable work of many LGBTI foster couples who have provided significant support to children, and I see this bill as a significant step forward for that group of people. I want to also ask the minister about the implementation of the bill and how she would see it operating, particularly the reporting frameworks and what the government's intention is in terms of reporting those adoptions and whether there will be some systemic reporting arrangement that will be different from the current arrangements.

Ms MIKAKOS (Minister for Families and Children) — I thank the member for his question. I am advised that adoption figures are published nationally through the Australian Institute of Health and Welfare (AIHW) publications on adoptions in Australia. The department provides information to the AIHW, and the information is published on a national basis. The way the AIHW publishes the data does not indicate the sexual identity of the adoptive parents, and it is not proposed that that will change. We will obviously continue to have data published annually in relation to adoptions overall.

Mr DAVIS (Southern Metropolitan) — Having consulted with a range of different groups and supporters and the department, I note that it is clear that there is likely to be a significant spike in same-sex adoption numbers, particularly adoptions by adults known to children. That is because historically same-

sex couples have not been able to adopt. I want to understand whether the government has made any financial allowance or allocation of resources to support that work of agencies in the forthcoming period.

Ms MIKAKOS (Minister for Families and Children) — I thank the member for his question. Firstly, it is important that the member understand that we are expecting an increase in the number of inquiries and applications from potential adoptive parents; however, the vast majority of these inquiries are likely to come from situations of known adoption, and such individuals apply directly to the court for those adoptions. The department may expect an increase in the number of reports requested by the court in relation to these known adoptions. The advice that I have is that we would not anticipate a huge spike in adoptions overall, certainly not in what is colloquially referred to as stranger adoptions, because they are obviously based on the ability of people to access adoptions overseas — inter-country adoption. We will therefore be anticipating an increase in applications directly to the court from known potential adoptive parents wishing to formalise legal arrangements.

Mr DAVIS (Southern Metropolitan) — I thank the minister. That accords with the information I have received from a number of sources suggesting that there will likely be a significant spike in the number of adoptions involving those known to the children. That will require resources not only for the agencies but potentially for government as well. Equally it may require some assistance for those who wish to undertake those adoptions. I think what the minister is telling me is that there is no financial allocation to support that, and I would ask that the government think carefully about that and reconsider, because I believe the government will need additional resources to manage those additional cases, which, certainly in my view, are very welcome.

Ms MIKAKOS (Minister for Families and Children) — I thank the member for his further inquiry in relation to this. It is very difficult for us to make projections in respect of these matters, given that there is very little data available on the number of same-sex parented families who are not already recognised as legal parents. The agencies that the member referred to are funded to provide adoption services to stranger adoptions, so it is not anticipated that that would have a direct bearing on their resources. However, we will obviously be closely monitoring the impact of these amendments and respond accordingly, but we do believe that the system, certainly from the departmental perspective — of the Department of Health and Human Services — will be able to cope with increases in

inquiries to the department in respect of these amendments.

Mr DAVIS (Southern Metropolitan) — I thank the minister for her response. I just ask that it be noted that there is a view amongst many of the groups that I have spoken to that there will be a significant spike — and I know that is her view as well — and I ask that the government review this situation and monitor it closely because it may be that additional resources are in fact required.

Ms MIKAKOS (Minister for Families and Children) — As I indicated to the chamber, we will be closely monitoring the implications of these legislative changes, as well as responding accordingly to any changes to demand pressures.

Dr CARLING-JENKINS (Western Metropolitan) — I would just like to go to the purpose of the bill, and I have two related questions. How does this bill reconcile with the UN Declaration of the Rights of the Child, specifically principle 6, which states ‘a child of tender years shall not, save in exceptional circumstances, be separated from his mother’? Related to that, can the minister confirm that this bill may well result in the loss of access to a mother for a child?

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her question. Obviously the United Nations convention needs to be interpreted broadly. It talks about the rights to a family, and every child has the right to a family, no matter what that family may look like. As I have indicated, we take the view that children should not be discriminated against because they happen to live in a same-sex family or a family of any other complexity or identity or because a child happens to live in a situation where they have a step-parent. It is important that we provide them with that legal certainty and supportive environment, and that is what this bill is seeking to do.

But I want to assure the member that this bill is not making any changes in relation to the rights of relinquishing parents. This has come up in the course of the debate, I recall, from other members as well. The bill does not make any changes to the current provisions in the act relating to access to information about relinquishing parents or the need for the court to be satisfied that the department has considered relinquishing parents’ wishes. There is the ability through the legislation for both adoptee children and also natural parents to obtain information about each other at particular points in the child’s age and life stage, and those provisions remain unchanged.

In fact the vast majority of adoptions nationally, including in our state, involve open adoptions, where a child is able to retain contact with the relinquishing parents. Obviously that would have more relevance in situations of stranger adoptions, but nevertheless open adoptions are in fact promoted and encouraged. That is obviously in direct response to the historic legacy of the forgotten Australians, the stolen generations and children being forcibly removed from their parents. So I take some exception to the premise of the member's question because we are not making any change to the provisions in the Adoption Act 1984 as they relate to contact with natural parents or access to information about natural parents or adoptees. Those provisions remain unchanged. This is a relatively straightforward bill that is just seeking to remove the current discrimination as it relates to adoption by same-sex couples.

Dr CARLING-JENKINS (Western Metropolitan) — I thank the minister for her answer. Can the minister confirm that a relinquishing mother in the case of stranger adoption may then choose to place their child with a mother and a father or a married couple? Can they choose that?

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her question. As I indicated, the bill does not include any amendments to current section 15(1)(b) of the Adoption Act 1984, which requires the court to be satisfied that the department has considered the relinquishing parents' wishes in relation to the sexual identity or gender identity of parents.

More specifically section 15(1)(b) of the act states that prior to granting an adoption order the court must be satisfied that the secretary or principal officer of an approved adoption agency has given consideration to any wishes expressed by a parent of the child in relation to the religion, race or ethnic background of the proposed adoptive parent or adoptive parents of the child.

It is the department's practice to consider the wishes of relinquishing parents in relation to a range of attributes of prospective applicants — for example, their age and whether they live in the country or the city, already have children, are married or are younger. This is part of the process of obtaining consent and ensuring that natural parents are appropriately supported throughout the adoption process. Obviously what occurs in these cases of determining the appropriateness of prospective applicants is that the department seeks to match children with prospective applicants.

However, we have not included sexual identity or gender identity as relevant attributes in respect of section 15 in accordance with the recommendation Mr Eamonn Moran, QC. We have taken the view that the best interests of the child are the paramount consideration under section 9 of the act. It is important that the approach we have taken in respect of this issue is consistent with anti-discrimination legislation and that we do not further entrench discrimination in our law by making any change to section 15. However, it is anticipated that the department will be working very closely with parents to ensure that their wishes are respected as much as possible.

Ms PENNICUIK (Southern Metropolitan) — My question on clause 1 goes to the issue of the ongoing availability to adopted children of all of the information about their biological heritage. I mentioned this in my contribution to the second-reading debate.

We had a situation where varying degrees of information were made available to adoptive children under the Adoption Act prior to 1984 as well as through changes made since then. This was also with respect to donor-conceived children. Members who were in the previous two Parliaments know that those issues have exercised our minds very vigorously, along with groups such as VANISH in particular and Tangled Webs, which was a group formed by donor-conceived young adults who found themselves in the situation of not being able to find out their biological heritage.

The Greens are very supportive of the bill and the changes it makes to ensure that the same-sex parents of children who are living in those loving families are recognised as their legal parents but also that those children are still able to access information about their biological parentage. This issue may be addressed under the Births, Deaths and Marriages Registration Act 1996. Section 17B of that act reflects the amendment I moved back in 2008 that requires the registrar to attach a note to a birth certificate if a person is donor conceived in order to alert that person to the fact that there is more information about their birth being held.

I am wondering if the government can reassure us that the person who donates a gamete — depending on whether that is a male or female — can be found by a child later in life in a case where that person is not actively engaged in the life of the child. Dear friends of mine, for example, are a same-sex female couple. One of them had a child. The person who was the biological father of the child is known to them and is involved, so the child knows who that person is. But in some cases that might not be the case, and when the children grow

older they may want to have that information. I want to know how that will be achieved.

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her question. I agree with the member and have certainly put this view on the record in the past in relation to the donor-conceived issue — that the children deserve to have knowledge about their identity and have access to that identifying information. The member might be aware that the government has committed to changing the law to give all donor-conceived people an equal legal right to available identifying information about their donor, regardless of when the donation occurred and whether the donor consented. The government recently sought and is considering public submissions on this issue.

I make the further point to the member that it is my understanding that rainbow families — same-sex couples who have children — have in fact gone out of their way to provide that identifying information to children in relation to these matters. I would hope that other parents in adoptive situations would take a similar view — that children have the right to have information that relates to their identity. But the specific issue around donor conceptions is a matter that the government is examining as part of a separate process to the bill before the house.

The DEPUTY PRESIDENT — Order! I remind members of the gallery that photographs are prohibited while there are proceedings taking place.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for that information, and I am very happy to hear that finally people will not be discriminated against based on the date they were conceived or born in terms of finding out that information. The example I am thinking of is where there was not a donor or artificial insemination involved in the creation of the child but rather another person but that person is not in the life of the child. How is that information still available to the child?

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her question. I am just trying to get some clarity about this scenario because as I understand it the member is asking about essentially what is a normal adoption context, not one where a donor is involved, in which case I can advise the member that there are provisions in the Adoption Act currently that would relate to having access to identifying information. That has not changed.

Mr JENNINGS (Special Minister of State) — I do not mean to interrupt my colleague. At one level, Deputy President, I am almost tempted to ask you whether in fact clause 1 is a test for clause 17, but I will

not ask you that question. I will not ask you to test that, but in fact, in effect, it is. The reason is that clause 1 indicates that there are two purposes of this bill. One is to amend the Equal Opportunity Act, and clause 17 is the only place where the Equal Opportunity Act is amended by this piece of legislation. In terms of the argument that has been put by Mr Davis in the committee stage of this bill, he can actually quite elegantly split his conscience to say that in one instance he is supporting the rights of gay people to adopt children, while in the same breath his conscience actually allows him to cast a blanket vote against the clause that guarantees equality under Victorian law for all our citizens. Whilst that may be a matter that is convenient in his conscience, I think it is a very tortuous concept of how conscience may work and how principles actually apply.

Ultimately, the point I am making at this point in time is that we should be very clear about this: if there is nobody in this chamber who is standing up to amend the first clause, then in fact we are taking, in my judgement, a disingenuous approach to the committee stage of the bill because if anybody then subsequently votes against clause 17 but has not made that point here and now in clause 1, then they have effectively argued a different position in relation to clause 1 than the argument they are going to put in relation to their voting intentions in relation to clause 17. My intention is not to actually stop the passage of clause 1, but I want to make it very clear to people that if we adopt clause 1, we are saying that we believe in a piece of legislation which provides for equality in the law. That is what I will be doing in the course of my contribution to the committee stage, and I would implore other people to do so.

Mr FINN (Western Metropolitan) — I hear what the minister says, and I am just wondering if he is challenging us to divide on every clause.

Mr DAVIS (Southern Metropolitan) — We will discuss clause 17 when we get there. There are still 15 more clauses beyond this one, but Mr Jennings wants to make elaborate arguments. The rules of the committee are clear, and as far as I can tell members across the chamber will be prepared to let this clause stand part of the bill. We will deal with the subsequent clauses in due course.

Clause agreed to; clauses 2 to 6 agreed to.

Clause 7

Ms PENNICUIK (Southern Metropolitan) — My question with regard to clause 7 — and it applies to clause 9, but I will just ask it under clause 7 — is with regard to the difference between the criteria that apply

for persons who are married as opposed to persons who are living in a domestic relationship. Persons who are living in a domestic relationship have to have been living in that relationship for not less than two years, but that does not apply to married persons — that is, in terms of living together for two years. This is an issue that was raised by the Scrutiny of Acts and Regulations Committee in that it perpetuates a discrimination based on marital status, basically. I am wondering if the minister could comment on that.

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her question. It is my understanding that the Scrutiny of Acts and Regulations Committee (SARC) did raise this issue. It is important that members understand that the bill, as I said before, is a fairly straightforward and simple one in terms of removing the current discrimination against same-sex couples. There are existing provisions in there that relate to currently married couples and also to the living arrangements of couples who are eligible to apply to adopt. Essentially what this bill has done is extend those current provisions on a similar basis to people in a registered domestic relationship, as well as to people living in a domestic relationship.

The minister has in fact responded to SARC, I understand, and his response has been published in the *Alert Digest* in relation to this matter. He has advised the committee of the differential treatment of married and de facto couples in relation to cohabitation requirements that currently exist under the present act. The reforms in the bill were informed by the review that was conducted by Mr Eamonn Moran, QC. In conducting that review a range of issues were identified that were beyond the scope of the review. One of those was the issue of achieving consistency in the cohabitation requirements.

The member may be aware that this bill is the second in a tranche of reforms of the Adoption Act 1984. We already had earlier this year reforms that related to the removal of the contact statements and the criminal penalties that applied in relation to natural parents affected by past adoption practices. The government has also made a further election commitment to undertake a modernisation of the Adoption Act. We are currently finalising the review process and the terms of reference for that modernisation, and we are intending to announce the details of this later this year with a view to the review taking place next year.

That review, I want to make it very clear, will not revisit the issue of same-sex adoption. We had a very clear election commitment in relation to that issue. We also had a very clear election commitment in relation to

contact statements. But the review will look at modernising the legislation in relation to other issues that have been identified, not only the issues in the review that Mr Eamonn Moran, QC, conducted that he found were outside the scope of the issues that he was tasked to look at but also other issues that members of the public have raised from time to time.

I do not want to indicate to the house at this stage the kinds of issues that that review will look at, because the terms of reference are still being finalised, but the issue that the member has identified is a very valid issue that I think needs further examination and may well be examined as part of that broader modernisation review of the Adoption Act.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for her answer, and I take on board everything she said. But I would draw to her attention also that what the committee did point out was that similar laws in the ACT and in New South Wales impose identical conditions on all couples who seek to adopt, whether they are married or in registered or unregistered domestic relationships. So there was an opportunity, whether or not it was covered by the review, for the government to actually look at that.

I make the point that although this particular differentiation is based on marital status, it could also be argued that that impacts more on same-sex couples, who are prevented from being married in Australia — as I said in my contribution, that is just another reason for marriage equality — but of course it will impact on those persons who are not in a same-sex relationship but also do not want to be married or have chosen not to be married and have chosen to live in a registered or non-registered domestic relationship.

I think the minister said it may well become part of the review. But I would hope it would become part of the review, because of course we do want to make sure that people are not discriminated against on the basis of these types of statuses.

Ms MIKAKOS (Minister for Families and Children) — I inform the member, as someone who does support same-sex marriage and removal of that level of discrimination that currently applies to same-sex couples, that those who may not wish to pursue a marriage, should the law change at a federal level at a future point in time, will still be able to register their relationships under the Victorian law and therefore come within the scope of the provisions of this bill. So they will not be excluded if they wish to register their relationship.

But as I said to the member, we are going to embark upon a modernisation review of the act, and this issue may well be the subject of submissions, should the terms of reference include these kinds of issues within their scope. But given that the issue has already been examined by Mr Moran, QC, in his review, I would imagine that these are exactly the kinds of issues that we may well be looking at in this next phase of modernising our Adoption Act.

Clause agreed to; clauses 8 to 16 agreed to.

Clause 17

Mr DAVIS (Southern Metropolitan) — The coalition position is a free vote for the other parts of this bill, with the exception of clause 17. This clause deals with religious bodies, and it is inconsistent with the arrangements that are in other states. It is very much a balancing act to ensure that the right to freedom of religion and the rights of individuals are respected in a fair way. The balance that has been struck in this clause we believe stands in contrast to other states. We also believe that the fairest balance to strike is to enable those who would seek the services this bill facilitates to do so from those agencies that are willing to provide those services, rather than their being compelled by a clause of this nature.

Let us be clear: the clause removes current exemptions that exist in the Equal Opportunity Act 2010, and we believe that those exemptions should remain, as I said, consistent with the situation in other states. It is clear that there are a number of agencies in the state — we are not talking about a single provider of services — and in those circumstances it is possible for those who would seek same-sex adoptions to achieve those with other agencies. I understand that people of goodwill will have a series of different views on this, but it is our view that this clause should not stand part of the bill.

Ms MIKAKOS (Minister for Families and Children) — I make the point, in response to the member's assertion that this is somehow unusual or that there are comparable provisions in other jurisdictions, that Tasmania does not have a special exemption for faith-based adoption agencies. There is no general exemption for services provided by religious bodies under the Tasmanian legislation. Further, in the ACT there is no special exemption for faith-based adoption services. There is only a general exemption for acts of a religious body that conform to religious beliefs and are necessary to avoid injury to religious susceptibilities. The member is not correct in his assertion that somehow Victoria is taking a different position in relation to this.

It is important to stress that the bill's amendments to the religious exemptions in the Equal Opportunity Act do not limit any right to freedom of religion and belief protected by the Charter of Human Rights and Responsibilities. As you, Deputy President, put very eloquently in your contribution to the debate, only individuals hold such a right, not religious bodies. The amendments to the Equal Opportunity Act will ensure that neither same-sex couples nor children are discriminated against when accessing adoption services.

Adoption agencies, whether they are faith-based or secular, provide services on behalf of the government that are essentially secular in nature, and they should be available to all members of the public equally. An adoption policy that allows for discrimination may deprive children already living with same-sex step-parents and caregivers of the right to formalise that care arrangement through adoption. It may result in children missing out on the opportunity to be placed with the most suitable adoptive parents.

Retaining a religious exemption for adoption services would fundamentally undermine the intended aim of the bill. As I said in my summing up of the bill, we take the view that it is not acceptable to discriminate just a little bit, which seems to be the position the coalition has taken in relation to clause 17. We all seem to be saying that the best interests of the children are paramount, and that is exactly the view the government takes. The best interests of children should be paramount, and that should mean that those children are not discriminated against by organisations that provide services funded by the government, nor should parents be discriminated against by agencies that are funded by government to provide this important service to the community.

Mr DAVIS (Southern Metropolitan) — With respect, the minister and I will have to disagree.

Mrs PEULICH (South Eastern Metropolitan) — Clause 17 clearly attacks people of faith and their religious freedom. Noting that even with the religious exemption same-sex couples would still be able to access services, I see that the removal of this clause would provide some balance in respect of all of the values people hold dear. I would also like to note the role of Doc Evatt in the drafting of the Universal Declaration of Human Rights, article 18 in particular, which states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others

and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

How does the removal of a religious exemption honour the intent of this article of the Universal Declaration of Human Rights?

Ms MIKAKOS (Minister for Families and Children) — I am pleased the member brought up Doc Evatt in the course of her question. He is someone I have enormous respect for in terms of his role in the development of the United Nations Universal Declaration of Human Rights. The article the member referred to talks about individual rights. As I explained in relation to how this bill sits with the Charter of Human Rights and Responsibilities, individuals hold such rights, not religious bodies or organisations.

Essentially the member is conflating the rights of religious bodies and organisations with the rights of individuals in her interpretation of that article. What we are talking about here are the rights of individuals, and the right of a child as well as a parent not to be discriminated against under Victorian law in terms of their ability to formalise their legal arrangements. As I said at the outset, I take a very firm view that all children in this state should have the same legal rights and entitlements under Victorian law, without facing discrimination.

Mrs PEULICH (South Eastern Metropolitan) — Further on the same clause, clearly any piece of legislation is a balancing of rights, and I believe the removal of this exemption fails that obligation. But to test the minister's logic, let me just say: if this Parliament were to enact a law that extinguished the rights of a trade union to exist and operate, would the minister not say that was a direct assault on the individual rights of people who wish to be a part of that union?

Mr FINN (Western Metropolitan) — I read recently a speech in the other place on this particular bill in which the member for Ripon, Ms Staley, made some excellent points on this. I hope she does not mind me paraphrasing her, but I think it is worth noting that because of the small number of adoptions in this state, we are talking about the only faith-based adoption agency that takes objection to this bill conducting, being involved with or facilitating, call it what you will, very few adoptions — almost zero — so in effect it would have no impact on the numbers to remove this clause. What we are seeing here is an out-and-out vote, and very clearly, on freedom of religion.

Mrs Peulich — It's an attack.

Mr FINN — Of course it is an attack on freedom of religion. This is about a government that says, 'You must do what we say'. This is a government that wants to control everybody, including people's religious choices. I add this to this debate, because I think the points that were made by Ms Staley in the other place are worth putting on the record here. I cannot understand why, given the fact that it would have absolutely no impact on the numbers, the government would want to push ahead with this if it does not want to control the religious institutions in this state.

Ms MIKAKOS (Minister for Families and Children) — I thank Mr Finn for his question — or I guess it is an assertion on his part rather than a question — but I make the point to the member that three of the four adoption agencies currently providing adoption services in Victoria are in fact faith-based organisations. However, Anglicare and Connections UnitingCare, as well as the more secular Child and Family Services Ballarat, have indicated their support for same-sex adoption, including the carve-out of adoption services from the religious exceptions in the Equal Opportunity Act 2010. It is regrettable that CatholicCare has taken the position that it has on this issue.

It has been interesting to have discussions with individuals who work for a Catholic-based organisation in other jurisdictions. I am not going to name the organisation, because I do not want the local cardinal to cause it any trouble, but it has taken a very different point of view. It has essentially said it implements same-sex adoptions in its jurisdiction, having worked out an arrangement whereby the government authorities there essentially process that part of the paperwork so that no difficulties are raised with the local archdiocese. It has been able to come to an arrangement whereby it is not discriminating against any couple under the law and yet it has been able to keep the peace with its religious authorities or hierarchy as well.

I make the point to Mr Finn, as I have previously, that we take a firm view that it is not okay to just discriminate a little bit, which is essentially what Mr Finn and others have said in this case — that because an organisation is contracted by government to look after only a modest number of adoptions every year, somehow we should turn a blind eye to discrimination.

Can I say — and I want to put this on the record — that I am very grateful for the work that CatholicCare has done over many years helping to place children, in some cases with profound disabilities, in loving and caring homes. I hope that if this clause were to pass, CatholicCare would reconsider its position in relation to

this issue. If it were to withdraw its services, as it has indicated, then we would be looking to make other arrangements in relation to the modest number of placements that it has responsibility for.

As we have said on numerous occasions during the course of this debate, we think there should not be any discrimination in relation to these issues. This is particularly pertinent for agencies that receive state funding to provide a service, and they should do so without discrimination. We think the rights of children should be paramount here and that children should not be discriminated against in relation to this issue.

Mrs PEULICH (South Eastern Metropolitan) — Further to the article I quoted from the Universal Declaration of Human Rights, I would like to remind the minister of article 28, which states:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realised.

And article 30, which states:

Nothing in this declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The minister and the Labor government are putting themselves above the declaration of human rights, and I think they ought to be ashamed of it. How can they justify in particular the removal of religious exemption when clearly it flouts a number of the articles in the Universal Declaration of Human Rights?

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her comments. I strongly disagree with her in relation to those comments. The member is asserting that the right to freedom of religion is absolute. It needs to be balanced against other rights, including the right to be free from discrimination, and therefore members need to make an appropriate decision as to what limitations are appropriate. In this case manifesting a religious belief by discriminating in the provision of public services is entirely unnecessary and inappropriate. We are clearly going to disagree in relation to this issue.

Dr CARLING-JENKINS (Western Metropolitan) — I have just one question around infant stranger adoption, and I refer to the extract of the adoption record which I previously quoted in my contribution where a mother requested parents of a specific faith and also stated:

... I ... think that a child should have a mother and a father. That's what I want my baby to have.

Can the minister outline whether if this stands part of the bill a relinquishing mother's request for a mother and a father would now as a result be unable to be legally acted upon by a faith-based agency?

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her question, and while it is not directly pertinent to the clause we are currently considering I did refer to this issue earlier. I am happy to advise the member that the amendments in the bill do not make any change to section 15(1)(b) of the Adoption Act 1984 that requires the court to be satisfied that the department has considered the relinquishing parents' wishes in relation to the sexual orientation or gender identity of parents. Section 15(1)(b) states that prior to granting an adoption order the court must be satisfied that:

... the Secretary or principal officer —

of an approved agency —

has given consideration to any wishes expressed by a parent of the child in relation to the religion, race or ethnic background of the proposed adoptive parent or adoptive parents of the child ...

As I indicated to the house earlier there is clearly an attempt by the department to match children with prospective applicants. Part of the process of this matching and obtaining consent is to ensure that natural parents are appropriately supported through the adoption process and that we have regard to their wishes. We have acted in accordance with the recommendations of Mr Eamonn Moran, QC, in his review and his recommendations in relation to not making any change to the current section 15(1)(b). However, in practice the department will obviously take on board the wishes of a natural parent in relation to these issues. There will also be the development of guidance for practitioners about how these amendments will operate in practice.

Mr JENNINGS (Special Minister of State) — I just want to support the minister in reminding the chamber that there is nothing in this bill that impacts upon the pre-existing arrangements in relation to section 15(1)(b) in terms of the determination of an agency in trying to comply with and respect the wishes of a parent in circumstances where they relinquish their child and hope that there is a range of attributes that should be accommodated in the appropriate placement of their child. It is incumbent on the agency to make that determination in accordance with the law, without fear or favour, on the basis of the parents who choose to use their agency.

The law is actually preserved; the protections are preserved. In fact the opportunity for an agency to have consideration for its obligations under the existing law

does not change, to the extent of the exception that there is an additional opportunity for same-sex couples to be considered as being those parents receiving the service of the agency. This is actually an additional opportunity, not a relinquishing of the opportunity of pre-existing rights under the existing act. It is very important for us to understand that there is nothing in this bill that diminishes the rights of anybody of faith — nobody — in terms of their aspirations to be parents or in fact the intention and the operation of an agency that operates within a faith-based system. There is nothing that falls against human rights obligations in terms of respect for faith-based institutions and people of faith. There is nothing that comes at the expense of those agencies or individuals.

The minister has described that the effect of the law as amended will be that new opportunities are created; none are diminished. Under this bill there will be equality under the law for same-sex couples in circumstances where that does not currently exist. I remind the committee that this committee has already adopted clause 1 of the bill, which says we will amend the Equal Opportunity Act. This is the only opportunity for us to amend the Equal Opportunity Act 2010, and if this clause is voted down, then we will not comply with what this committee has already agreed to, which is to amend the Equal Opportunity Act 2010 to make sure that it complies equally across the law for all of our citizens.

Mr Ondarchie interjected.

Mr JENNINGS — Mr Ondarchie, you may have difficulty in understanding two things. One is how you sit with your conscience; the other, how you sit with the logic of this committee. We have adopted as a committee that clause 1 stands part of the bill. Clause 1 says we will amend the Equal Opportunity Act to guarantee equality under the law. The test in a few minutes will be whether we actually understand what we have already agreed to. Members will be invited, in voting on whether or not clause 17 stands part of the bill, to decide whether in fact they accept that people in Victoria are equal under the law. That is one of the key objectives of this piece of legislation, and again it is the reason why I will support it. I remind the committee of what we have already agreed to.

Mr DAVIS (Southern Metropolitan) — The minister who last spoke sought to argue that this clause does not diminish the rights of religious organisations and religious people. I beg to differ, and it is very clear from the material that has been presented to many of us that that is not the view of those religious organisations. Whatever Mr Jennings's views, they are not shared by many others. I respectfully understand his position, but equally it is clear that others have a very different view

and a sincerely arrived at view. It is also true, as I have said before, that other states have similar exemptions to those that exist under current Victorian law, New South Wales in particular. We are removing that exemption through this clause, and our position as a coalition is that we do not support that, and we will oppose this clause. Some may have a different view about that and some may think it should be more elegant, but that is our clear position.

Committee divided on clause:

Ayes, 19

Barber, Mr	Mikakos, Ms
Dalidakis, Mr	Mulino, Mr
Dunn, Ms (<i>Teller</i>)	Patten, Ms
Eideh, Mr	Pennicuik, Ms
Elasmar, Mr	Pulford, Ms
Hartland, Ms	Somyurek, Mr
Herbert, Mr	Springle, Ms
Jennings, Mr	Symes, Ms
Leane, Mr	Tierney, Ms
Melhem, Mr (<i>Teller</i>)	

Noes, 19

Atkinson, Mr	Lovell, Ms (<i>Teller</i>)
Bath, Ms	Morris, Mr
Bourman, Mr	O'Donohue, Mr (<i>Teller</i>)
Carling-Jenkins, Dr	Ondarchie, Mr
Crozier, Ms	Peulich, Mrs
Dalla-Riva, Mr	Purcell, Mr
Davis, Mr	Rich-Phillips, Mr
Drum, Mr	Wooldridge, Ms
Finn, Mr	Young, Mr
Fitzherbert, Ms	

Pairs

Shing, Ms	Ramsay, Mr
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Clause negatived.

Clause 18 agreed to.

Reported to house with amendment.

Report adopted.

Third reading

The PRESIDENT — Order! The question is:

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

House divided on question:

Ayes, 31

Atkinson, Mr	Melhem, Mr
Barber, Mr	Mikakos, Ms
Bath, Ms	Morris, Mr
Crozier, Ms	Mulino, Mr
Dalidakis, Mr	O'Donohue, Mr
Davis, Mr	Ondarchie, Mr
Drum, Mr	Patten, Ms (<i>Teller</i>)
Dunn, Ms	Pennicuik, Ms

Eideh, Mr	Pulford, Ms
Elasmar, Mr	Ramsay, Mr
Fitzherbert, Ms	Somyurek, Mr
Hartland, Ms	Springle, Ms
Herbert, Mr	Symes, Ms
Jennings, Mr	Tierney, Ms
Leane, Mr	Wooldridge, Ms
Lovell, Ms (<i>Teller</i>)	

Noes, 8

Bourman, Mr	Peulich, Mrs (<i>Teller</i>)
Carling-Jenkins, Dr	Purcell, Mr
Dalla-Riva, Mr	Rich-Phillips, Mr
Finn, Mr	Young, Mr (<i>Teller</i>)

Question agreed to.

Read third time.

FISHERIES AMENDMENT BILL 2015

Introduction and first reading

Received from Assembly.

Read first time for Ms PULFORD (Minister for Agriculture) on motion of Mr Jennings; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Ms PULFORD (Minister for Agriculture), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the charter), I make this statement of compatibility with respect to the Fisheries Amendment Bill 2015.

In my opinion, the Fisheries Amendment Bill 2015, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

1. Overview of the bill

The purpose of this bill is to amend the Fisheries Act 1995 (the act) to establish a scheme to phase out commercial net fishing in Port Phillip Bay, to provide for a limited non-net fishery to operate in Port Phillip Bay from 1 April 2022, and to compensate persons whose fishery licences are surrendered under, or affected by, the scheme.

As part of the scheme's implementation, the bill sets out the process by which affected licence-holders will have the option of accepting a compensation package to either:

- surrender their licence and exit the fishery within seven years; or
- retain their vessel and authorisation to commercially fish in the non-net fishery in Port Phillip Bay when it commences on 1 April 2022.

The scheme only allows for a maximum of eight licence-holders to remain in the non-net fishery. In the event that there are more than eight licence-holders who elect to retain their licence, the bill prescribes the process and criteria by which the secretary will determine, before 1 April 2016, which of those licence-holders is successful, and the process for cancelling any remaining licences in 2022.

2. Human rights issues

Section 20 of the charter provides that a person must not be deprived of his or her 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.

Statutory rights are inherently subject to change and, for this reason, are less likely to be found to be proprietary than other rights. This conclusion is even more likely where what is being considered is a statutory licence, where the nature of the right is such that the licence-holder did not have a reasonable expectation of its lasting nature. The existing provisions in division 4 of part 2 of the act make it clear that licences are granted under the act on the basis that they can be suspended, cancelled, varied or have conditions imposed upon them, and are therefore inherently contingent. In these circumstances, I am of the opinion that the cancellation or alteration of a licence will not amount to a deprivation of property.

Even if the statutory licences under the act were considered proprietary in nature and a decision by the secretary to cancel licences therefore resulted in the deprivation of that property, it is clear that the process for cancelling or varying licences is precisely set out in the bill and is not arbitrary in nature.

For example, the bill sets out in clear detail the process by which the minister must give licence-holders notice of the requirement to elect to retain or surrender their licence, and the process by which those licence-holders may make that election. The bill also sets out clearly what compensation a licence-holder will be entitled to in each scenario. Although the secretary has the power to determine which eight licence-holders will retain their authorisation to carry on non-net commercial fishing in Port Phillip Bay, the objective criteria on which that decision is made is provided in part 1 of the new schedule 4 (namely the eight highest ranked licence-holders according to their non-net catch recorded between 1 April 2009 and 31 March 2014). Remaining licences will only be cancelled after these processes have been implemented. The bill therefore does not provide the secretary with a discretion that is capable of being exercised arbitrarily or selectively.

Given the above, and the fact that the clauses of the bill clearly and precisely formulate the circumstances in which any deprivation of property will occur, in my view there is no limitation of the property right under section 20 of the charter because any deprivation of property would be in accordance with law.

Hon. Jaala Pulford, MP
Minister for Agriculture

*Second reading***Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).**

Mr JENNINGS (Special Minister of State) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Fisheries Act 1995 is the principal legislation for the management, development and conservation of Victorian fisheries.

Fishing is one of Victoria's most popular recreational pursuits, being home to an estimated 721 000 recreational fishers. Victoria's bays, inlets, oceans and inland waters support productive fisheries and provide quality recreational fishing experiences.

It has been estimated that recreational fishing contributes around \$2.3 billion to Victoria's social and economic wellbeing, particularly in rural and regional Victoria. It encourages kids and families to get outdoors and learn more about our environment. Recreational fishing contributes to a healthy lifestyle for many Victorians.

The Andrews government's Target One Million plan — the largest injection of funds into fisheries in 30 years — will help to grow recreational fishing in Victoria by encouraging more families to get outdoors and enjoy fishing.

I will now turn to the particulars of the Fisheries Amendment Bill 2015.

This bill will deliver on the government's 2014 Target One Million election commitment to remove all commercial netting from Port Phillip Bay by 31 March 2022 in order to grow recreational fishing in Victoria.

Commercial fishing has a long history in Port Phillip Bay with many of the current licence-holders having a direct multigenerational family connection to fishing in Port Phillip Bay.

The government recognises that this decision impacts on people's livelihoods and that fishing is more than a just a business or workplace. For many operators fishing in the bay is a lifestyle and something they have a strong and passionate connection to.

The removal of netting from Port Phillip Bay is expected to increase catch rates and size of fish for the recreational fishing sector, and reduce spatial competition. This will enhance recreational fishing opportunities in the bay for many Victorians, with the potential to attract more visitors from outside of Victoria to fish in Port Phillip Bay.

The bill will provide commercial fishers currently netting in Port Phillip Bay with a fair and clear exit strategy over seven years.

The bill establishes a scheme to phase-out commercial net fishing in Port Phillip Bay by 2022, to provide for a limited

non-net fishery to continue to operate in the bay and to compensate persons whose fishery licences are surrendered or restricted by the scheme. The scheme also includes a prohibition on commercial net fishing in Corio Bay from 1 April 2018.

The bill provides for two types of compensation packages to be offered to licence-holders. A surrender package for those exiting the fishery and an adjustment package for up to eight fishers eligible to remain in the non-net fishery after 1 April 2022. The first surrender packages will be paid on 1 April 2016.

The non-net fishery will be established as an 88-tonne quota-managed longline snapper fishery, with each eligible fisher allocated quota units equal to 11 tonnes of snapper on 1 April 2022.

The election commitment was to provide \$20 million for the removal of netting from the bay. Based on consultation and review of the scheme, the proposal will now provide up to \$27 million for compensation, depending on when fishers exit the fishery. This compensation will provide a fairer and better recognition of individual investment and loss of income to licensees.

The bill establishes a process whereby, in the first year of the scheme, licence-holders will be able to elect to remain in the non-net fishery that will operate from 1 April 2022. If more than eight fishers nominate, then the eight licences with the highest average non-net catch per kilogram of all species over the five-year period from 1 April 2009 to 31 March 2014 will be successful. Successful nominations in this process will not be eligible for a surrender package but will be paid the adjustment package on 1 April 2022.

The bill provides for an annual election process, commencing in early 2016, in which fishers may nominate to surrender their licence and accept a compensation package. Licences will be cancelled upon surrender. The bill includes a provision that provides that any licences remaining in the last year of the scheme before 1 April 2022 will be cancelled by the secretary.

The surrender package will consist of compensation for the assessed market value of the licence, assessed by the valuer-general at \$310 000, plus an allowance of \$75 000 for commercial fishing equipment such as vessels and nets to account for the reduced market value of such specialised gear given the prohibition on netting. The surrender package will also include an amount to provide compensation for loss of income based on three times the total average annual catch value taken over the five fishing years from 1 April 2009 to 31 March 2014 under the licence. The package available in any one year will be reduced in value by 10 per cent per year over the seven years of the phase-out in recognition of the fact that fishers are able to continue to generate an income whilst they remain in the fishery.

The adjustment packages for commercial fishing licence-holders who will remain in the non-net fishery from 1 April 2022 will consist of 50 per cent of the assessed market value of the licence, in recognition of the reduced utility and earning capacity of the licence without the authority to use nets, plus an allowance of \$50 000 to account for the reduced market value of specialised gear given the prohibition on netting. This package will not be subject to a 10 per cent reduction in value, and will be payable on 1 April 2022.

Key stakeholders such as Port Phillip Bay commercial fishers and the commercial fishing representative body, Seafood Industry Victoria, have been consulted on the intention to remove netting and some of the potential characteristics of the non-net fishery.

I commend the bill to the house.

Debate adjourned for Mr DRUM (Northern Victoria) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 19 November.

RELATIONSHIPS AMENDMENT BILL 2015

Introduction and first reading

Received from Assembly.

Read first time for Mr HERBERT (Minister for Training and Skills) on motion of Mr Jennings; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Mr HERBERT (Minister for Training and Skills), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter'), I make this statement of compatibility with respect to the Relationships Amendment Bill 2015.

In my opinion, the Relationships Amendment Bill 2015, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The Relationships Act 2008 (the act) established a relationships register in Victoria for the registration of domestic relationships and caring relationships. Registration is one way for partners in such relationships to attain formal recognition of their relationship, particularly same-sex partners who are unable to marry under Australian law. Registration also provides conclusive proof of the relationship for the purposes of Victorian law.

The purpose of the Relationships Amendment Bill 2015 (the bill) is to amend the act to provide that only one partner in a relationship to be registered needs to live in Victoria, and to allow certain relationships formalised in other jurisdictions to be recognised as if they were registered domestic relationships under the act.

Clause 4 of the bill amends section 6 of the act to enable partners who are in a registrable domestic or caring relationship to apply to register that relationship if one of the partners in the relationship lives in Victoria.

Clause 6 of the bill inserts a new chapter 2A into the act, which recognises relationships formalised under

corresponding laws in other jurisdictions, including same-sex marriages, as if they were registered relationships for the purposes of Victorian law.

These amendments promote the right to equality and the protection of families and children under the charter.

Human rights issues

Right to equality

Section 8 of the charter provides that every person has the right to enjoy his or her human rights without discrimination, is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

Previously, both partners in a domestic or caring relationship must have been domiciled or ordinarily resident in Victoria to register their relationship. The amendment in clause 4 of the bill detailed above will make it easier for Victorians in committed relationships to enjoy the benefits of formalising their relationship. This includes those couples who are currently unable to marry under Australian law because of their sex, sexual orientation or gender identity.

The recognition of relationships formalised in corresponding jurisdictions in clause 6 of the bill will mean that a couple in Victoria that has formalised their relationship under a corresponding law, either before or after commencement of the bill, will not need to re-register their relationship under the Victorian registration scheme to enjoy the benefits of registration. This provides recognition under Victorian law for couples who have formalised their relationships under interstate registration schemes and overseas laws that allow for same-sex marriage and civil unions.

Accordingly, the bill promotes the right to equality in the charter for people in couple relationships, regardless of their sex, sexual orientation or gender identity.

Protection of families and children

Section 17 of the charter provides that families are the fundamental group unit of society and are entitled to be protected, and that every child has the right, without discrimination, to such protection as is in his or her best interests.

Section 33C in the new chapter 2A, as described above, excludes from recognition any relationship entered into in other jurisdictions that would be contrary to Victorian law. Relationships excluded under section 33C include those that:

- involve a person under the age of 18;
- are non-consensual;
- are between persons related by family; or
- involve a person already married or in another relationship formally recognised under the relevant law.

The effect of these amendments is to: simplify the requirements for registration of relationships in Victoria, particularly domestic relationships; recognise relationships formalised under corresponding laws; and exclude those relationships that might undermine the protection of families and children, such as those that involve a minor or are

incestuous. The bill therefore promotes the protection of families and children in accordance with section 17 of the charter.

The Hon. Steve Herbert, MLC
Minister for Training and Skills

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).

Mr JENNINGS (Special Minister of State) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The government has made a strong commitment to put equality back on the agenda in Victoria, particularly for lesbian, gay, bisexual, transgender and intersex — LGBTI — Victorians. This government aims to create a fairer Victoria by reducing discrimination and respecting diversity. The Relationships Amendment Bill 2015 is just one part of the government's broader equality agenda.

The bill implements the government's pre-election commitment to amend two aspects of the Relationships Act 2008. Firstly, the bill provides that in order to register a domestic or caring relationship in Victoria, only one partner in the relationship needs to live in Victoria. Secondly, the bill provides for recognition of certain relationships formalised under Australian and international laws as if they were registered domestic relationships in Victoria.

Victorian laws have recognised unmarried couples, previously described as 'de facto couples', for many years. In 2001, almost 60 statutes were amended by the Bracks Labor government to ensure that this recognition was also given to same-sex couples. Victorian laws now recognise 'domestic relationships', regardless of the sex of the partners in the relationship.

In 2008, the Brumby Labor government passed the Relationships Act to establish a relationship register for domestic relationships. Registration is one way for partners in domestic relationships to attain formal recognition of their relationship, particularly same-sex partners who are unable to marry under Australian laws. Registration also makes it easier for couples to prove they are in a domestic relationship: they do not have to provide any further evidence to establish that they are in the relationship recognised under Victorian law. This makes it easier to access rights, for example, when discussing a partner's health information with a doctor in an emergency or when seeking compensation entitlements as a dependent partner.

The registration scheme was amended again in 2009 to allow for the registration of caring relationships. A caring relationship is a relationship between two adults, which is not a marriage or a couple relationship, where the partners in the relationship provide each other with personal or financial commitment and support of a domestic nature without fee or reward.

The purpose of the relationships register, for both domestic and caring relationships, is to allow people to register one relationship, their primary relationship, which will be recognised as such for the purposes of Victorian law.

Connection to Victoria

In establishing the Relationships Register in 2008, Victoria followed the Tasmanian approach, which was the only Australian relationship registration scheme at that time. As such, the Relationships Act requires both partners in the relationship to be registered to be ordinarily resident or domiciled in Victoria.

This requirement imposes an unnecessary barrier to relationship recognition in Victoria. It is also now out of step with the majority of other interstate registration schemes that have since been established, which require only one person in the relationship to live or reside in the relevant state or territory.

The bill therefore makes it easier for couples to register their relationship in Victoria by simply requiring one partner in the relationship to live in Victoria.

Recognising relationships formalised under corresponding laws

In addition, in contrast to the other interstate relationship registration frameworks, the Relationships Act does not automatically recognise relationships registered in other Australian jurisdictions or formalised overseas as the equivalent of a registered domestic relationship for the purposes of Victorian law.

The bill inserts a new chapter into the Relationships Act to provide for the recognition of corresponding law relationships without the partners to the relationship needing to re-register their relationship in Victoria or provide any further evidence to establish that they are in a domestic relationship. Relationships registered or formalised under corresponding laws will be taken to be registered domestic relationships for the purposes of Victorian law.

To determine which laws will be recognised as corresponding laws, the bill allows for specific laws to be prescribed in regulations, as well as allowing broader recognition of relationships under laws that satisfy clear statutory conditions. This 'hybrid' approach provides a level of certainty, with regulations setting out the laws that are already known to allow for formalisation of a relationship that equates to a Victorian domestic relationship. For example, the regulations will prescribe the registration schemes in other Australian states and territories, as well as the civil partnership and same-sex marriage schemes in the United Kingdom, New Zealand and Canada. The hybrid approach also provides the flexibility to recognise other overseas laws that clearly meet the threshold criteria. This avoids the need to amend the Victorian regulations every time an overseas law is enacted to recognise same-sex relationships, including marriage, or other domestic relationships.

The bill excludes from recognition any relationship entered into in another jurisdiction that would be contrary to Victorian law, including one that: involves a person under the age of 18; is non-consensual; is between persons related by family; or involves a person already married or in another relationship formally recognised under the relevant law.

Together, the amendments make relationship recognition easier in Victoria. As such, the bill promotes the right to equality in the charter, including for couples who cannot currently marry under Australian law because of their sex, sexual orientation or gender identity. It enables more people who want the dignity of formal recognition of their loving relationship to register it, or have recognised a relationship that has been formalised in another jurisdiction. Such couples will have the security of knowing that their decision to commit to a shared life with each other is respected in Victoria.

The Victorian government supports marriage equality and will continue to advocate for change to commonwealth laws to allow this. The Minister for Equality has asked the LGBTI task force and justice working group to examine proposals for further reform of the Victorian Relationships Act in order to strengthen the rights of same-sex couples in this term of government.

In the meantime, through this bill, the government recognises that all Victorians, regardless of their sex, sexual orientation or gender identity, are entitled to have their committed relationship recognised before the law.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 19 November.

Business interrupted pursuant to standing orders.

Sitting extended pursuant to standing orders.

LOCAL GOVERNMENT AMENDMENT (FAIR GO RATES) BILL 2015

Introduction and first reading

Received from Assembly.

Read first time for Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) on motion of Mr Jennings; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Mr DALIDAKIS (Minister for Small Business, Innovation and Trade), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the charter), I make this statement of compatibility with respect to the Local Government Amendment (Fair Go Rates) Bill 2015.

In my opinion, the Local Government Amendment (Fair Go Rates) Bill 2015, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The purpose of the bill is to give effect to the government's commitment to establish a head of power for the Minister for Local Government to set a cap on general rates and municipal charges to be levied by councils in any given financial year. Further, the bill allows a council to apply to the Essential Services Commission (the ESC) for a higher cap or caps and the ESC may do so for up to four financial years, on specified grounds. The minister may also determine that where there are repeated instances of non-compliance with the cap, the rates or charges (or part thereof) levied in respect of a specified financial year are invalid. Repeated non-compliance may also be a ground for suspension of the council.

Human rights issues

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

Taking part in public life

Section 18 of the charter establishes a right for an individual to participate in the conduct of public affairs, to vote and be elected at state and municipal elections, and to have access to the Victorian public service and public office, without discrimination.

Clause 9 of the bill amends existing section 219 of the Local Government Act 1989 to provide that a council that has repeatedly and substantially failed to comply with a general order made by the Minister for Local Government or a special order made by the ESC, which impose a cap on council's general rates and municipal charges, is a ground for the minister to recommend to the Governor in Council that the council and all of its councillors be suspended.

The right to take part in public life is engaged by this amendment since repeated non-compliance by a council with a rate cap may result in the suspension of the council, and councillors being removed from office. However, any limitations, if any, are justifiable. The bill aims to give Victorian communities accountable and efficient local councils, by ensuring the budget processes are made more transparent, and that ratepayers have a say in determining councils' funding priorities and control over rates they are required to pay, strengthening the system of democracy. Further, there are standards expected of councils, and the community is entitled to be represented by councils that act lawfully and with integrity. It is important, therefore, that appropriate disciplinary measures are taken against a council and its councillors that fail to do so.

Further, clause 12 of the bill provides the ESC the authority to monitor and review a council's compliance with the rate cap, including its impact on council's financial sustainability, service levels and performance, and to report such matters annually. This monitoring and reporting function of the ESC ensures council is notified of any inadvertent non-compliance and provides it with the opportunity to rectify its practices so as to avoid future non-compliance and disciplinary action.

Philip Dalidakis, MLC
Minister for Small Business, Innovation and Trade

*Second reading***Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).**

Mr JENNINGS (Special Minister of State) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill amends the Local Government Act 1989 and the Essential Services Commission Act 2001 to provide the legislative framework for implementing the government's Fair Go rates system to protect Victorian ratepayers from unsustainable council rate increases.

This new system will come into operation for the first time in the 2016–17 financial year. It will mean that in all future years annual council rate increases will be capped in line with increases in the consumer price index (CPI) unless a council has obtained approval for a higher increase from the Essential Services Commission (the ESC).

Capping annual council rate increases in this way will promote greater accountability and transparency in local government budgeting and service delivery, and will help ensure that rates and charges are used efficiently and ratepayers receive maximum benefit.

Setting the average rate cap

The bill empowers the Minister for Local Government to set an average rate cap to limit the percentage amount by which councils can increase their rates for a specified financial year. The bill defines the average rate cap as the percentage amount equal to the change in the Melbourne CPI for the financial year as forecast by the Department of Treasury and Finance plus or minus any adjustment specified by the minister.

Providing for the cap to be adjusted above or below the forecast change in the CPI provides flexibility for other matters such as wage pressures or efficiency dividends to be taken into account where appropriate.

In setting the average rate cap, the minister must request advice from the ESC. The minister must have regard to any advice received from the ESC but is not required to follow this advice. This is to enable the minister to take into account other issues that might be impacting on a council or group of councils in a given year.

Applying the average rate cap to general rates and municipal charges

The bill authorises the minister to direct a council by order that the council's average rate in respect of a specified financial year must not exceed the average rate for the previous financial year by more than the average rate cap. The order must be published in the *Government Gazette* by December 31 in the financial year before the capped year.

The bill provides a formula for councils to calculate the average rate in the financial year preceding the capped year. This is calculated by taking the total annualised general rates

and municipal charges leviable as at the end of the financial year (including the full year effect of supplementary rates) over the number of rateable assessments as at 30 June.

The bill provides that the average rate cap will only apply to general rates and municipal charges. These rates and charges currently represent about 88 per cent of councils' annual rates and charges revenue. Revenue from service rates and charges (such as charges for garbage collection), special rates and charges, revenue in lieu of rates, and the fire services levy, will not be covered by the first rate cap.

However, the bill also provides for other rates and charges to be prescribed as subject to the average rate cap. This means that if councils are found to be disproportionately allocating their overhead costs to service rates and charges or to other rates and charges, consideration can be given to extending capping to include these other rates and charges.

Minister may set different average rate caps

The minister may make an order in relation to all councils, to a class of councils, or to a single council, so that, for example, a different average rate cap may apply to a specified group of councils in a given financial year.

This means the common needs of, say, small rural councils, or those affected by natural disasters, could be accommodated should the minister determine that it is appropriate.

Application to the Essential Services Commission

Where a council wishes to increase its rates by more than the average rate cap set by the minister, the bill provides that it may apply to the ESC for approval of a higher cap. An application for a higher rate cap must be made by 31 March in the financial year preceding the capped year.

The ESC can only approve a higher cap where it is satisfied:

of the reasons for the proposed rate increase greater than the average rate cap;

the application for a higher cap takes account of ratepayers' and communities' views;

the outcomes being pursued reflect the efficient use of council resources;

consideration has been given to alternative budgetary priorities and funding options;

the assumptions and proposals in the application are consistent with the council's long-term strategic planning and financial management instruments.

The ESC must also be satisfied that the higher cap is appropriate having regard to the council's record of compliance with any previous average rate caps or higher caps that applied to the council.

The bill requires councils applying to the ESC for a higher cap to show that they have considered community views in relation to the proposed higher cap. This is consistent with the requirement for councils to consult their communities on proposed budgets under section 129 of the Local Government Act 1989.

Councils will have the flexibility to seek ratepayer and community views regarding a proposed higher cap separately,

or in conjunction with consultation on the council's proposed budget. Some councils may choose to consult on alternative budget scenarios in a proposed budget — namely one based on an increase that complies with the average rate cap, and another that involves a higher cap for which the ESC's approval is being sought and which outlines the services or capital works that can be accommodated with higher rates.

Essential Services Commission approval of a higher cap

The bill gives the ESC power to approve a higher cap for a council that applies instead of the average rate cap set by the minister. The ESC may approve a higher rate cap for a council for either a single year or for up to four years. However councils will be required to satisfy the ESC on all of the requirements needed to support a single year higher cap over future years before multiple-year caps are approved.

Allowing for multiple-year caps will allow councils to better align their annual budgets with longer term strategic planning, including the development of four-year council plans, strategic resource plans and 10-year asset management plans.

The ESC has indicated that for the first year of the system's operation, higher caps will only be approved for one year. This will allow time for both the ESC and councils to gain experience under the new system. It is likely that before approving multiple-year higher caps both the ESC and councils will require more time for longer term planning to be undertaken and budget needs properly identified.

The ESC is required to publish notice of all higher cap approvals in the *Government Gazette*.

Non-compliance with the cap

The bill provides that if a council fails to comply with the average rate cap set by the minister or a higher cap approved by the ESC, the non-compliance can be taken into account when future caps are set or approved. The minister may take the non-compliance into account and set a lower average rate cap that applies specifically to that council. This will allow for any minor or inadvertent non-compliance to be managed appropriately. The ESC can also take the non-compliance into account when assessing a future application by the council for a higher cap.

In any case of repeated of non-compliance by a council, the bill provides that the minister may determine that rates or charges (or part thereof) levied in respect to a specified financial year are invalid. Repeated non-compliance will also be a ground for the minister to recommend to the Governor in Council that a council be suspended under section 219 of the Local Government Act 1989.

Fees

Section 243 of the Local Government Act 1989 provides for fees to be prescribed by regulations. No fees will be prescribed for the Fair Go rates system's first year of operation. Any future fees prescribed for applications to the ESC will be the subject of a full regulatory impact statement enabling full consultation with the sector.

Monitoring effectiveness of the system

The bill requires the ESC to report on councils' compliance with the average rate cap annually, and the overall outcomes of the Fair Go rates system for ratepayers and communities biennially.

The bill also provides for a review of the system by the Minister for Local Government and the Minister for Finance by 31 December 2021. The purpose of the review is to determine whether the mechanism for setting a cap on rates is still appropriate, and if the legislative framework is effective or needs to be amended. The bill also requires further reviews to be completed every four years after the first review is completed.

Conclusion

The Fair Go rates system for which this bill provides the legislative framework will play a central role in giving Victorian communities the strong, accountable and efficient local councils they deserve. Council budget processes will be made more transparent as a result of the changes outlined in this bill.

The system gives citizens a real say in determining their council's funding priorities and a measure of control over the rates they are required to pay in return for council services. In doing so it strengthens our system of local grassroots democracy.

I commend the bill to the house.

Debate adjourned for Mr DAVIS (Southern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 19 November.

TERRORISM (COMMUNITY PROTECTION) AMENDMENT BILL 2015

Introduction and first reading

Received from Assembly.

Read first time for Mr HERBERT (Minister for Training and Skills) on motion of Mr Jennings; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Mr HERBERT (Minister for Training and Skills), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the charter), I make this statement of compatibility with respect to the Terrorism (Community Protection) Amendment Bill 2015 (the bill).

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

Overview

The bill implements a number of the recommendations of the 2014 *Victorian Review of Counter-Terrorism Legislation* (review report) by amending the Terrorism (Community Protection) Act 2003 (the act) in order to provide for the remote entry of premises to access electronic equipment for the purposes of covert search warrants, and to extend the

operation of preventative detention and prohibited contact orders. It also amends the expiry date of the act as a whole from 1 December 2016 to 1 December 2021. As this effectively re-enacts the act for a further five years, this statement of compatibility considers the human rights impacts of the act in its entirety, not just the provisions of the act specifically amended by the bill.

The purposes of the act are to provide powers and obligations relating to the prevention of and response to terrorist acts, to provide for the application for, and the grant and execution of, search warrants authorising covert searches by police officers, to provide for the application for and the making of preventative detention orders, to provide for mandatory reporting of the theft or loss or discrepancies in quantity of certain chemicals and other substances, and to protect counterterrorism methods from disclosure in legal proceedings.

Human rights issues

Part 2 — covert search warrants

Part 2 of the act provides for the issue of covert search warrants for the purposes of investigating suspected terrorist activity. The warrant is covert in the sense that the occupier of the premises in question knows nothing about its issue, or the subsequent entry and search carried out under its authority. The use of covert search warrants has been invaluable in investigations into possible terrorist offences in the past, and these provisions are regarded by investigation agencies as an essential part of their investigatory toolkit.

Section 6 provides that a police officer, with the approval of the chief commissioner, a deputy commissioner or an assistant commissioner, may apply to the Supreme Court for the issue of a covert search warrant if the police officer suspects or believes, on reasonable grounds, that: a terrorist act has been, is being, or is likely to be committed; a person who resides at or visits the premises has been involved in planning a terrorist act or has provided or received training from a terrorist organisation; there has been activity on the premises connected with a terrorist act; entry and search of the premises would assist in preventing or responding to a terrorist act; and it is necessary for that entry and search to be conducted without the knowledge of the occupier. The court may issue a covert search warrant if satisfied that there are reasonable grounds for the suspicion or belief founding the application for the warrant. If necessary, the court can require that additional information is provided before it makes its decision.

Generally, applications must be made in writing and supported by an affidavit. In urgent circumstances, the warrant may be issued on the basis of a telephone application. In either case, the applicant must notify the Public Interest Monitor (PIM) of the application, and the PIM is entitled to make submissions to the court.

A warrant issued under part 2 may authorise the person to whom it is directed (and any other person named or described in the warrant) to enter premises, or other specified premises adjoining or providing access to the premises, by force or impersonation if necessary; search the premises; seize, copy, photograph or otherwise record a description of a thing at the premises; place a thing at the premises; operate any electronic equipment on the premises and copy, print or otherwise record information from the equipment; or to test, or take and keep a sample of a thing at the premises.

In addition to the existing provisions, clause 5(2) of the bill inserts new subsection 9(1)(fa) into the act, which enables a warrant issued under part 2 of the act to authorise the operation by way of remote entry of any electronic equipment on a premises and to copy, print or otherwise record information from that equipment. This amendment is necessary due to developments in technology since the act was originally passed, as it is now possible to remotely access a computer without being physically present. Remote access is a safer and less intrusive process than physically entering premises in order to access the device.

Right to privacy

Section 13(a) of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. By their nature, covert search warrants enable police to interfere with privacy by entering and searching private premises. However, the charter right to privacy will only be limited if the interference is unlawful or arbitrary.

In my view, the interference will not be unlawful, as it will be authorised under the act and approved by the Supreme Court. It will also not be arbitrary, as the power is sufficiently constrained to the very limited circumstances described above. Examples of circumstances where covert warrants may be necessary include where notification of a search could jeopardise an ongoing investigation by revealing that there has been a tip-off, or by revealing police methodology.

In deciding whether to grant a warrant, the court must consider the nature and gravity of the terrorist act (or suspected act), the extent to which the warrant would assist the prevention of or response to the act, and the extent to which the privacy of any person is likely to be affected. These requirements enable the balancing of the legitimate aim of investigating suspected terrorist acts with the significant interests of the individual in privacy, particularly in relation to the home.

The court must also consider any conditions to which the warrant may be made subject. Such conditions could include, where appropriate, a requirement that the applicant notify the occupier of the premises at a specified future time that the search has taken place.

The court must also consider any submissions made by a PIM. The involvement of the PIM ensures that an independent third party is aware of the application for and grant of a warrant, and enables submissions to be made to the court in relation to the public interest, including in the protection of human rights. I note that this aspect of the scheme distinguishes the Victorian provisions from the delayed notification search warrants available under commonwealth and NSW legislation, where no provision is made for submissions by a PIM or equivalent body.

Further safeguards include a requirement that the person to whom a warrant is issued must report back to the Supreme Court on the use of the warrant within seven days of its expiry. The chief commissioner must also report annually to the minister on police use of covert search warrants, and that report must be tabled in Parliament.

The above considerations demonstrate that the covert search warrant powers are carefully tailored to ensure that interferences with privacy are reasonable and justified by the important purpose of protecting public safety. Taking these considerations into account, there are strong grounds for concluding that the covert search warrant powers are neither

unlawful nor arbitrary, and so do not limit the right to privacy in s 13(a) of the charter.

Fair hearing

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

The right to a fair hearing includes a requirement that a party must be afforded a reasonable opportunity to present his or her case in conditions that do not place him or her at a disadvantage vis-a-vis his or her opponent, a principle that is often referred to as 'equality of arms'. The covert search warrant powers are relevant to this aspect of the right to a fair hearing, as the fact that a person is not present for a search may make it difficult to claim legal professional privilege in relation to privileged documents, to challenge whether a warrant has a proper legal basis, or to demonstrate that a search has not been executed in accordance with the warrant.

In my view, on balance, these concerns are addressed through the numerous safeguards, set out above, surrounding the application for and use of search warrants, and outweighed by the importance of the legitimate objective of counteracting suspected terrorism. I therefore consider that there are strong grounds for concluding that the covert search warrant provisions do not limit the right to a fair hearing.

Freedom of expression

Section 15 of the charter provides that every person has the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds. This right is subject to special duties and responsibilities, and may be subject to such lawful restrictions reasonably necessary to respect the rights and reputation of others, or for the protection of national security, public order, public health or public morality.

Applications for covert search warrants are made in closed court. Section 12 prohibits the publication of information or reports derived from application proceedings. This means that anybody in attendance will be unable to publish material from the proceedings. While the right to freedom of expression is relevant to this restriction, in my view the restriction is reasonably necessary to respect the rights and reputation of other persons and for the protection of national security.

Right to property

Section 20 of the charter act provides that a person must not be deprived of their property other than in accordance with 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. This right is relevant to the provisions enabling seizure of property. However, as the seizure provisions meet the relevant standards of lawfulness, the right is not limited by these provisions.

Compatibility of covert search warrant scheme

The covert search warrant provisions have implications for human rights. In particular, these powers significantly affect the right to privacy, given the fact that a person is not present during a search and may not find out about it afterwards. They also have implications for the right to a fair hearing,

given the difficulties that may be associated with claiming legal privilege or challenging the lawfulness of evidence obtained during a search. In light of the above analysis, and in particular the potential limitation of the rights under sections 13 and 24 of the charter, I consider that, while there are strong grounds for concluding that extending the operation of the covert search warrant provisions is compatible with the charter, the bill may be partially incompatible with the charter.

Nevertheless, I consider that the object of the provisions justify their continued operation for the extended period set out in the new sunset provision. As set out in the review report, the covert search warrant powers have been used on very few occasions since their introduction, and have been an effective tool in investigating suspected terrorist activity. Given the numerous safeguards in place, and the necessity of supporting investigatory agencies in their efforts to combat terrorism, I therefore consider it is necessary to support these powers, even in the event that they are incompatible with charter rights.

Part 2A — preventative detention orders and prohibited contact orders

Part 2A of the act provides for the making of preventative detention orders (PDOs) to prevent an imminent terrorist act occurring, or to preserve evidence of, or relating to, a recent terrorist act. A person may be detained under a PDO for up to 14 days. During detention, a person may also be subject to a prohibited contact order (PCO), which limits the detainee's ability to communicate with specified individuals.

Only one PDO has been applied for and granted since the introduction of these provisions in 2006. This reflects the high threshold of necessity that must be reached before such an order is sought, and the significant protections built in to the act to ensure that these very serious powers are not used inappropriately.

The operation of these powers is summarised below, followed by consideration of their impact upon human rights.

Summary of provisions

Application process

Only an authorised police officer may apply for a PDO. Under section 13E, the Supreme Court may grant the order if satisfied on reasonable grounds that the person in relation to whom the order is sought: will engage in a terrorist act; possesses or has in his or her control a thing connected with the preparation for, or the engagement of a person in, a terrorist act; or has done an act in preparation or planning for a terrorist act. The court must also be satisfied that making the order would substantially assist in preventing a terrorist act occurring, and that detaining the person for the period for which the order is sought is reasonably necessary for that purpose. The terrorist act must be imminent and expected to occur within 14 days.

Alternatively, the court may make a PDO if satisfied on reasonable grounds that a terrorist act has occurred within the last 28 days, that it is necessary to detain the person to preserve evidence of, or evidence that relates to, the terrorist act, and that detaining the person for the period for which the order is sought is reasonably necessary for that purpose.

The applicant must notify the PIM of the application (section 13DA), and the court must have regard to any submissions made by a PIM (s 13E(1A)).

The person to whom an application relates is entitled to appear at the hearing of the application, give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions (section 13E(9)(a)). However, an application for a preventative detention order may be made ex parte (unless the person is already being detained).

Where the application is made ex parte, if the court wishes to hear from the person concerned, an interim PDO may be made to hold the person in detention until the matter is finally determined. An interim order allows for a maximum detention of 48 hours, or until the final determination of the application (whichever is the later).

Making of the order

A PDO must set out a number of matters, including: the period of detention; any place or places where the person may be (or must not be) detained; what contact is authorised during the detention; and a summary of the grounds on which the order is made. Information is not required to be included in the summary if to do so would be likely to prejudice national security (section 13F(4)(h) and section 13F(5)). The Ombudsman and the IBAC must be notified of the making of a PDO (section 13F(10)).

Orders may be extended under section 13I; however, the extension must not result in the PDO exceeding 14 days.

Prohibited contact orders

The Supreme Court PCO under section 13KA in relation to a person subject to a PDO. Under a PCO, a person may be prohibited, while being detained under a PDO, from contacting the person specified in the PCO (sections 13L(5) and 13K(5)). The court must be satisfied that making the order is reasonably necessary to: avoid risk to action being taken to prevent a terrorist act occurring; prevent serious harm to a person; preserve evidence of, or evidence that relates to, a terrorist act; prevent interference with the gathering of information about a terrorist act or preparation for a terrorist act; or to avoid risk to a terrorism-related arrest, the taking into custody of a person to whom a preventative detention order has been or is likely to be made, or to the service on a person of a commonwealth control order.

The applicant for a PCO must notify the PIM, who may make submissions before the court. If an order is granted, the Ombudsman and the IBAC must be notified and given a copy of the order.

Other contact while in detention

Under section 13ZC, a person detained under a PDO is not entitled to contact other persons except as provided for in sections 13ZD, 13ZE, 13ZF and 13ZH. Subject to any limitations in a PCO, a detainee is entitled to the following contact:

Once, with persons who otherwise may be concerned about the whereabouts of the person (family members, housemates, employers, employees or business partners, or other persons authorised by police) solely for the purpose of letting the person know they are being detained and are safe (section 13ZD). The person may disclose the fact that a PDO has been made, the fact that he or she is being detained, and the period of detention.

The Victorian Ombudsman or IBAC (section 13ZE).

Lawyers, for the purposes of for advice or representation in relation to the PDO, a PCO, or his or her treatment in connection with the detention (section 13ZF).

For persons under 18, or persons who are incapable of managing their own affairs, a parent or guardian or other person able to represent that person's interests (section 13ZH).

The PDO itself must also set out whether the person is allowed to have any further contact with family members or other persons, and any conditions applicable to that contact (see section 13F(4)(e)).

If the detained person wishes to contact a particular lawyer, but is unable to do so, then the police officer detaining the person must give the person reasonable assistance to choose another lawyer (13ZF(3)). Assistance must also be provided if the person has difficulties choosing or contacting a lawyer because of language difficulties (13ZF(4)).

Under section 13ZG, the contact that the detained person has with another person under section 13ZD or 13ZF must take place in a way that can be effectively monitored by a police officer. Further, any letters a person detained under a PDO wishes to send (other than letters to the Ombudsman or IBAC) must be given to a police officer. Subsection 13ZC(4) provides that this includes legal documents and letters to lawyers.

Under section 13ZJ, it is an offence for a person detained under a PDO to intentionally disclose to another person the fact that a PDO has been made, that he or she is being detained, or the fact that a prohibited contact order has been made in relation to the detention (unless the disclosure is authorised under sections 13ZD, 13ZE, 13ZF or 13ZH).

Offences are also created in relation to unauthorised disclosure of those matters by lawyers acting for detained persons, parents or guardians, interpreters, and third parties who have received unauthorised disclosures.

Oversight and review

If a PDO is made, a senior police officer who was not involved in applying for the order must be nominated to oversee the exercise of the powers and performance of obligations under the order, and the treatment of the person in connection with their detention. The detainee, their lawyer, or a person they are in contact with under section 13ZH(2), as well as the Ombudsman, IBAC, or a person exercising authority or enforcing the order, is entitled to make representations to the nominated senior police officer about those matters.

A person who is subject to a PDO may also, with the leave of the Supreme Court, apply to the court for the revocation or variation of the order, or of any PCO that is in force in relation to that person (section 13N). The court may grant leave if satisfied that new facts or circumstances have arisen since the making of the order.

Further, a police officer who is detaining a person must apply to the Supreme Court for revocation or variation of the order if the grounds on which it was made have ceased to exist (section 13O). Clause 8 of the bill amends section 13O(2) of the act to also require a police officer who is detaining a person under a preventative detention order to apply to a court to have the order revoked or varied if satisfied that it is appropriate to do so because new facts or circumstances have arisen since the making of the order. Previously, section 13O

only provided for an application to have the order varied (not revoked).

Clause 8 also inserts a new subsection 13V(1A) into the act which requires a police officer to release a person from detention without delay if the police officer is satisfied that the grounds on which the order was made have ceased to exist.

Under section 13ZU, proceedings may be brought before a court for a remedy in relation to a PDO, a PCO, or the treatment of a person in connection with the person's detention under a PDO. Finally, under s 13ZR, the minister must make an annual report to Parliament on any applications for or making of PDOs and PCOs, and any complaints made to the Ombudsman or IBAC.

Relevant human rights

Rights to liberty and freedom of movement

Section 21 of the charter provides that all persons have the right to liberty and security of the person, including the right not to be arbitrarily detained (subsection (2)) and the right to be informed of the reason for detention (subsection (4)).

In my view, to the extent that the right to liberty is limited by the PDO provisions, that limit is reasonable and demonstrably justifiable in accordance with section 7(2) of the charter. In the review report, the review committee stated that it was 'in no doubt that, in the circumstances in which a PDO can be made, detention for the prevention of harm to other persons is justifiable'. As noted by the review committee, the basic objective of this and other parts of the terrorism legislation is the protection of the community from the acts or potential acts of others. To the extent that PDOs enable detention for the preservation of evidence of a terrorist act that has already occurred, I consider that such a measure is justifiable on the basis that identification and prosecution of those responsible is an essential measure to prevent further terrorist acts from occurring. While I acknowledge that detaining persons without charge is a serious and unusual measure, in the limited circumstances that it is allowed under the act, that detention is justifiable in light of the seriousness of the terrorist threat and the potentially devastating consequences for the community.

I note that a court, when making a PDO, is likely to be bound to give effect to the liberty right in the charter, either because it is acting in an administrative capacity and is therefore bound by the public authority obligations the charter, or because the charter applies directly to the court by reason of section 6(2)(b). As the review committee noted, before issuing a PDO, a court would be required to consider whether there are any less restrictive means of achieving the purpose of the order. This provides a strong safeguard against the inappropriate use of PDO powers.

Further, as a person may only be detained by order of the Supreme Court in the very limited circumstances described above, I consider that the detention is for a proper reason and is therefore not arbitrary within the meaning of section 21(2).

In relation to the right to be informed of the reason for detention, in most cases the act does not limit this aspect of the liberty right. Section 13ZA requires that a detained person be given a copy of the PDO, which includes a summary of the grounds on which it was made (section 13F(4)(h)). In some cases, information may be excluded from the summary of grounds if providing that information would prejudice national security. To the extent that this will result in a

limitation on the right in section 21(4) of the charter, in my view, any limitation is reasonable and demonstrably justifiable in accordance with section 7(2) of the charter. Information about the reasons for detention will only be withheld where it is necessary to do so for the important purpose of protecting national security. The limitation is directly tied to achieving that purpose, and there is no less restrictive means by which this purpose could be achieved. I therefore consider that the limitation is justifiable.

Finally, I note that the right to freedom of movement in section 12 of the charter may be limited by the PDO provisions, which restrict a person's movement for the duration of the order. However, any restriction is reasonable and demonstrably justifiable for the important purposes of preventing terrorist acts and preserving evidence of recent terrorist acts.

Right to humane treatment when deprived of liberty and right not to be subjected to cruel, inhuman or degrading treatment

Section 22(1) of the charter provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. Subsection (2) relevantly provides that a person who is detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary. Subsection (3) provides that a person who is detained without charge must be treated in a way that is appropriate for a person who has not been convicted. Section 10(b) of the charter provides that a person must not be treated or punished in a cruel, inhuman or degrading way.

The rights in section 22(1) and section 10(b) are recognised under section 13ZB of the act, which explicitly requires that persons detained under a PDO be treated with humanity and respect for the inherent dignity of the person, and must not be subjected to cruel, inhuman or degrading treatment. Nothing in the act authorises treatment of a person which would be contrary to these fundamental rights.

I note that, as a person subject to a PDO may be detained in a prison or youth justice facility, the right to be segregated from convicted persons is relevant. However, given that contact with other persons is significantly restricted under a PDO, a person held in such a facility is unlikely to be authorised to have contact with other prisoners. As such, I do not consider this aspect of the right to be limited.

On the other hand, the limitations on contact with other persons under a PDO will result in a highly restrictive form of detention. The detention is not strictly 'incommunicado', as the detained person may have contact with a lawyer or with IBAC or the Ombudsman, which offers strong protection against the risk of inappropriate treatment while in detention. However, the restrictions effectively mean that detention may amount to solitary confinement. This has an impact upon detainees' social contact, as well as their ability to engage in activities that otherwise may reduce the adverse psychological effects of being detained, such as exercise, work or education programs. Solitary confinement may present particular difficulties for persons who suffer from mental illness, intellectual disability, or for young persons.

However, in the circumstances in which a PDO is made, I consider that these restrictions do not amount to a breach of section 22(1), section 22(3) or section 10(b). The restrictions do not amount to 'cruel, inhuman or degrading treatment' as they are not intended to punish, degrade or humiliate the detainee. They are intended to prevent the person from circumventing the purpose of the detention or from

compromising ongoing investigations into terrorist threats. The restrictions only apply for the length of time necessary to achieve the purpose of the PDO, and in any event, for a maximum of 14 days. There are therefore no less restrictive means available to achieve the relevant purpose of a PDO.

I note that the legislation makes specific provision for additional contact for young persons and for persons lacking capacity to manage their affairs. Further, the Supreme Court may authorise additional contact for a person subject to a PDO beyond that provided for under the act. This provides a further safeguard against any inhumane treatment, as the court may provide for protective measures for particularly vulnerable persons. Taking these matters into account, as well as the seriousness of the threat of terrorism, and the permissible purposes of a PDO, I am of the view that there are strong grounds for concluding that these provisions are compatible with the rights in section 22 and section 10(b).

Protection of children

Section 17(2) of the charter provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child. Section 23(1) of the charter is also relevant, as it provides that a child who is detained without charge must be segregated from all detained adults.

These rights may be limited by the act, which enables a PDO to be made in relation to a person who is 16 years or over. The power to detain minors in these circumstances is a significant one, and a measure of last resort. However, it is considered necessary given the potentially devastating consequences to the community of a terrorist act, and the demonstrated risk of radicalisation of young persons who may carry out such acts. In my view, there is no less restrictive means available to achieve the same purpose.

I note that a number of provisions in the act ensure that young persons detained under a PDO are treated appropriately and that their rights are limited no more than is necessary. These include:

The requirement that a PDO specify where a person under 18 is to be detained (subsections 13F(4) and (8)). The detention must occur in a youth justice facility unless the court is satisfied that it is reasonably necessary to detain the person elsewhere. The court must have regard to the person's age and vulnerability, and the likely impact of detention on the person.

The provision for a person under 18 to have at least 2 hours contact per day with a parent, guardian or a person capable of representing the person's interests (section 13ZH). The court making the order may also specify that the person may have more than the 2 hours daily contact provided for in the legislation (section 13F(7)).

Section 13WA applies certain protective provisions in the Children, Youth and Families Act 2005 to the person's detention in a youth justice facility. For example, section 478 of that act applies, which prohibits a number of things including physical force (except as reasonably necessary for specific purposes), corporal punishment, and psychological pressure intended to intimidate or humiliate.

Section 13ZBA provides that a minor who is detained under a PDO must not be detained with adults, except in exceptional circumstances. This could include, for

example, where it is in the child's best interests to be detained with an adult.

Taking these safeguards into account, and the fact that any application for a PDO, and particularly an application that relates to a young person, will be scrutinised with extreme care by the Supreme Court, I consider that there are strong grounds for concluding that any limit on the rights of the child is reasonable and demonstrably justifiable in accordance with section 7(2) of the charter.

The right to equality

Section 8 of the charter provides that every person has the right to enjoy his or her human rights without discrimination, and that every person is entitled to the equal protection of the law without discrimination, and has the right to effective protection against discrimination.

Section 13WA is relevant to this right. In applying section 478 of the Children, Youth and Families Act 2005 to a detainee held under a PDO in a youth justice facility, it provides that the aspect of that provision that prohibits discriminatory treatment does not apply to the extent that 'discriminatory treatment ... is reasonable and necessary having regard to the nature of the person's detention' (section 13WA(5)(g)). This potentially limits the right to equality by allowing discriminatory treatment. However, any limit must be 'reasonable and necessary', and the person imposing the limit would be subject to the public authority obligation in section 38 of the charter, so could not discriminate in a way that imposed an unreasonable limitation on the right. I therefore consider that section 13WA is compatible with the right to equality.

The right to a fair hearing

The right to a fair hearing is relevant to these provisions in two ways: first, an application for a PDO may be made ex parte, and so a person may not have the opportunity to be heard; second, monitoring of communications between detained persons and their raises issues regarding the right to legal representation and legal professional privilege.

In my view, the right to a fair hearing is not limited by these provisions. Although a PDO may be made at an ex parte hearing, if a court is concerned that the person subjected to the PDO will not be heard, the court can make an interim order to hold that person in detention while giving them the opportunity to be notified of and to appear at the hearing of the final determination of the application. I consider that a court acting in these circumstances is bound to give effect to the right to fair hearing, either because the court is acting in an administrative capacity and is a public authority under the charter, or because the court would be directly bound to do so because of the effect of section 6(2)(b) of the charter. Further, even if no interim order is made and a person is subjected to a PDO following an ex parte hearing, that person may apply to have the order varied or revoked if he or she has new information or circumstances that were not before the court when the PDO was made.

With regard to the monitoring of communications between detainees and their lawyers, the fact that police may be privy to such communications could raise an issue regarding equality of arms. It may also be relevant to the right not to be compelled to testify against himself or herself or to confess guilt, which is an aspect of the fair trial right that is also specifically protected under section 25(2)(k) of the charter. However, in my view, these concerns are addressed by the numerous safeguards in the act.

Any communication between a detainee and a lawyer for a purpose approved under the act is not admissible in evidence against the person (section 13ZG(5)). Under section 13ZJ(10), no information can be disclosed for any purpose by a police officer or interpreter monitoring such a communication unless the information was communicated in the context of the detainee or lawyer breaching the act by engaging in unauthorised communication. Section 13ZT makes clear that part 2A does not affect the law relating to legal professional privilege or client legal privilege. Finally, under section 13F(6), the Supreme Court may include a provision in a PDO directing that the contact that the person has with a lawyer under section 13ZF must not be monitored.

Given these protections, I consider that there are strong grounds for concluding that the right to a fair trial is not limited by these provisions.

Right to privacy

The right to privacy is affected by the PDO provisions in three main ways: first, by the monitoring of contact for persons under a PDO; second, through the powers granted to police in executing a PDO; and third, through the provisions enabling the taking of identification material from detained persons.

Monitoring of contact

As discussed above, any contact a person who is subject to a PDO has while in detention must be monitored by police. This constitutes a significant intrusion on a person's private communications with family members, lawyers and others. However, the interference with privacy is not unlawful, as it is authorised by the act. It is also not arbitrary, as it only occurs in circumstances where the Supreme Court has determined it appropriate that a person be detained under a PDO. If a person under a PDO were able to communicate with others without being monitored by police, this could seriously compromise the purpose of the PDO, which is to prevent a terrorist act or to prevent the destruction of evidence of a terrorist act. In these circumstances, such interference is not considered arbitrary.

Execution of PDO

A number of provisions relating to the execution of a PDO involve interferences with privacy.

Under s 13R, a police officer may require a person to provide his or her name or address if the officer believes on reasonable grounds that he or she may be able to assist the officer in executing a PDO.

Under section 13S, if a PDO is in force, and a police officer believes on reasonable grounds that the subject of the order is on any premises, the police officer may enter and search those premises using any force that is reasonably necessary. Such entry must not occur between 9.00 p.m. and 6.00 a.m., unless it would not be reasonably practicable to take the person into custody at another time, or unless it is necessary to enter during those hours in order to prevent the concealment, loss or destruction of evidence concerning a terrorist act.

Under section 13T, a police officer may conduct a search of a person taken into custody under a PDO to ascertain whether the person is carrying any seizable items, or evidence of, or evidence relating to, a terrorist act. The officer may seize any such thing found as a result of the search.

The interferences with privacy enabled by these provisions are not unlawful, as they are provided for under the act. They are also not arbitrary, as they enable police to require information, to search premises, or to search persons in restricted circumstances where it is necessary to do so to effectively carry out the PDO. I therefore consider that these provisions do not limit the right to privacy.

Taking of identification material

Section 13ZL provides that identification material may be taken from a person detained under a PDO if the person consents in writing, or if a police officer believes on reasonable grounds that it is necessary for identification purposes, or to document an illness or injury. Police officers may use such force as is reasonably necessary to take the identification material.

No identification material (other than hand, finger, foot or toe prints) may be taken from a person under 18 or a person who is incapable of managing his or her affairs without an order from the Magistrates Court or the Children's Court. If identification material is taken from such a person, it must be done in the presence of a parent, guardian or other appropriate person. Material may be taken from a person under 18 without an order from the court if both the person and his or her parent or guardian (or other appropriate person) consents in writing.

Identification material taken from a person detained under a PDO may only be used for identification purposes. The material must generally be destroyed after 12 months.

While these provisions permit an interference with privacy, I consider that the interference is neither unlawful nor arbitrary. The circumstances in which identification material can be taken and used are strictly confined by the legislation, and safeguards are in place to ensure that identification material is not inappropriately taken from young persons or persons lacking the capacity to consent. I therefore consider that these provisions do not limit the right to privacy.

Right to freedom of expression

The right to freedom of expression is significantly affected by the PDO provisions. In particular, as set out above, a detained person is subject to serious restrictions on who they can contact, and what matters can be discussed during that contact. The right is further restricted where a PCO is made. Third parties are also restricted in relation to what information can be disclosed regarding a PDO.

While these restrictions are significant, in my view they are permissible restrictions in accordance with subsection 15(3) of the charter, as they are reasonably necessary to protect the rights of others and to protect national security, public order and public health. Where a threat of terrorism exists, or where a terrorist act has occurred and there is a risk that evidence will be destroyed, limiting the communication of persons suspected to be involved in those matters may be necessary to ensure that the aim of the PDO is not compromised, and that the public can be protected and public order maintained through effective investigation of offences. For these reasons, I consider that the restrictions imposed under PDOs and PCOs are compatible with the right to freedom of expression.

Charter compatibility of the PDO scheme

The PDO provisions affect a number of fundamental human rights. In particular, the potential for solitary confinement, the detention of young persons, and the monitoring of

communications with lawyers have significant implications in relation to the right to be treated humanely while in detention, the rights of children, and the fair hearing right. In light of the above analysis, and in particular the potential limitation of the rights under sections 17(2), 22 and 24 of the charter, I consider that, while there are strong grounds for concluding that extending the operation of the PDO provisions is compatible with the charter, the bill may be partially incompatible with the charter.

Nevertheless, I consider that the object of the PDO provisions justify their continued operation for the extended period set out in the new sunset provision. In my view, the PDO scheme is fundamentally important for the protection of the Victorian community given the potentially devastating consequences of terrorist acts. I consider that adequate safeguards are in place to ensure that the powers under the scheme are not used inappropriately. The fact that only one PDO has been issued since the powers were introduced nearly a decade ago demonstrates the effectiveness of such safeguards. I therefore consider that any risks to human rights inherent in a scheme of this nature are adequately balanced by the importance of the objectives of the legislation.

Part 3 — police powers to detain and decontaminate

Part 3 of the act provides Victoria Police with special powers for use in the event of a chemical, biological or radiological attack, in order to protect the public from contamination.

Where a senior police officer reasonably believes that a terrorist act has occurred, or may have occurred, and that the area or the people in it will be or may have been exposed to contamination by substances released as part of the act, that officer may authorise another police officer to exercise the powers set out in part 3.

Under section 18, for the purpose of preventing or limiting the spread of any contamination caused by the terrorist act, or suspected terrorist act, the police officer authorised may:

- direct persons to enter, not to enter or to leave any particular premises or area;
- detain a person (whether alone or with others);
- dispose of, destroy or seize any source of contamination or possible contamination, or anything contaminated;
- direct a person to submit to decontamination procedures by emergency services;
- enter a place in the suspected contaminated area, without the consent of the occupier, in order to carry out any of the above actions.

The authorisation enabling the use of these powers lasts for a maximum of eight hours, unless extended by a maximum of further 16 hours by the Chief Commissioner of Police, a deputy commissioner or an assistant commissioner and with the agreement of the agency under the State Emergency Response Plan.

Sections 18(7) and 18(8) make it an offence to fail to comply with a direction under 18(1)(b), or to hinder, obstruct or delay a police officer exercising any of the powers under 18(1). For dealing with urgent situations, where a person does not comply with a direction under section 18, section 21 provides power for an authorised police officer, or another police officer acting under an authorised officer's direction to use reasonable and necessary force to ensure compliance with the direction.

Relevant human rights

The right to liberty and security of the person

The right to liberty is relevant to section 18(1)(c) of the act, which provides power for police to detain a person. In my opinion, although they can result in the deprivation of liberty, the detention powers are not arbitrary. The powers are only exercisable for the purpose of preventing or limiting the spread of any contamination caused by the terrorist act, or suspected terrorist act. Like the other powers in section 18, the detention power only operates for a limited period, and only for so long as the preconditions for the authorisation of the powers are met. Further, section 18A provides specific safeguards for persons detained under section 18, namely that police must facilitate any reasonable request by a detained person for communication or medical treatment.

Accordingly, I consider that the detention powers are compatible with section 21 of the charter.

The right to freedom of movement

The right to freedom of movement is relevant to the direction powers in section 18(1)(b) and (d) of the act, which enable police to direct persons to enter, not to enter or to leave any particular premises or area, and to direct persons to submit to decontamination procedures by emergency services. Although these direction powers do not amount to physical detention, they do constitute a potential restriction on a person's movement, particularly as it is an offence to fail to comply with a direction.

However, any limitation on the right to freedom of movement is reasonable and justifiable under section 7(2) of the charter. It is recognised that the right to freedom of movement is often subject to restrictions necessary to protect public order, public health or morals or the rights and freedom of others. The purpose of the direction power is to ensure that the public can be efficiently moved on from areas of contamination to limit the public's exposure and protect them from chemical, biological or radiological contamination. The direction powers only operate for a limited period, and only for so long as the preconditions for the authorisation of the powers are met. Further, the offence of failing to comply with a direction under 18(1)(b) is subject to a 'reasonable excuse' defence.

For these reasons, in my opinion the detention powers constitute a reasonable and justifiable limitation on the right to freedom of movement and are therefore compatible with the charter.

The right to property

The powers contained in section 18(1)(ca) of the act, which authorise police to dispose of, destroy or seize any source of contamination or possible contamination or anything that is contaminated, have the potential to interfere with a person's property. However, the circumstances in which police may dispose of, destroy or seize property are clearly set out in the legislation and confined to only interfering with property that is linked to contamination or possible contamination. Further, the powers may only be used within the prescribed time limits of the authorisations. In my opinion, any interference with property occasioned by these powers is in accordance with law and is therefore compatible with the charter.

The right to privacy

The right to privacy is relevant to the power to enter property without consent in section 18(1)(e). Further, because the right

to privacy includes notions of private life and personal autonomy as well as information privacy, it is relevant to the power in s 18(1)(d) to direct a person to submit to decontamination and the powers of police in section 21 to use reasonable and necessary force to ensure compliance with a direction (including, for example, forcibly decontaminating a person).

In the case of entry to residential premises, occupiers are entitled to a higher expectation of privacy. Accordingly, the power to enter premises without consent is tailored and limited to the important and urgent circumstances set out in s 18(5), namely that there are reasonable grounds that immediate entry to that place is necessary to ensure the safety of any person or prevent or limit the spread of contamination caused by the terrorist act or suspected terrorist act.

In the case of the power to direct a person to submit to decontamination, the power is confined and clearly confined to the circumstances of preventing or limiting the spread of contamination.

The carefully circumscribed powers reflect an appropriate balance between ensuring compliance with the protective purpose of the provisions and individual privacy. Furthermore, each power has appropriate safeguards to ensure that any interference with privacy will not be arbitrary. For these reasons, I consider that the powers in section 18(1)(e) and 18(1)(d) do not limit the right to privacy.

Right to be presumed innocent — reverse onus

The right in s 25(1) of the charter is relevant where a statutory provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that he or she is not guilty of an offence. This right is relevant to section 18(7) of the act, which makes it an offence to refuse or fail to comply with a direction by police to enter, not to enter or leave any particular premises or area, unless the person has a reasonable excuse.

By creating a ‘reasonable excuse’ exception, the offence in section 18(7) may be viewed as placing an evidential burden on the accused, in that it requires the accused to raise evidence as to a reasonable excuse. However, in doing so, this offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of a reasonable excuse, which will ordinarily be peculiarly within their knowledge, the burden shifts back to the prosecution who must prove the essential elements of the offence. I do not consider that an evidential onus such as this provision limits the right to be presumed innocent, and courts in other jurisdictions have taken this approach.

As such, in my opinion, section 18(7) does not limit the right to be presumed innocent.

I note that the same analysis applies in relation to the reverse onus provisions in section 13R and section 13T of the act, which are referred to above, and the offence provisions in part 3A of the act, discussed below.

Other human rights relevant to the use of force

The use of force provision in section 21, which provides for the power to use reasonable force to compel a person to obey a direction may involve the physical restraint or apprehension of a person, which may constitute an interference with an offender’s rights to life (s 9), bodily privacy (s 13), security of person (s 21), humane treatment when deprived of liberty

(s 21) and protection from cruel, inhuman or degrading treatment (s 10).

The use of force may reasonably limit these rights provided it occurs within the framework of the law and with the objective of protecting public order, people’s lives or property. Human rights principles require that the law and policies governing the use of force protect life to the greatest extent possible and safeguard the circumstances in which force is used. Any use of force must be no more than absolutely necessary and strictly proportionate to achieving a clearly defined lawful purpose.

Section 21 of the act accords with these principles as it permits reasonable force to be used only in strict circumstances directly connected to protecting life. It is only authorised where a terrorist attack has occurred, or may have occurred, and that the area or the people in it will be or may have been exposed to contamination by substances released as part of the act. The use of force power is only enlivened where a direction has been given for the purpose of preventing or limiting the spread of any contamination caused by the terrorist act, or suspected terrorist act, and a person has refused to comply with that direction, and is therefore available as a last resort.

Accordingly, I am satisfied that any interference with human rights caused by section 21 is proportionate to the risk, and is reasonable and justified in line with section 7(2) of the charter.

Part 3A — special police powers

Part 3A of the act allows for the authorisation of the police to exercise special powers in limited circumstances. Authorisation is granted by a judge of the Supreme Court, who must be satisfied that particular grounds exist for the use of the special powers. The chief commissioner is also able to make an interim authorisation, with the approval of the Premier, to use special powers, however such interim authorisation must be confirmed by the Supreme Court within 24 hours.

For the purposes of achieving the objective of the authorisation, the powers that may be exercised by the police are as follows:

obtain disclosure of identity (s 21O): If a police officer believes a person to be the subject of the authorisation, in the company of a person who is the subject of the authorisation, in a vehicle subject of the authorisation, or in an area which is the subject of an authorisation, the officer may request proof of that person’s identity, and may detain the person for as long as is necessary for the purpose of doing so. It is an offence to fail or refuse to comply with a request from a police officer under this provision, or to give a false name or address. The offence provisions contain a defence of reasonable excuse, with an evidential onus on the accused to make out the defence.

search persons (s 21P): If an officer believes that a person meets the criteria outlined above in relation to obtaining disclosure of identity, the officer may, without warrant, stop and search the person and anything in the possession or control of that person. The power to search a person includes the power to carry out an ordinary search, a frisk search or, where someone is suspected to be the target of the authorisation, a strip search may be undertaken. The act provides for limits and rules on the conduct of searches, and safeguards for the protection of

a person's privacy and dignity during a search (schedule 1). In particular, no strip search may be carried out on a child under the age of 10 years, and special rules apply to minors between the age of 10 and 18 years or persons of limited intellectual ability, who may only be strip searched in the presence of a parent or guardian, unless the seriousness and urgency of circumstances require otherwise.

search vehicles (s 21Q): Again, if the criteria outlined above is met, an officer may, without warrant, stop and search a vehicle and detain the vehicle for as long as is necessary to enable the search to be conducted, and may order the driver or rider of the vehicle to remove it from, or to keep it within, the relevant area.

move vehicles (s 21R): Where a particular geographical area is the subject of the authorisation, an officer may move or have moved to the nearest convenient place any vehicle parked or left standing in the area if, in his or her opinion, it is a danger to other persons or vehicles, is causing or likely to cause congestion or is hindering the exercise of the special powers authorised under this part. Reasonable force may be used to enter the vehicle for this purpose.

enter and search premises (s 21S): If the subject of the authorisation is a person or vehicle, and a police officer reasonably suspects that the person is on certain premises, then the officer may enter and search those premises. Further, any premises which are themselves in an area which is the subject of the authorisation may similarly be searched. The officer may order any person or group of people to leave, or not to leave, the premises entered and searched. The act provides duties on the officer to do as little damage as possible.

place a cordon around a target area (s 21T): An officer is empowered to cordon off any area which is the subject of the authorisation, or any part of it. Persons or groups of people may be ordered to leave, or not to leave, the cordoned-off area.

seize and detain things (s 21U): In connection with a search carried out under this part, a police officer may seize and detain anything that the officer reasonably suspects may be used, or may have been used, to commit an act of terrorism, or anything that the officer reasonably believes may provide evidence of the commission of a serious indictable offence. Provision for the return or disposal of anything seized is made in the section.

reasonable force (s 21V): In the exercise of any of the above special powers, the use of reasonable force is expressly permitted (s 21V).

The circumstances that allow an authorisation to be given for the use of special police powers are:

to secure an event that is likely to be attended by a large number of people, or a gathering of 'prominent persons', where reasonable grounds exist that the event may be the target of a terrorist act and where the giving of authorisation targeting a particular area is necessary to assist in protecting any person attending the event from a terrorist attack (s 21B);

where a terrorist act is occurring, or is expected to occur within the next 14 days, to prevent that act, reduce the threat of it or to reduce the potential impact of it (s 21D);

to assist in the recovery process following a terrorist act, or to assist in the apprehension of those responsible and to preserve evidence (s 21E); or

to protect essential services infrastructure from a terrorist act, to mitigate the effect of such an act on the service or on people in the vicinity or to assist in the recovery of an essential service (s 21F). Unlike the first three grounds, authorisation under this ground must be given by order of the Governor in Council, on the recommendation of the minister responsible for the service, made with the approval of the Premier and in accordance with advice received from the chief commissioner.

Various safeguards exist regarding the operation of the special police powers, including a number of checks and balances built into the provisions to prevent misuse of the powers, outlined below. There are also provisions which allow for a level of ministerial, judicial, parliamentary and public scrutiny, including reporting requirements of the Premier to the Parliament, the oversight of the Supreme Court and that only the chief commissioner may apply for an authorisation with prior approval of the Premier.

Relevant human rights

The range of special powers available to police where an authorisation has been given under this part is relevant to a number of charter rights:

requiring a person to disclose their identity is relevant to the right to privacy in section 13 of the charter;

stopping and searching of persons is relevant to the right to freedom of movement under section 12 (and, if the stopping occurs for long enough, the right to liberty in section 21) as well as the right to privacy in section 13 of the charter;

entering a vehicle for the purpose of moving it, and entering and searching premises is relevant to the right to privacy in section 13 of the charter;

cordoning off areas, and directing persons not to enter or leave such an area is relevant to the right to freedom of movement in section 12, and on occasion, the right to liberty in section 21;

seizing and detaining items is relevant to the right to property in section 20 of the charter;

the use of reasonable force is arguably relevant to the protection against inhuman and degrading treatment in section 10 of the charter;

the use in offence provisions of 'reasonable excuse' defences bearing an evidential onus on the accused is relevant to the right to be presumed innocent in s 25(1) of the charter; and

the potential of such powers to be exercised in relation to young persons is relevant to the protection of children in section 17(1).

In my consideration of these powers, I note observations of the review committee that these special powers are not so far removed from powers available to police on other occasions as to render them remarkable, and are considered necessary having regard to the circumstances for which they were designed.

Where a search is authorised by the court or where there are reasonable grounds to suspect a criminal offence and it is not practicable to seek a warrant, the detention and search of persons, vehicles and property is compatible with the rights to privacy, movement and liberty. With regards to the exercise of special powers in respect of a particular person named or described in authorisation, I am satisfied that the exercise of such powers is compatible with the rights in the charter having regard to the strict processes for authorisation, including the seriousness of the criteria with which a court must be satisfied. Similarly, the exercise of such powers with respect to a particular vehicle would only pose a low level of interference with charter rights and are likely to be compatible.

There is likely to be a limitation on charter rights, particularly the right to privacy, from the exercise of special powers in relation to 'target' areas, which allows the special powers to be exercised in relation to any person, any vehicle and any premises within the area described in the authorisation. Of particular relevance to my consideration is the statement of compatibility made to the Parliament in respect of the Summary Offences and Control of Weapons Acts Amendment Bill 2009, which declared a partial incompatibility with the charter regarding the provision of stop, search and seize powers that could be exercised on all persons in designated areas to detect carriage of weapons, without need for reasonable suspicion on the part of officers exercising such powers. However, in contrast to those provisions, I am of the view that the seriousness and urgency of the objective of mitigating and preventing the risk of terrorist acts, and the existence of the embedded safeguards, judicial oversight and constrained authorisation processes, leads to the conclusion that any limitations arising from the exercise of the special powers would be reasonable and proportionate. I am of the view that where the statutory test for authorisation is met, and where it is considered appropriate to make an authorisation in relation to a specified area, it is not an arbitrary interference with privacy to exercise special powers in respect of any person, vehicle or premises in that area.

I note that these powers, enacted since 2003, have been used on just one occasion and this involved an extraordinary set of circumstances during the Commonwealth Games in Melbourne in 2006.

Accordingly, it is my view that, given the seriousness of the circumstances in which an authorisation to use such powers would be granted, part 3A of the act, including the provisions regarding searches in the schedule to the act, are compatible with the charter.

Part 5 — protection of counterterrorism information

Sections 23 and 24 of the act contain measures to protect the confidentiality of sensitive police investigative methods where appropriate. The provisions allow for the exemption from disclosure in legal proceedings of 'counterterrorism information'. This is defined in section 3 as information that relates to the covert methods of investigation used in relation to a terrorist act or a suspected act.

The act does not provide a blanket protection from disclosure of such information. Rather, a case-by-case decision must be made by the court, balancing the competing public interests of protecting the information relating to the covert methods of investigating the terrorist act or suspected act against providing an accused person with all the evidence available. The procedures replace the balancing exercise required of the court under the law relating to public interest immunity, and

give effect to the process by which the court deals with competing issues by enabling greater participation of an accused without undermining the reasons why the documents should be kept confidential.

Under section 23, if in any legal proceedings an issue arises relating to counterterrorism information as defined above, a person may be excused from disclosing that evidence if the court is satisfied that the disclosure of it would prejudice the prevention, investigation or prosecution of an act of terrorism or suspected act; and the public interest in preserving the confidentiality of the information outweighs the public interest in its disclosure.

In balancing these competing interests, the court must consider which of the parties is seeking the disclosure, the nature of the proceedings and the importance of the information to the case, and the likely effect of disclosure. However, the court is not restricted to those considerations and may inform itself as it sees fit in reaching a decision. The court is entitled to inspect any documentary evidence before ruling on it.

Relevant human rights

Right to a fair hearing and rights in criminal proceedings

The principle of equality of arms in the fair hearing right under section 24 of the charter, discussed above, is relevant to these provisions. Section 25(2) of the charter is also relevant, which provides that a person charged with a criminal offence is entitled to certain minimum guarantees, including the right to be informed of the nature and reason for the charge, to have adequate time and facilities to prepare a defence, to examine or have examined witnesses against him or her, and to obtain the attendance and examination of witnesses under the same conditions as witnesses for the prosecution.

As is evident from the rights in sections 24 and 25 of the charter, one of the basic tenets of the right to a fair trial is that the accused is entitled to know the case against him or her. However, this has to be balanced against the need to keep some sensitive information from the accused or from the public. This balancing exercise is often carried out by the courts in situations where they have to decide whether to admit evidence which may be subject to public interest immunity.

In my opinion, although the rights in sections 24 and 25 of the charter are engaged by part 5 of the act, the limitation on those rights is proportionate, reasonable and justified, taking into account the following considerations:

The nature of the information to which the provisions apply, and the purpose of protecting sensitive police investigative methods; and

The fact that the provisions do not interfere with the Supreme Court's ability to conduct its proceedings as it sees fit, including the manner in which it evaluates the evidence once submitted, or the manner in which it affords procedural fairness after the application is made; and

The fact that the court is given guidance at section 23(2) on matters to be taken into account in ensuring fairness whilst carrying out the important balancing exercise referred to above; and

The further fact that section 23(3) makes it clear that the court may inform itself in any way it sees fit, and in

doing so, may inspect any document for the purpose of deciding whether disclosure should be ordered (section 24).

Accordingly, I consider that part 5 of the act is compatible with the charter.

The Hon. Steve Herbert, MP
Minister for Training and Skills

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).

Mr JENNINGS (Special Minister of State) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Counterterrorism legislation in Australia exists as part of a nationally agreed framework comprised of commonwealth legislation, the referral of powers by the states and complementary state legislation.

Under this legislation, a range of powers exist to provide relevant tools for law enforcement agencies to respond to the threat of terrorist acts. These powers do not target any particular individuals or groups within our society. The powers are applicable irrespective of the ideological justification used by terrorists and terrorist groups.

The rise of ISIS and incidents over the past two years or so has provoked a number of changes to existing legislation and consideration of the continuing appropriateness of existing legislation and practice by all jurisdictions.

The commonwealth has made several amendments to its own legislation. There has been a review by the Council of Australian Governments of commonwealth legislation. In Victoria, there was a review of counterterrorism legislation, culminating in a report to the Parliament tabled last year on 16 September 2014.

This bill makes a number of technical amendments to the Terrorism (Community Protection) Act 2003 (the act), including the implementation of some of the recommendations of the Victorian review.

This bill supports the safety of Victorians by ensuring the powers in the act remain relevant and necessary. It complements the government's broader approach to social cohesion and community resilience that focuses on the safety of Victorians, while also emphasising the need to work closely with communities to understand and address violent extremism.

Sunset provisions

The bill includes an important amendment to sunset provisions. There are two separate sunset provisions in the act. The first, in section 13ZV, relates to preventative detention orders and prohibited contact orders.

The Supreme Court, on the application of police, may issue a preventative detention order (PDO). The PDO authorises a person to be taken into custody and detained for up to

14 days. The order is preventative. It protects the public from harm by preventing a person supporting or participating in a terrorist act or from destroying relevant evidence following a terrorist act. Prohibited contact orders restrict a person from having contact with specified persons if there are security reasons that justify such an imposition.

Under section 13V, after 9 March 2016, preventative detention orders and prohibited contact orders cease to have any effect and cannot be applied for by police. The bill repeals that provision.

These powers have not been widely used in Victoria. Police successfully sought the first preventative detention order in April in relation to the alleged attack during ANZAC day celebrations. They have been used on several occasions in New South Wales. Despite their infrequent application, recent events and the evolving threat environment demonstrate the need to retain these powers. All other jurisdictions have similar powers. The majority in the Victorian review also concluded the powers should be retained.

The second sunset provision is contained in section 41. It provides that the act expires in its entirety on 1 December 2016. The bill retains that sunset provision but amends the date to 31 December 2021.

The sunset provisions are a safeguard that ensures the practical operation of the act's provisions remain appropriate and balanced. It is clear that there remains a need to retain this legislation.

When the Victorian review completed its report last year, the requirement for a statutory review ended. This bill amends the act to require another statutory review to be completed and tabled in the Parliament before 31 December 2020. The government recognises the powers in the act must be maintained but considers the amendments to the sunset periods and the requirement that there be another statutory review are important elements that demonstrate to all Victorians that the existence and use of these powers is subject to monitoring and, ultimately, overseen by the Parliament.

Victorian review recommendations

The Victorian review made 13 recommendations. Many of those recommendations are consistent with amendments recommended by the earlier COAG review.

The bill implements six recommendations made by the Victorian review. Six of the remaining recommendations are under consideration, including those which are the subject of ongoing discussions between the commonwealth and the states and territories. Those discussions have not been completed sufficiently to prepare relevant amendments.

The government will not be implementing recommendation 4 of the Victorian review to provide for delayed notice to be given to an occupier of premise(s) and any adjoining premise(s), which are the subject of an executed covert search warrant.

Recommendations 2 and 3 relate to the covert search warrant provisions. The recommendations were to amend the act to clearly provide for 'remote entry' or 'remote access' to data held on a 'target' computer and that a definition of 'vehicle' be included in section 3, so that it applies consistently to the whole of the act.

Covert search warrants are issued by the Supreme Court on the application of police, if the court believes that a terrorist act is likely to happen, or has happened, and the warrant will assist police in responding to or preventing the terrorist act. Warrants are issued in relation to 'premises'. They are covert because the occupier or owner of the premises is not made aware of their existence.

Covert search warrant powers have been used once in 2004–05. In 2012–13, six covert search warrants were issued by the Supreme Court, but not executed by Victoria Police. They have not been otherwise used. These powers are not used often but they remain an important tool for law enforcement.

Technological advancements since the act first commenced allow a person's computer to be accessed by 'remote entry' without police being physically present. It is safer for police, less intrusive, and may negate the need for a physical search if nothing of concern is revealed.

The bill amends section 9(1) to include the ability of police to search by means of remote entry. A definition of 'remote entry' is inserted into section 3. The bill also amends the relevant reporting requirement to include the number of occasions when equipment was accessed by remote entry. The amendments do not affect the threshold requirements that police must meet in order to persuade a court to issue a covert search warrant. They simply add the ability to conduct a search by remote entry to the list of activities that are already authorised when a covert search warrant is issued.

The bill inserts a definition of 'vehicle' into section 3, providing a consistent approach for the purposes of the entire act. The specific definition of 'vehicle' for the purposes of part 3A — special police powers is repealed.

This change clarifies the term 'vehicle' for the whole act. The definition of 'vehicle' covers all forms of transportation, and includes a vessel and an aircraft.

The bill implements recommendations 7, 9 and 10 in relation to PDOs. Recommendation 7 recommended an amendment to provide that a PDO must contain the name of the person in relation to whom it is made, or the name by which the person is known to police.

Under section 13F(4), a preventative detention order must, amongst other things, state the name of the person to whom it relates. If police do not know the true identity of a suspect, they cannot apply for an order. The use of false names or aliases is not uncommon. Such aliases may appear on official, though false documents, such as passports and drivers licences. The bill addresses this problem by amending section 13F(4) to require that an order must set out the name of the person or, if the name is uncertain, the name or names by which the person is known to police.

Recommendation 9 of the review recommended an amendment to provide that the responsibility for the welfare of a detainee transfers from the police to the prison authorities at the same time as the detainee transfers from the custody of one to the other.

Division 5 of the act imposes requirements as to the humane treatment of a person subject to a PDO. Under section 13ZB, a person subject to a PDO must be treated with humanity and respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment. The remainder of part 5 imposes requirements in relation to the treatment of a person, their contact with others (including family, the Ombudsman, lawyers), prohibiting questioning of the person, requirements

for a detained person under 18, disclosing information and taking identification material. Section 13ZN creates an offence where a person, through act or omission, contravenes these safeguards.

Under section 13W, the police officer detaining a person under a PDO may request the secretary of the Department of Justice and Regulation to authorise the transfer of that person to a prison. The police officer making the request to the secretary retains overall responsibility for the detainee while they are in prison. However, that police officer has no actual control over the person when they are in prison detention.

This potentially results in a situation where a police officer has no actual control over what happens in a prison but may potentially be liable under the offence provision in section 13ZN if prison personnel contravene safeguards.

The bill amends section 13W to clarify that the responsibility of the police officer does not apply only to the extent that the police officer cannot reasonably perform any of the various obligations. The section already makes it clear that the governor of a prison assumes responsibility for a person when they are transferred. The police retain an overriding responsibility for a PDO and the ability to enter a prison at any time for purposes connected with the PDO.

Recommendation 10 of the review recommended that the act be amended to provide that, as soon as is practicable after the detaining officer becomes satisfied the grounds on which a PDO was made have ceased to exist, the detainee must be released. Recommendation 11 recommended that the act be amended to require that police apply to the court for a variation or a revocation depending on the circumstances if they are satisfied that the grounds on which the order was made have ceased to exist or the facts and circumstances on which the order was based have changed.

Under section 13O, where the police officer detaining a person under a PDO is satisfied that the grounds on which the order was made have ceased to exist, they must apply to the Supreme Court to revoke the order. There is no corresponding requirement that, in such a circumstance, the person must be released from detention. In other words, whilst there is a duty on the police officer to make an application to the Supreme Court, there is no corresponding duty to release the person from detention and, in these circumstances, the person potentially remains in detention when no basis for that detention exists.

The bill amends section 13V by inserting a new subsection (1A) that requires the police officer detaining a person to, without delay, release them or arrange for their release if satisfied that the grounds on which the order was made have ceased to exist. This amendment operates as a further safeguard for a person subject to a PDO by recognising that their detention ought to cease as soon as the basis for that detention ceases. A similar provision appears in the New South Wales legislation. In this situation, the police must also make an application to revoke the PDO under section 13O(1).

Section 13O requires a detaining police officer to make an application to the Supreme Court if they are satisfied that, because of new facts or circumstances, it is appropriate that the order be varied. In this situation, the court can vary the order but not revoke it, notwithstanding it may form the view that revocation is appropriate given the changed facts or circumstances. Under section 13N, an application by a person detained under a PDO to revoke or vary the order can result in

the court either revoking or varying the order because of new facts and circumstances.

As noted by the Victorian review, there is no basis for this distinction. The bill amends section 130 to make it clear that where the detaining police officer is satisfied that either the grounds on which the PDO was made no longer exist or the facts or circumstances have changed, they must apply for a revocation or a variation of the PDO. The Supreme Court will have the power to revoke or vary the order.

Reporting amendment

Section 21M requires the Premier to cause a report to be prepared about the operation of part 3A (special police powers). The report must be laid before each house of the Parliament within 15 sitting days of it having been completed. The Attorney-General has administrative responsibility for the act (except for part 4, which is the administrative responsibility of the Minister for Police). The bill makes a minor amendment to substitute the reference to the Premier with the Attorney-General, thereby transferring responsibility for tabling the report to the Attorney-General.

Further amendments

Six of the remaining recommendations of the Victorian review are still under consideration. A number of them are affected by ongoing discussions between all jurisdictions. The government will consider further amendments when discussions have been completed and jurisdictions are in general agreement as to the need for and scope of further amendments.

The range of powers in the act exist to provide relevant tools for law enforcement agencies to respond to the threat of terrorist acts.

The amendments are a necessary response to the evolving threat of terrorism and clarify the operation of certain powers and provisions but do not alter threshold requirements or detract from any safeguards.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 19 November.

CHILD WELLBEING AND SAFETY AMENDMENT (CHILD SAFE STANDARDS) BILL 2015

Introduction and first reading

Received from Assembly.

Read first time for Ms MIKAKOS (Minister for Families and Children) on motion of Mr Jennings; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Ms MIKAKOS (Minister for Families and Children), Mr Jennings tabled following statement

in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Child Wellbeing and Safety Amendment (Child Safe Standards) Bill 2015 (the bill).

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

Overview

The bill will amend the Child Wellbeing and Safety Act 2005 (the principal act) to provide for standards in relation to child safety with which certain entities must comply. The bill will also amend the Commission for Children and Young People Act 2012 to improve the operation of that act and the Education and Training Reform Act 2006 in relation to the definition of child abuse.

The bill is another important step in implementing the government's response to recommendation 12.1 of the report of the Family and Community Development Committee of the Parliament: *Betrayal of Trust — Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (Betrayal of Trust report).

Recommendation 12.1 of the *Betrayal of Trust* report recommended that the government review its contractual and funding arrangements with education and community service organisations to ensure they have a minimum standard for ensuring a child-safe environment and consider extending a standard for other organisations or sectors that have direct and regular contact with children.

The bill will empower the minister to make standards (the child safe standards) to ensure that in the operation of applicable entities, the safety of children is promoted, child abuse is prevented and allegations of child abuse are properly responded to. The minister must publish the child safe standards in the *Government Gazette*.

The bill also includes a definition of 'child abuse' in the principal act and amends the definition of 'child abuse' in the Education and Training Reform Act 2006 so that 'child abuse' has the same meaning as it has in the principal act.

Human rights issues

The following right under the charter act is potentially relevant to the bill: right of children to protection (section 17(2)).

Protection of children

Section 17(2) of the charter act provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by reason of being a child. Section 17(2) recognises that children are vulnerable because of their age and entitled to special protection.

Clause 17 of the bill provides for the minister to make child safe standards. Clause 19 requires certain entities to comply with the child safe standards, unless the entity is exempt under clause 22, or the regulations provide that the entity is

exempt from the requirement to comply with the child safe standards, or the entity is prescribed under clause 20 or belongs to a class prescribed under clause 21.

Clauses 20 and 21 of the bill allow for the prescribing of additional entities or class of entities by regulation, to enable the range of entities to which the child safe standards apply to be expanded if further classes of entities or individual entities are identified as being required to comply with the child safe standards.

Clause 23 provides that the regulations may also prescribe that an individual who is not an applicable entity and who carries on a business that belongs to a prescribed class and that provides services specifically for children, or facilities specifically for use by children who are under the individual's supervision, must comply with the child safe standards on and after the day prescribed.

I consider that the provisions of the bill promote the right of children to protection, as it will ensure a consistent approach to child safety by entities that: (a) provide any services specifically for children; (b) provide any facilities specifically for use by children who are under the entity's supervision; or (c) engage a child as a contractor, employee or volunteer to assist in the provision of services or facilities.

Jenny Mikakos, MP
Minister for Families and Children

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).

Mr JENNINGS (Special Minister of State) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill proposes amendments to the Child Wellbeing and Safety Act 2005 to enable the introduction of minimum compulsory child safe standards to better protect children from the risks of abuse.

The bill will insert a power in the Child Wellbeing and Safety Act 2005 for the minister to determine minimum standards that organisations providing services to children must comply with in order to create and maintain a child safe environment.

On 13 November 2013 the Family and Community Development Committee (the committee) tabled to the previous Parliament its report entitled *Betrayal of Trust — Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations (the Betrayal of Trust inquiry)*. The committee made a number of findings and recommendations about the need to improve organisations' responses to child abuse and prevent child abuse from occurring in organisations.

This bill substantially implements recommendations 12.1, 13.1 and 13.2 of the Betrayal of Trust inquiry.

Recommendation 12.1 of the Betrayal of Trust inquiry provided that the government review its contractual and funding arrangements with education and community service organisations that work with children to ensure minimum standards for ensuring a child safe environment. The report further recommended that the government consider extending the standards for child safe environments to other organisations or sectors that have direct and regular contact with children.

The proposed scope of organisations that will be required to comply with the child safe standards gives full effect to the recommendation of the *Betrayal of Trust* report, by ensuring that there is a minimum standard for child safety in all organisations providing services to children, not just services funded by government. This scope also reflects feedback from stakeholder consultations.

The bill includes a power to prescribe additional entities or class of entities within scope of the child safe standards. For example, additional organisations could be prescribed as within scope of the standards in response to recommendations from the Royal Commission into Institutional Responses to Child Abuse.

This bill meets an election commitment by implementing key recommendations of the Betrayal of Trust inquiry. The government is committed to implementing all of the inquiry's recommendations and has already responded to the majority of the recommendations.

This bill complements and builds on the Education and Training Reform Amendment (Child Safe Schools) Act 2015 which was the first step towards implementing recommendations 12.1 and 16.1 of the *Betrayal of Trust* report. The Education and Training Reform Amendment (Child Safe Schools) Act 2015 ensures that all Victorian schools are required to take action to better manage and reduce the risk of child abuse, including in responding to allegations of child abuse.

The bill will enable the introduction of standards to improve child safety in all organisations that provide services for children in Victoria, and improve the manner in which these organisations respond to allegations of abuse in relation to children.

The child safe standards will drive cultural change in organisations so that protecting children from abuse is embedded in everyday thinking and practice. Further, the organisations proposed to be subject to the standards are wideranging and different. For these reasons, principle-based standards supported by capacity building activities are proposed. This will enable the diverse range of organisations in scope some flexibility in how they meet the requirements, and ongoing improvement will remain a focus of the standards.

Consultations with stakeholders took place from late 2014 to early 2015 to inform the content of the standards, their scope and how organisations can be supported to meet the standards.

The child safe standards include requiring organisations to develop a code of conduct that establishes clear expectations for appropriate behaviour with children, human resources practices that reduce the risk of child abuse by new and

existing personnel, and policies for reporting and responding to allegations of child abuse.

Many organisations may have existing policies and procedures which aim to keep children safe. The child safe standards will, as far as possible, use existing mechanisms to improve child safety in organisations and increase consistency across sectors.

Future oversight and monitoring mechanisms for the standards are being considered by government.

The child safe standards will commence in two phases. It is intended that organisations regulated or funded by government will be required to comply with the standards from 1 January 2016. This first phase will include registered schools, out-of-home care services, hospitals, early years services and organisations funded by government to deliver services to children. Organisations in the first phase are already regulated or funded by government, and compliance with the standards will be initially monitored through these existing arrangements. Education, awareness raising and helping organisations to create and maintain child safe environments will be the initial focus of the standards. It is intended that other organisations providing services to children that have limited or no funding or regulation by government, including many sporting and youth organisations, will be required to comply with the standards from 1 January 2017.

The Betrayal of Trust inquiry also recommended (recommendations 13.1 and 13.2) that the government identify ways to support peak bodies to build preventative capacity in sectors that interact with children, identify ways to encourage smaller organisations or activities to be affiliated with peak bodies to enable access to capacity building opportunities and ensure that non-government organisations are equipped with high quality information and advice about the prevention of criminal child abuse in organisations.

The government is undertaking capacity building activities to support organisations to meet the standards including developing tools, training, templates and other materials. The child safe standards, and supporting organisations to meet them, substantially implement the relevant recommendations of the *Betrayal of Trust* report.

In conclusion, the bill will amend the Child Wellbeing and Safety Act 2005 to provide for standards to ensure that in the operation of organisations providing services to children, the safety of children is promoted, as far as possible child abuse is prevented and allegations of child abuse are properly responded to.

I commend the bill to the house.

Debate adjourned for Ms CROZIER (Southern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 19 November.

PUBLIC HEALTH AND WELLBEING AMENDMENT (SAFE ACCESS ZONES) BILL 2015

Introduction and first reading

Received from Assembly.

Read first time for Ms MIKAKOS (Minister for Families and Children) on motion of Mr Jennings; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Ms MIKAKOS (Minister for Families and Children), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Public Health and Wellbeing Amendment (Safe Access Zones) Bill 2015.

In my opinion, the Public Health and Wellbeing Amendment (Safe Access Zones) 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 bill makes a number of amendments to the Public Health and Wellbeing Act 2008, including:

providing for safe access zones around premises at which abortions are provided;

prohibiting the publication or distribution of recordings of persons accessing, attempting to access, or leaving premises at which abortions are provided; and

providing for search warrants in relation to the offences which involve recording, publishing or distributing.

Human rights issues

In Victoria, premises at which abortions are performed under the Abortion Law Reform Act 2008, as well as staff members and persons accessing the premises, have become the focus of activities by persons who oppose abortions. The bill will result in some restrictions upon those activities.

Safe access zones

Clause 5 of the bill inserts a new part 9A into the Public Health and Wellbeing Act. Part 9A provides for a safe access zone of 150 metres around premises at which abortions are provided. New section 185D prohibits certain behaviour within the safe access zone, namely:

- (a) in relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or

- (b) communicating within a safe access zone by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided, that is reasonably likely to cause distress or anxiety; or
- (c) interfering with or impeding a footpath, road or vehicle in relation to premises at which abortions are provided, without reasonable excuse; or
- (d) intentionally recording by any means, without reasonable excuse, another person accessing, attempting to access, or leaving premises at which abortions are provided, without that other person's consent; or
- (e) any other prescribed behaviour.

As set out in new section 185A, the purpose of the safe access zones is to protect the safety and wellbeing of people accessing services provided at the premises, and employees and other persons who need to access the premises in the course of their duties and responsibilities. As set out in new section 185C(2) the public, employees and others who need to access premises at which abortions are provided should be able to enter and leave such premises without interference and in a manner which protects the person's safety and wellbeing and respects the person's privacy and dignity.

Section 13 of the charter provides that every person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Section 12 of the charter also protects freedom of movement. In Victoria, abortion is legal in the circumstances prescribed in the Abortion Law Reform Act. A woman's decision to undergo an abortion is an intensely personal one. Such a decision falls within the sphere of private life and personal autonomy recognised by the right to privacy in section 13 of the charter. Persons who work in such premises are entitled to be and feel safe accessing their workplace.

On the other hand, section 15 of the charter protects freedom of expression and section 16 of the charter protects peaceful assembly. Abortion is an issue upon which people hold many different views, including those who strongly disagree with the provisions of the Abortion Law Reform Act and with the decisions of women who seek to access health services provided for in that act.

Section 15 of the charter provides that 'special duties and responsibilities' are attached to the right to freedom of expression and that the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality. Further, the rights in sections 15 and 16 of the charter may be subject to reasonable limitations pursuant to s 7(2) of the charter. Unfortunately, in the case of abortion, there is a long history and many instances of persons purporting to exercise their right to free expression in ways that do not respect the rights or reputation of others and which impact upon the public order around clinics.

Women accessing legal abortion services are entitled to have their privacy respected, to feel safe and to be treated with dignity. However, there have been numerous incidents of women and their support people being confronted by persons outside clinics seeking to denounce their decision. This extends to harassing and intimidatory conduct, following

people to and from their private vehicles or public transport, forcing written material upon them despite a clear unwillingness to receive that information, and verbal abuse. Women and their support people have reported that they have found such conduct very distressing and in many cases psychologically harmful. This is compounded by the fact that many women seeking abortion services are highly vulnerable to psychological harm by reason of the circumstances that have contributed to their decision to undergo an abortion.

In addition to the impact upon women accessing abortion services, staff of abortion clinics have experienced sustained harassment and verbal abuse over many years, often being followed to or from the premises, or being physically blocked from entering the premises. This has resulted in significant psychological damage and stress for some staff. The impact of such conduct as well as otherwise peaceful protests around premises that perform abortions, needs to be understood against the background of the most extreme cases, such as the fatal shooting of a security guard inside the East Melbourne Fertility Control Clinic in July 2001. The offender had in fact planned a massacre of people present at the clinic. This, and other similar events internationally, create an environment in which even peaceful protest activity can have a more harmful effect upon the wellbeing of staff and visitors to premises than might ordinarily be the case.

The prohibited behaviour extends beyond conduct that is actually intimidating, harassing or threatening, or which impedes access to premises. The bill prohibits communicating, inside the zone, by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided, that is reasonably likely to cause distress or anxiety. I consider that this is necessary to properly protect the rights and interests of women and other persons who access the premises. There is an exception in relation to communicating, which applies to all employees and contractors who provide services to the premises. This will ensure employees or contractors who may need to communicate with a patient or other staff in relation to abortion inside the safe access zone will not be committing an offence.

Provisions that only prohibit intimidating, harassing or threatening conduct, or conduct which impedes access to premises are inadequate for a number of reasons, including:

- (a) They can only be enforced after the harmful conduct has occurred and there are significant difficulties in enforcing such laws. This is particularly the case in relation to conduct directed toward women accessing legal abortion services. Although such conduct has often extended to criminal conduct, women and their support persons are generally unwilling to report the conduct to police or assist in a prosecution which would expose them to the stress and possible publicity of a criminal proceeding. The intensely private nature of the decision that the protesters seek to denounce, effectively operates to protect the protesters from prosecution for criminal conduct.
- (b) It will not fully protect staff members and others from the harmful effect of the otherwise peaceful protests given their sustained nature and the background of extreme conduct against which they occur. Staff and members of the public are entitled to be safe and to feel

safe in undertaking their lawful work activities and accessing lawful health services.

I consider that it is necessary to create a safe access zone around premises at which abortions are provided, and prohibit certain communications in relation to abortions within that zone, in order to prevent the harm and not just to respond to inappropriate conduct when it occurs.

I also consider that statutory criminal offences are the most appropriate mechanism in order to protect these rights. The recent litigation in the Supreme Court has highlighted the limited options currently available under the law. While clinics might have an ability to obtain civil orders from the courts, those avenues are limited. It also relies upon private organisations to take action to protect the rights of members of the public. I consider that, in circumstances where abortion is legal in Victoria, it is appropriate to ensure that there are protections in place to ensure that such services can be accessed and provided for in a manner that respects the dignity of those seeking and providing those services.

A safe access zone of 150 metres has been determined to be appropriate because it provides a reasonable area to enable women and their support people to access premises at which abortions are provided without being subjected to such communication. As I have explained, the conduct has included following women and their support persons to and from their private vehicles and public transport. There have also been many instances of staff being followed to local shops and services, and subjected to verbal abuse. Such conduct has often occurred well beyond 150 metres. However, I consider that 150 metres is a reasonable area that is necessary to enable women and their support persons to access premises, safely and in a manner that respects their privacy and dignity. While such conduct has occurred beyond 150 metres of some abortion services, having a clear safe access zone of 150 metres will enable abortion services to advise women of how they can best access the premises without the risk of such conduct, such as where they can park their vehicles or use public transport.

Accordingly, to the extent that the provisions limit freedom of expression and peaceful assembly, those limits are reasonable and necessary to protect the rights and interests of persons accessing or working in premises in which lawful abortion services are provided. Less restrictive means will not be as effective in achieving those purposes.

Section 14 of the charter protects freedom of thought, conscience and religion. Views about abortion can be strongly connected with religious beliefs. While the bill will not impact upon a person's ability to hold such beliefs, some people wish to demonstrate or express those views through religious practices such as public prayer. Such conduct has the potential to fall within the freedom in s 14(1)(b) of the charter to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private. The bill will have the effect of prohibiting that conduct within a safe access zone if, and only if, it involves communicating about abortion in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and that is reasonably likely to cause distress or anxiety. The fact that such communication occurs in the form of a religious practice does not diminish the impact upon the rights of persons accessing lawful abortion services or the stress and harm they may experience. To the extent that such conduct is limited within the safe access zones, for the reasons explained above, I consider that it is reasonable and

necessary in order to protect the rights of persons accessing lawful abortion services.

Recording and publishing restrictions

The bill also prohibits and provides for offences in relation to recording or publishing persons accessing, attempting to access or leaving premises at which abortions are provided. The prohibition against recording applies within the safe access zone (see s 185D and the definition of prohibited behaviour in s 185B). The prohibition against publishing or distributing recordings in s 185E extends to recordings taken from outside the safe access zone. The prohibitions only apply to recordings made or published without the person's consent, and provides for an exception of reasonable excuse.

The purposes of the prohibitions are to protect the privacy of persons accessing premises at which abortions are provided and to protect them from the intimidatory conduct currently engaged in by some persons through taking recordings with the explicit or implicit threat of publicly exposing individuals who access lawful abortions or provide those health services. They are limited to recordings of persons accessing, attempting to access or leaving premises at which abortions are provided, and only where those persons have not consented to such recording or publication. Although the provisions involve restrictions upon free expression, I consider they are necessary to respect the rights and reputation of people who access premises at which abortions are provided.

The bill provides for search, by warrant, and seizure of things which may be evidence of the commission of an offence under new part 9A that involves recording, publishing or distributing. The exercise of these powers has the potential, in some circumstances, to impact upon privacy of individuals. However, the powers are subject to judicial supervision through the warrant process and, accordingly, any interference with privacy is neither unlawful nor arbitrary. To the extent that seizure involves a deprivation of property, any such deprivation occurs in accordance with law and accordingly is compatible with the right to property in s 20 of the charter.

Presumption of innocence

A number of the offence provisions provide for an exception of 'reasonable excuse'. Where this is the case the accused will bear the onus of adducing or pointing to evidence capable of establishing the existence of a reasonable excuse. Once that is done, however, the burden lies with the prosecution to prove the absence of the reasonable excuse beyond reasonable doubt. I consider that, to the extent that an evidential onus limits the presumption of innocence, it is a reasonable limit. There are many different reasonable excuses that may apply to the offences. It is reasonable to expect that an accused who claims to have a reasonable excuse bear an onus of pointing to or adducing evidence sufficient to raise the existence of that excuse. It will be reasonably easy for an accused to do so, but very difficult for the prosecution to establish an accused had no reasonable excuse given the vast range of potential reasonable excuses that could apply. Accordingly, I consider that the provisions are compatible with the right to be presumed innocent in s 25(1) of the charter.

Jenny Mikakos, MP
Minister for Families and Children

*Second reading***Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).**

Mr JENNINGS (Special Minister of State) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill is designed to support women's reproductive health choices by ensuring that all women can access health services that provide abortions without fear, intimidation, harassment or obstruction.

In 2008, the Parliament took the historic step of passing the Abortion Law Reform Act to decriminalise abortion and modernise the law so that it was unambiguous, widely understood and reflected general community standards. The act implemented the recommendations of the Victorian Law Reform Commission's 2008 final report on the law of abortion. That report also discussed the issue of safe access zones around hospitals and clinics that provide abortion services.

The Law Reform Commission commented that, during its consultations, several people raised the issue of protection outside abortion clinics, citing concerns that the safety and wellbeing of patients and staff were jeopardised because of the intimidation and harassment by anti-abortion protesters. Although the commission did not make a formal recommendation on this issue, which fell outside the commission's terms of reference, it encouraged the then Attorney-General to consider options for a legislative response.

At the time, the government preferred to adopt a wait-and-see approach; to assess whether the decriminalisation of abortion would lead to an abatement of the protests, obstruction and harassment of women and staff accessing abortion services.

Unfortunately it has not, so I bring this important bill before the house.

This bill acknowledges that Victorian women have a right to access legal reproductive services without fear, intimidation or harassment. Women also have a right to access these services without having their privacy compromised.

Staff who work at places where abortions are performed have a right to enter and leave their workplace safely, every day, without being obstructed, interfered with, hindered or harassed.

By providing for safe access zones around premises that perform abortions, this bill will ensure that women and staff can access these premises safely, without experiencing the stress, fear and anxiety that can occur when they encounter anti-abortion groups outside these premises.

Some members of our community have deeply held views about abortion. This is their right, and they are free to express their views. The bill does not seek to prevent people from holding or expressing their views.

However, Parliament has clearly mandated that abortion services are legal health services. Expressing deeply held views does not carry with it a right to subject others to fear and intimidation.

It is unreasonable for anti-abortion groups to target women at the very time and place when they are seeking to access a health service, or to target health service staff. The impact of such actions on these women must be understood within the context of their personal circumstances. Many are already feeling distressed, anxious and fearful about an unplanned pregnancy, or a procedure that they are about to undergo. To be confronted by anti-abortion groups at this time is likely to exacerbate these feelings. It is intimidating and demeaning for women to have to run the gauntlet of anti-abortion groups outside health services.

Targeting health services in this way can also have impacts on women's health and wellbeing. For example, health services have reported that some patients are too afraid to attend clinics when anti-abortion groups are out the front, or to return for follow-up appointments because of their experience when previously accessing the clinic.

The general aim of anti-abortion groups is to deter women from accessing abortion services. In recent consultations on the proposed bill, health services have reported that their activities are having an impact.

A 2011 study in relation to one Victorian clinic where abortions are performed found that 85 per cent of women surveyed reported seeing protesters outside the clinic, 74 per cent reported seeing anti-abortion displays such as posters and props, 55 per cent reported that protesters had said things to them, 60 per cent reported that protesters had tried to hand them anti-abortion information and 20 per cent had someone attempt to block their entry to the clinic.

Health services have reported that staff of clinics that have been targeted by anti-abortion groups have also been severely affected by the daily harassment they endure. Facing this day after day, year after year, has had a negative impact on their mental health. This affects their working life to the point that some staff members are too afraid to leave their office to get a coffee unless a security guard is present.

A recent Supreme Court decision considered whether the City of Melbourne had an obligation to enforce the nuisance provisions of the Public Health and Wellbeing Act against a group harassing and intimidating people at a clinic that provides reproductive health services, including abortions. The court refused to make an order requiring the council to take specified action, but found that the council's advice to the clinic to refer the matter to police and have it dealt with as a private nuisance was not effective. The case illustrates that current laws are unsatisfactory, and that women and staff are not adequately protected from harassment in the circumstances I have outlined.

The rights to freedom of expression and freedom of thought, conscience, religion and belief are fundamental to a democratic society and are protected in Victoria under the Charter of Human Rights and Responsibilities Act.

However, the rights to express, communicate or demonstrate one's views or beliefs are not absolute. They do not create a right to harass and intimidate a person providing or accessing a legal health service.

Both patients and staff of abortion services have a right to privacy and must be allowed to access health services and to work in an environment free of fear, harassment and abuse. Behaviour that seeks to or has the effect of dissuading, frightening or intimidating patients or staff of health services is not, in my view, acceptable, respectful or consistent with the intention of the charter.

This bill has been carefully designed to strike an appropriate balance between various rights and freedoms that are fundamental to a democratic society. It is targeted specifically at conduct that can cause fear, anxiety and intimidation and is restricted in its scope and reach so as not to unjustifiably impact on the rights of people to freedom of expression.

There are precedents for these laws. Broadly similar laws to protect women who are seeking abortions and clinic staff from harassment and intimidation have been enacted in Tasmania, Canada and various North American states, although the provisions of these laws may vary, reflecting diverse circumstances in different jurisdictions.

This bill is in line with general community views. A 2013 Newspan survey of Victorians commissioned by the Public Health Association of Victoria found that over 80 per cent of Victorians surveyed supported safe access zones around abortion clinics.

I now turn to the provisions of the bill.

The bill inserts a new part 9A into the Public Health and Wellbeing Act to provide for a safe access zone of 150 metres around premises at which abortions are carried out. Its purposes are to:

protect the safety, wellbeing and privacy and dignity of people accessing the health services provided at those premises, and of staff and other persons who need to access the premises in the course of their duties and responsibilities; and

prohibit publication and distribution of certain recordings that could identify people accessing those premises.

A zone of 150 metres was chosen after consultation with a wide range of stakeholders. Hospitals and clinics provided examples of the activities of anti-abortion groups and the places where they confronted patients and staff. This included waiting at places where patients parked their cars and at public transport stops. Some health services asked for a much larger zone, but after careful consideration it was determined that a zone of 150 metres would be sufficient to protect people accessing premises.

Within the safe access zone it will be an offence to engage in 'prohibited behaviour' which is defined in the bill to include:

besetting, harassing, intimidating, threatening, impeding or obstructing a person by any means, where the behaviour relates to a person accessing or leaving premises at which abortions are provided;

communicating in relation to abortions in a manner that could possibly be seen or heard by a person accessing or leaving premises at which abortions are provided where the communication is reasonably likely to lead a person to suffer distress, upset or anxiety;

impeding a footpath, road or vehicle without a reasonable excuse;

intentionally recording a person accessing or leaving premises at which abortions are performed, without that person's consent, and without a reasonable excuse.

The offence of communicating in relation to abortions in a manner that would be reasonably likely to lead a person to suffer distress, upset or anxiety must be read in the context of the purpose and guiding principles outlined in the bill. It is intended to cover the diverse range of activities that are undertaken on a regular basis by the people who have persistently stationed themselves outside abortion clinics and have handed out upsetting materials, displayed distressing and sometimes graphic images and props to upset and dissuade women from obtaining abortions. Health services have reported that protesters sometimes engage in acts of disturbing theatre; for example, displaying a doll in a pram splattered with fake blood or standing silently with their mouths taped shut. Therapeutic communications by health service providers will not be prohibited.

This offence does not require that an individual who is accessing or leaving such premises must actually see or hear the activity. The purpose of the provision is to ensure that this behaviour does not take place inside the zone in a manner that is visible or audible to those entering or leaving the premises. A sermon about abortions conducted inside a church that falls within a safe access zone that cannot be heard outside the church would not be captured by these laws.

People engaging in prohibited activities may have a variety of different motives for their actions. They may be seeking to protest about abortion, or may genuinely believe that they are helping women in need, saving lives, providing alternatives to abortion or educating people about abortion and its impacts, among other reasons. Nonetheless, when this conduct takes place directly outside health services providing abortions, it has the effect of intimidating, and causing anxiety to, many patients and health service staff.

In two cases, the bill provides that prohibited behaviour inside the safe access zone is not an offence where there is a reasonable excuse.

Impeding a footpath, road or vehicle outside a clinic for a legitimate purpose (for example, to undertake construction or maintenance works or because emergency services personnel require diversion of pedestrians or traffic for public safety reasons), will not be an offence.

Similarly, recording a person seeking to access premises where abortions are provided is only an offence where it occurs without the person's consent, and without a reasonable excuse. Examples of a reasonable excuse would include the recording by security cameras installed by a company contracted by a health service, legitimate recording undertaken by Victoria Police in gathering evidence for enforcement purposes, or legitimate news reporting by a media organisation outside a hospital. This offence will be limited to circumstances where the recording could identify an individual and which identifies a person as a person accessing premises at which abortions are performed.

The offences in the bill are summary offences that attract a maximum penalty of 120 penalty units or up to 12 months imprisonment. These penalty levels recognise the seriousness

of the offences in question and the impact a breach would have on women wanting to safely and privately access a health service where abortions are performed.

The 150-metre safe access zone relates to premises at which both medical and surgical abortions are performed. The measurement will be defined from the external perimeter of the premises. Pharmacies that merely supply drugs that may induce an abortion are not covered.

The bill provides that these new provisions of the Public Health and Wellbeing Act will be enforced by Victoria Police. Victoria Police currently enforce the Summary Offences Act, which contains a range of similar offences, for example, relating to trespassing, public order and threatening behaviour. Given their experience, skills and capabilities, Victoria Police are best placed to enforce the new offences.

While police will generally exercise their discretion and issue warnings to move people to a location outside the safe access zone, the bill will enable police officers to apply to a Magistrates Court for a search warrant where required to obtain evidence of the commission of the offences in the bill relating to recording, publishing or distributing a recording. The bill ensures police can collect evidence of such an offence, but requires a warrant to ensure that there is external scrutiny and no undue interference with the privacy of citizens.

Victoria has a proud history of activism and peaceful protests and this bill does not change that. The offence provisions have been carefully developed to target specific behaviours that are aimed at deterring people from accessing or providing legal medical services. Individuals can still protest and express their views about abortions outside safe access zones.

Standing on the street outside an abortion clinic with the aim or effect of shaming or stigmatising women who are trying to access a legitimate reproductive health service, or staff who work there, is not acceptable to this government.

In the development of this bill the Victorian government has consulted with many important stakeholders within our community. These include public and private hospitals and day procedure centres and their representative bodies, women's groups, the Human Rights Law Centre, the Law Institute of Victoria, Liberty Victoria, unions, health groups and community groups.

I would like to take this opportunity to thank each of these stakeholders for their active engagement in discussing this important policy initiative with the Victorian government. I am pleased to say the overwhelming majority of these stakeholders are in step with the Victorian community on this issue, and are overwhelmingly supportive of the proposed legislation.

I also wish to acknowledge and pay tribute to the work of Fiona Patten, a member of the Legislative Council, who took the initiative of developing a private members bill to address this longstanding problem.

In conclusion, patients, their support persons and staff accessing abortion clinics have a right to privacy. People have a right to access legal health services without being frightened by harassing and intimidating behaviour. Vulnerable people, such as pregnant women seeking access to legal medical services, should be protected from undue interference.

They deserve better.

This bill entitles women and those accompanying them to access these services in a safe and confidential manner, and without the threat of harassment. It enables staff to access their workplace without being verbally abused, obstructed or threatened.

I commend the bill to the house.

Debate adjourned for Ms WOOLDRIDGE (Eastern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 19 November.

STATE TAXATION ACTS FURTHER AMENDMENT BILL 2015

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr JENNINGS (Special Minister of State); by leave, ordered to be read second time forthwith.

Statement of compatibility

Mr JENNINGS (Special Minister of State) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the 'charter'), I make this statement of compatibility with respect to the State Taxation Acts Further Amendment Bill 2015.

In my opinion, the State Taxation Acts Further Amendment Bill 2015, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The bill amends the Duties Act 2000, the Payroll Tax Act 2007 and the Valuation of Land Act 1960.

The bill amends the definition of 'cattle' in the Duties Act 2000 to include bison. This aligns the definition of 'cattle' in the Duties Act 2000 with the corresponding definition in the Livestock Diseases Control Act 1994. The Livestock Diseases Control Act 1994 regulates the sale of livestock and provides various compensation funds on which claims can be made. Chapter 10 of the Duties Act 2000 governs the imposition of duty on livestock sales and provides for the duty received to be paid into the relevant fund.

The proposed amendments to the Payroll Tax Act 2007 update the terms of an exemption provided for a 'new entrant' to reflect current legislative and administrative arrangements and do not alter a taxpayer's entitlements or obligations or engage a charter right.

The Valuation of Land Act 1960 provides for a 'general valuation' to be undertaken every two years and for further,

'supplementary' valuations are done as the need arises. These valuations are used for the calculation of council rates (on 'rateable' land), for the determination of land tax (on 'taxable' land) and since 2012, for the collection of the fire services property levy (on 'leviable' land). While some lands will be rateable, leviable and taxable, other lands may be subject to some, but not all, of these rates and taxes.

The bill makes some adjustments to statutory time frames for the submission of nominations for general valuations and the return of those valuations, and also fills a gap in the current legislation to ensure that a supplementary valuation may be conducted if a change occurs that could affect a valuation used for rating, or levy, or tax purposes. It also rectifies a drafting issue in the provisions authorising the valuer-general to give a valuation to a rating authority, such as the State Revenue Office. Consistent with the intention of the original amendments, it validates the provision of supplementary valuations made since 2012, to put beyond doubt the use made of supplementary valuations certified by the valuer-general.

The bill also addresses an anomaly in treatment of apportionment. Currently the provisions governing apportionment assume that the land will be at least partly leviable or rateable. However, there are some lands that are non-rateable and non-leviable, but nonetheless require assessment for land tax purposes. In the interests of consistency and fairness, valuations done for land tax purposes should adopt the same methodology. The bill accordingly amends the Valuation of Land Act 1960 to enable apportionment to occur in respect of non-rateable and non-leviable lands. This amendment is to operate retrospectively, so that valuations already made in 2014 on this basis — in the absence of any alternative basis for fairly calculating the value for tax purposes — can be relied upon for the whole of the valuation cycle, i.e. for the land tax assessments issued in 2015 and 2016.

Human rights issues

To the extent that proposed amendments affect a natural person's liability for a tax or levy, the bill engages rights under the charter as outlined below.

Right to property

Section 20 of the charter protects against the deprivation of property other than in accordance with law.

The inclusion of bison in the definition of 'cattle' in section 3 of the Duties Act 2000 will make the sale of bison a dutiable transaction. This engages property rights under section 20, because purchasers who currently are not liable when they buy bison will be charged duty on these transactions. Duty is assessed in accordance with chapter 10 of the Duties Act 2000. As with all dutiable transactions, taxpayers liable for duty on bison sales may dispute their assessments in accordance with part 10 of the Taxation Administration Act 1997.

This amendment preserves consistency between the regimes by which livestock are compensated under the Livestock Diseases Control Act 1994, and subject to duty under the Duties Act 2000. Having regard to the wider context in which livestock sales are taxed and the public purposes for which the revenue is applied, I believe the imposition of duty on bison sales to be a reasonable limitation of the right to property.

Right to privacy and reputation

Section 13 of the charter protects a person's right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

This bill does not expressly provide for the collection or disclosure of personal information. However, it does increase the range of circumstances in which a supplementary valuation may be undertaken and, where applicable, provided to the commissioner of state revenue. The proposed amendment to the Valuation of Land Act 1960 engages the right to privacy to the extent that they provide for a supplementary valuation of a natural person's property to be undertaken and given to the commissioner of state revenue, who may then retain, use and disclose it as permitted under the taxation laws. Providing for supplementary valuations to be done when any relevant change occurs ensures that land valuations are kept up-to-date. Having regard to the purpose for which this information is collected, in my view the proposed amendment is a reasonable limitation on the person's right to privacy.

Supplementary note on the retrospective operation of some proposed amendments

The retrospective operation of laws that impose a tax, duty or levy may involve the exercise of administrative powers that engage a person's charter rights. I therefore provide an outline, for the sake of completeness, of two amendments to the Valuation of Land Act 1960 that will have a retrospective effect. However, in my view these amendments do not engage charter rights; they merely rectify a technical defect or omission in the statutory framework.

The bill corrects a technical defect in the provisions authorising the provision of supplementary valuations to ratings authorities such as the commissioner of state revenue. It is clear that the current provisions were intended to facilitate the provision of these supplementary valuations, and that a mere technical defect has impeded their intended operation. In these circumstances, retrospective application of the amendment to supplementary valuations made from 1 January 2012 is consistent with the purpose of the original provision.

The amendments providing for the apportionment of value for taxable land that is non-rateable and non-leviable are to have retrospective operation to put beyond doubt the validity of valuations already made on that basis. When these circumstances have arisen, the valuations have been calculated by applying the general principle that value should be apportioned between the occupancies. To do otherwise would have given rise to an inconsistency in the method used to calculate the value of rateable and non-rateable lands. Taxpayers who were dissatisfied with valuations made on this basis were entitled to object to that valuation under division 3, part III of the Valuation of Land Act 1960, which explicitly provide for apportionment to be grounds for objection. Providing for these amendments to operate retrospectively will ensure that an apportioned site value made in or after 2014 can be relied on for land tax assessments made in 2015 and 2016.

Gavin Jennings, MLC
Special Minister of State

*Second reading***Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).**

Mr JENNINGS (Special Minister of State) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The State Taxation Acts Further Amendment Bill 2015 makes a number of technical amendments to the Duties Act 2000, the Payroll Tax Act 2007 and the Valuation of Land Act 1960.

The integrity of Victoria's tax system relies on effective and sustainable tax administration.

The Victorian government is committed to maintaining best practice tax administration and ensuring that the commissioner is well positioned to meet the needs of both the government and community as we move into the future.

This bill supports this commitment by making amendments to update and clarify Victoria's revenue laws. These measures will make it easier for Victorians to comply with their taxation obligations and ensuring equitable and fair outcomes for all Victorians affected by the taxation regime.

In line with the commitment to maintain best practice tax administration, this bill amends the Duties Act and the Payroll Tax Act.

Duty is payable on the sale of cattle, calves, sheep, goats and swine under independent provisions in the Livestock Disease Control Act 1994. The duty collected is paid into compensation funds, such as the Cattle Compensation Fund, and used for the prevention, monitoring and control of livestock disease, and to compensate livestock owners for losses caused by disease. The definition of cattle in the Livestock Disease Control Act was amended to include 'bison' so that bison come under the regulatory and compensation scheme of the Livestock Disease Control Act. As a result, a consequential amendment is required to ensure the definition of cattle in the Duties Act is aligned for the purposes of imposing livestock duty on bison.

The Payroll Tax Act provides an exemption for the wages paid or payable by an approved group training organisation to a 'new entrant' apprentice or trainee. As a consequence of changes to the legislation governing registered training organisations, which include group training organisations, the definition of new entrant in the Payroll Tax Act has become obsolete. The amendment to the Payroll Tax Act updates the definition of 'new entrant' to preserve the scope of the exemption.

The Valuation of Land Act establishes the process for the administration of land valuations in Victoria. Valuations are conducted biennially by valuation authorities and establish the value of properties as at 1 January each even year. Supplementary valuations are also made during each valuation cycle to account for a variety of circumstances, including new properties arising from subdivisions of land

and changes in the use or status of existing properties. These valuations are used for assessing council rates, land tax and fire services property levy. The amendments to the Valuation of Land Act make improvements to the valuation process and provide the legislative certainty to existing administrative practices.

The land valuation amendments ensure the valuation return time line is aligned with the new council budget time lines, improve the accuracy of the valuation data received by a rating authority and permit the valuer-general to accept a late nomination from a council requesting the valuer-general conduct the general valuation on their behalf.

As a result of amendments to the Local Government Act 1989 in 2014, councils are now required to adopt their budgets by 30 June each year. The valuation best practice specifications guidelines were amended to recommend that general valuations be submitted to the valuer-general by 30 April. Currently, the Valuation of Land Act requires that a valuation be returned by 30 June, which gives rise to scenarios where councils have no time between receiving final valuations and adopting their budgets. Therefore the due date for a return of the general valuation will be brought forward to 30 April, which is in line with the guidelines. This amendment will not commence until the 2018 general valuation cycle, which should give councils and valuers sufficient preparation time.

Councils are required to conduct general valuations every two years. Under the Valuation of Land Act, a council may nominate the valuer-general to conduct the general valuation on the council's behalf. A nomination must be made by 30 June of the even year preceding the next general valuation. Councils that wish to nominate the valuer-general to conduct the general valuation may not be able to meet the nomination cut-off date for various reasons. The Valuation of Land Act will be amended to allow the valuer general to accept a late nomination if the valuer general considers it appropriate to do so.

Supplementary valuations are completed during general valuation cycles to account for new properties and changes to existing properties. This ensures the accuracy of the valuation data received by rating authorities such as the SRO. The provisions providing for supplementary valuations allow for changes to properties where they move from non-rateable to rateable and/or from non leviable to leviable. However, the provisions do not provide for the opposite change — i.e. where properties move from rateable to non-rateable and/or from leviable to non leviable. Further, the provisions do not provide for rateable land that becomes leviable or ceases to be leviable. An amendment to the Valuation of Land Act will provide for supplementary valuations to be made in these circumstances. This will ensure that the valuation data is correct and updated.

The bill makes two other amendments to the Valuation of Land Act to correct some minor technical deficiencies relating to the ability to determine a land valuation for part of a land that has not been separately valued and the provision of supplementary valuations by the valuer-general to a rating authority, such as the State Revenue Office.

The measures enacted by this bill will improve the operation of Victoria's taxation laws and the land valuation process. In line with government policy, these amendments will help to maintain the integrity and sustainability of the taxation

system. They also improve the valuation process and ensure it is operating as intended.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 19 November.

ADJOURNMENT

Mr JENNINGS (Special Minister of State) — I move:

That the house do now adjourn.

Kalianna School Bendigo

Ms LOVELL (Northern Victoria) — My adjournment matter is for the Minister for Education, and it is in regard to the need for the redevelopment of Kalianna School Bendigo. My request of the minister is that he commit funding to build new school buildings to replace the old school, which is no longer suitable or adequate to cope with the school's growing student numbers. I recently visited Kalianna to inspect the state of the school's facilities and to talk with the school's principal, Peter Bush, and his assistant principal, Kirshy McAinch, about the school community's vision for a new school.

Kalianna is a special development school in Bendigo which values unity, inspiration, creativity, inclusion and positivity for its students and school community. Of the utmost importance to Kalianna is meeting the social, emotional, educational and physical needs — including sensory and personal care needs — of all its students, and it promotes and respects diversity. To continue to adequately meet these aims now and into the future the school requires redevelopment as it has outgrown the existing facilities. The 40-year-old buildings are run down, small and unsuitable for the school's 264 special needs students. Some classrooms are without basic requirements, such as appropriate lighting and air conditioning. One classroom is a converted cleaning room, about 7 metres by 5 metres, and is expected to house students, a teacher and a teacher's assistant. The toilet facilities are too small and do not meet modern disability standards.

The school staff work hard to deliver quality education and support to the students and maintain a great school community and environment, but they can only do so much in limited facilities. The vision for the new school is for it to be a centre of excellence for the Bendigo and wider community to improve the learning outcomes for students with additional needs. Components that would

help the school achieve this include a lecture theatre, which would become a formal learning space for teaching students on placement from La Trobe University in Bendigo.

The space would also be used to help educate mainstream teachers in the classroom requirements for students with additional needs, including students with autism spectrum disorders. The coalition government committed \$4.8 million to redevelop the school; however, Labor has only provided \$1 million in planning money. The school is currently working with the Department of Education and Training to achieve approval to work with the architects to develop the master plan for the school. However, without a commitment from the government for funding of the rebuild, the school community remains in limbo.

Parents at the school are particularly unhappy with the condition of the school buildings and feel that their children are not being given the same opportunities for education in quality facilities as children in mainstream schools. When last in government, Labor trumpeted its Bendigo education plan. Unfortunately this plan did not include Kalianna. We now have the current Labor government trumpeting Victoria as the education state but failing to back up its rhetoric with the funding necessary to achieve this. Kalianna students deserve the same opportunities to learn in modern and quality learning environments as mainstream students in Bendigo.

My request of the minister is that he commit to more than just the planning of the redevelopment by providing the necessary funding for the entire redevelopment of the school.

Night Network

Mr LEANE (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Public Transport, and it concerns the conversation we recently had with Brendan Nottle from the Salvation Army about the Night Network program. In our conversation Brendan gave evidence that the teams of Salvos that work at night, in the small hours of the morning and on the weekends, particularly in the CBD, find that they assist a lot of vulnerable young adults who find themselves in situations that could turn perilous for them. They offer to walk home with some individuals. They offer to drive some individuals home. They even have a service where they carry around a bag of thongs so they can offer women who are going to walk a long distance a pair of thongs to replace their high heels. They make sure they carry different coloured thongs — Mr Jennings would be interested in

this — because some women insist that the colour of their thongs should match their outfit. I think that is fair.

The Salvos' evidence is that 24-hour public transport on the weekend will help alleviate a lot of these issues where young people trying to get home are vulnerable. The action I seek from the minister is that she instruct her department that any evaluation of Night Network into the future include input from the Salvos as far as how much this process will alleviate the ongoing concerns that they deal with.

Public transport infrastructure

Mr BOURMAN (Eastern Victoria) — My adjournment matter tonight is for the Minister for Public Transport. The right to farm and the need for reliable and efficient public transport are usually not at odds with each other. In fact the need for rail transport is well recognised by the farming community as it is a way of moving bulk produce around.

Recently I visited Stan Larcombe in Mount Duneed to hear about the proposed compulsory acquisition of some of Stan's land for a rail yard. Stan is at least a third-generation farmer of his property, so he has a sentimental attachment to it as well as it being his livelihood. Imagine my surprise when Stan showed me a map with the proposed acquisition of the land required for the rail yard, which formed a great big 200-metre-wide strip across the entire property, cutting off resources of the farm, such as the shearing shed and so on, from the bulk of his pasture. What this means is that all the equipment sheds, shearing sheds and even Stan's house will be separated by a 200-metre-long stretch of rail yard from the rest of his property, along with all of his livestock.

It is clearly not feasible to build a 200-metre-long tunnel, nor is it feasible to put a stock crossing across 200 metres of rail yard. So to shear, drench or do anything else with the sheep that Stan farms, he will have to load his livestock onto a truck, move them past the 200-metre-wide rail yard and then off-load them. Once he has finished, the cycle will be reversed. This impost is clearly not workable and just patently unfair. I call on the Minister for Public Transport to urgently stop this acquisition and use one of the other options for the rail yard that does not trap a farmer in an untenable situation.

Drought assistance

Mr RAMSAY (Western Victoria) — My adjournment matter tonight is for the Minister for Agriculture, the Honourable Jaala Pulford. I have a

number of issues relating to farmers I represent in the north-east who are suffering from significant drought conditions. Farmers in the areas around Manangatang, Birchip, Donald, Ararat and Horsham — mainly in the grain-growing areas — are suffering from intolerably dry conditions and are finding that most of their crops cannot be harvested for grain. They are being harvested for hay, which is about a \$300 per tonne reduction in potential returns.

The returns on some of these farming ventures are only about 33 per cent of the total input costs of the business. Many farmers are carting water for stock and domestic purposes at the moment, and significant mental health issues are now arising. We have seen in past droughts that there has been significant depression and stress related to those farming communities that are suffering drought-like conditions.

I suspect that this has been a bit under the radar for the minister. There have been some showers and there has been a small amount of relief rain, but generally speaking the farming communities in the north are suffering drought-like conditions. The commonwealth has acknowledged this, with concessional loans, which are the result of an agreement between the commonwealth and the state in relation to drought declarations, now starting to flow to those farming communities. We recognise that they are in drought. We recognise that they are drought-declared areas, yet there is very little sign of the minister providing some state drought relief.

The coalition, when it was in government, put in place a number of drought relief measures during the previous drought. One of the best returns on investment by the state in providing relief was shire rate relief. I request that the minister look at, as a no. 1 priority, providing shire rate relief for those facing hardship in those drought-declared areas. I strongly recommend that she look at the rural financial counselling service and make sure that the rural financial counsellors are fully funded to provide that important service. I encourage her to look at potentially running mental health forums, perhaps in conjunction with beyondblue. They have been very successful in the past. I strongly recommend that she look at stock containment area grants or tax concessions in relation to investment in stock containment areas as well as potentially some compensation for water supply. This is the kind of drought package that has been successful in the past.

The matter I want to raise with the minister is that she give serious consideration to putting forward a drought package for those farmers in drought-declared areas or potential drought-declared areas who are seeking —

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

Special religious instruction

Dr CARLING-JENKINS (Western Metropolitan) — My adjournment matter tonight is for the Minister for Education, the Honourable James Merlino. It concerns the decision of the government earlier this year to remove special religious instruction (SRI) from curriculum time in Victoria effective from 2016. This is still a relevant issue, with a number of petitions on this subject being tabled in this house over the past few weeks.

SRI has been a feature of schooling for many years. I remember my mother teaching this — we called it religious education back then — before I even went to school. In Victoria currently 30 000 students participate in this program in nearly 400 government schools. While some schools choose not to run this program at all, participation in SRI was at a high of 30 per cent in some schools and higher in others. This is not insignificant. Most lessons of SRI incorporated lessons for life — for example, helping people with disabilities, honouring parents and caring for the sick.

I find the government's decision to pull SRI very disappointing. There was very little consultation, if any at all, with SRI providers, schools with SRI and parents of children enrolled in SRI. The Victorian president of the Australian Principals Federation says they were not consulted, so in his opinion schools were not consulted. Access ministries, a large provider of SRI, was also not consulted. The CEO of Access ministries, Dawn Penney, stated in a press release in August:

Over the last 12 months Victorian SRI providers from faiths including Buddhist, Muslim, Jewish, Baha'i and Christianity, in collaboration with the Victorian department of education, have vastly improved all aspects of SRI delivery across recruitment, training, accreditation, supervision and resources.

It is my understanding that SRI providers from these diverse faiths were not consulted; they were left out. The government appears to be imposing an ideological position upon people of faith.

Parental concerns were also not taken into consideration. This change will result in their children becoming susceptible to more marginalisation — for example, going to religion class during lunchbreaks instead of trying out for sport. There is also a concern amongst parents about the lack of consultation. With 60 000-plus parents having opted their children into SRI programs, it is disappointing that there was no consultation with them.

Let us look at the broader concerns of the many schools benefiting from community engagement with local churches and faith-based groups. There are concerns that roadblocks will now be put in the way of such things as breakfast clubs, one-on-one mentoring programs, lunchtime and after-school programs, student-led prayer groups and chaplaincy programs.

I call on the minister to carry out a thorough consultation and while doing so allow SRI to continue into 2016, pending the outcome of this consultation process.

Police resources

Mr O'DONOHUE (Eastern Victoria) — I raise a matter on the adjournment for the Minister for Police. I refer to the emerging and growing police resourcing and numbers crisis in Victoria. We have seen recent revelations that supposed 24-hour police stations such as those at Reservoir, Epping, Greensborough and Pakenham have not had enough members to even keep their doors open to the public. This has come as a terrible shock to these communities. These revelations come on the back of the brand-new \$16 million Somerville police station being closed to the public and the Ashburton police station having its opening hours slashed from seven days a week to just two days a week.

Information has come to me that now the Mooroolbark police station, supposedly a 24-hour-a-day, 7-days-a-week police station, is so lacking in police numbers that it is generally closed to the public during the night shift. I am aware that because of a chronic member shortage it was closed for the afternoon shift last Sunday.

To make matters worse, I understand that after the Andrews government failed to make any specific allocation for Victoria Police to accommodate the terrorism threat level changes, the anti-jump barrier that is to keep police members safe is yet to be installed at the Mooroolbark police station.

I am very concerned about these matters. I ask the minister: when will he and his government adequately resource Victoria Police so that busy, important police stations such as Mooroolbark have the police resources to keep their doors open 24 hours a day, 7 days a week, as is advertised in the community and as the community expects and understands, and when will the government provide the resources to Victoria Police so that important counterterrorism and safety measures for Victoria Police members, such as the installation of the anti-jump barrier at the Mooroolbark police station, can be installed?

Port of Hastings

Mr MULINO (Eastern Victoria) — My adjournment matter this evening is for the Minister for Ports. I ask the minister to visit, with myself and other community stakeholders, the port of Hastings to discuss future development opportunities at the port and for related industries.

It has been a matter of great interest to be on the Port of Melbourne Select Committee over the last couple of months or so to hear evidence not only on the lease of the port of Melbourne but also future development opportunities. It has been interesting to hear evidence from a wide range of stakeholders from across the state, including around the port of Hastings area in my electorate. One thing that has struck me, and I must say it has been a very educational opportunity, is the sheer complexity of the issues that face this state when it comes to future development opportunities. I must say that while there is a wide range of views in terms of where future international container development opportunities should be, there has been a wide consensus that Infrastructure Victoria is a very sensible place for those issues to be considered.

What I want to talk to the minister about is the fact that there are considerable development opportunities at the port of Hastings, regardless of where the second container port, when it is ultimately needed, is developed. The port is already a significant bulk handling port; it handles significant amounts of both imports and exports in relation to petroleum and other bulk goods. What this government says very clearly is that this port is open for business and it wants to develop the port further. The port is also a significant one when it comes to other commercial shipping activities. I am very keen to discuss opportunities for development, and I think we need to take advantage of economic opportunities in that region while Infrastructure Victoria is undertaking a thorough examination of future opportunities for the state.

Derrimut Hotel

Mr FINN (Western Metropolitan) — I wish to raise a matter this evening for the Minister for Police. It concerns an issue that has been brought to my attention by people associated with the Derrimut Hotel in Sunshine. Whilst the Special Minister of State might not be familiar with the Derrimut Hotel, I have a suspicion that Mr Leane, who is sitting behind him, might be.

The problem in the area surrounding the Derrimut Hotel — I hasten to add it is not actually in the hotel; it

is outside the hotel — is that there has been a spike in alcohol-induced violence outside the hotel, in the park across the road and next door. People gather and consume large amounts of alcohol and then proceed to do very antisocial things and attack the hotel. In fact drunks have been laying siege to the hotel.

The hotel management has had to make a decision to put no women in the bottle shop because it is just not safe for them. It has put on extra security, which of course has cost the management more money, and its numbers are down because people are obviously having a great deal of trouble getting in or indeed getting out of the hotel. The Derrimut Hotel has on a number of occasions been in lockdown because of the violence outside. Can you imagine the distress of your average bloke in a Sunshine pub not being able to go home? That is something that I think we really need to take into consideration as well.

The Sunshine police are doing their best, but as we know — and I think we raised this earlier this week, Mr O'Donohue — the Sunshine police are, to say the least, stretched beyond breaking point. They just do not have the capacity to provide the sort of support that the Derrimut Hotel and people in the surrounding area need to protect them from this sort of behaviour. I am asking the minister to direct the Sunshine police to facilitate a plan to stop this particular violence in the precinct, but most importantly to provide the resources to the Sunshine police to enable them to do the job that is needed to protect the people who use this hotel, particularly the blokes in the front bar whose welfare we should all be concerned about. I ask the minister to take this on as a matter of urgency. This is something I believe is important, and it needs some urgent attention from the minister.

Make Moe Glow

Ms BATH (Eastern Victoria) — My adjournment matter this evening is directed to the Minister for Tourism and Major Events, the Honourable John Eren, regarding the community group Make Moe Glow in my electorate. Make Moe Glow was formed in 2005 and has organised many community events and projects since that time. They are an enthusiastic and dedicated group of people with the aim of improving Moe's image, and they have been doing so for 10 years. Back in 2007 they surprised themselves and delighted themselves with a passionate charge at the Victorian Tidy Town award, winning it in that year, which was fantastic. In recent times the group has been focusing on tourism in the Moe area and surrounding region with the support of the Latrobe tourism and visitor centre in Traralgon. In fact recently I was at the launch of their

visitors guide to Moe. It is a beautiful bright and bold document that encourages people to visit and enjoy all the activities, restaurants and art spaces in the area.

One of the group's main projects is developing the Blue Rock Motorcycle Club facility. That group is working out of shipping containers at the moment, which is not ideal. The management committee wishes to upgrade facilities so it can attract international races. This would be fantastic for the local economy. Make Moe Glow is trying to also establish a Chinese garden in the botanical gardens to reflect the history of Chinese miners in the area.

Two months ago my constituent and the president of Make Moe Glow, Marilyn May, wrote to the minister to invite him to Moe to meet with the group to discuss these and other projects to further tourism opportunities in the region. After quite some time with no reply, I spoke to the minister here in this house and I emailed the minister on 29 September requesting a response. There still has not been the decency of a reply to this group's invitation. Regional Victoria does not seem to be very high on the minister's priority list. Make Moe Glow and I are yet to hear back from the minister or even his office.

I call on the minister to visit this wonderful township of Moe and meet with the hardworking community group Make Moe Glow.

Minister for Families and Children comments

Ms FITZHERBERT (Southern Metropolitan) — My adjournment matter this evening is for the Premier, and it concerns attitudes towards those with disabilities. The issue of the concerns and needs of people with disabilities is something that is often considered within this place. I note the recent media release of 23 October headed 'Better support for children with disabilities', which was about professional development for teachers. We all agree that this is important work. Part of the respect that should be afforded to those with disabilities is how we speak about or refer to them, so I was quite offended and struck by the comments made by the Minister for Families and Children earlier this week. In both instances she was referring to my colleague Ms Crozier. On 10 November she started an answer to a question from Ms Crozier with:

I know the member opposite is a slow learner.

On the following day, on 11 November, she started off an answer, again to Ms Crozier, with:

As I said yesterday, it is pretty clear that the member is an extremely slow learner.

This is frankly an unreasonable way to speak to a member, but it is also inappropriate for a minister and a leader in our community to use the term 'slow learner' as a term of derision. I might say that this was shortly after she had given quite a long answer about people with disabilities and how they should be supported.

I think this is inappropriate. I note that the minister is the only member of Parliament who has used that expression through the whole of this term of government, and I think she should stop. The action that I seek is for the Premier to counsel the minister on her inappropriate and offensive choice of words and to require her to apologise for them.

Responses

Mr JENNINGS (Special Minister of State) — I have a written response to Mr Ramsay's adjournment matter on 8 October.

In terms of this evening's matters, Ms Lovell raised a matter for the attention of the Minister for Education relating to Kalianna School Bendigo seeking his support for funding and his support for a redevelopment of the school.

Mr Leane raised a matter for the attention of the Minister for Public Transport seeking her guarantee that within the evaluation of the government's initiative in relation to weekend 24-hour public transport availability there is an appropriate evaluation, as it may affect disadvantaged people across the community, and particularly that the evaluation incorporates the perspective and understanding of these issues of the Salvation Army.

Mr Bourman raised a matter for the Minister for Public Transport seeking a review of the alignment of a railway development that goes through the property of Mr Stan Larcombe in Mount Duneed and seeking her intervention to see whether an alternative alignment may make less of an impact upon his property.

Mr Ramsay raised a matter for the attention of the Minister for Agriculture seeking her support for provision of state relief to support drought-affected communities and seeking her recognition of the drought circumstances across parts of regional Victoria.

Dr Carling-Jenkins raised a matter for the attention of the Minister for Education seeking that he review policies relating to religious instruction in schools and undertake further consultation with the providers of that instruction to reconsider their views on the current policy settings the minister has adopted.

Mr O'Donohue raised a matter in relation to police resourcing in a variety of locations. He is seeking undertakings from the minister in relation to the provision of that resourcing to underpin 24-hour, seven-day-a-week service provision out of police stations.

Mr Mulino raised a matter for the attention of the Minister for Ports building on some of the material that is publicly available to us all in relation to the consideration of the select committee that has been dealing with port-related matters. He sees not only the great capability that currently exists in Hastings and what the potential there may be but also some of the complexities in dealing with the variety of community aspirations, infrastructure that may be appropriate and what might be able to be provided to support the appropriate development over time.

Mr Finn interjected.

Mr Mulino — I can't believe you have the energy to be so disruptive.

Mr JENNINGS — Mr Finn, who has expertise in disruption, has drawn attention to it yet again. In this instance he referred to the adverse outcomes that may be creating, in his words, almost a state of siege at the Derrimut Hotel.

Mr Finn — In Sunshine.

Mr JENNINGS — In Sunshine. He is seeking police intervention to address what sounds like a very chaotic community safety issue adjacent to the hotel. He is concerned to ensure that the Sunshine police are resourced to ensure that that community safety issue is addressed.

Ms Bath raised a matter for the attention of the Minister for Tourism and Major Events, outlining the impressive contribution made by the Make Moe Glow organisation. They have a 10-year track record of being fierce advocates for the community in Moe. She drew attention to a variety of community assets and opportunities and described the bright and bold approach they have adopted to extol the virtues of Moe. Ms Bath wants to ensure that the Minister for Tourism and Major Events recognises that capability and that opportunity to support the citizens of Moe, and she is hoping that the minister is responsive to the correspondence he may have received from Marilyn May in representing Make Moe Glow and is responsive to that community organisation's aspirations.

Ms Fitzherbert raised a matter for the Premier, raising her view — in fact which is a reasonable view; there is no doubt about it, a reasonable view — in relation to all

members of this chamber, and she drew attention to a contribution of one of my colleagues in question time the other day and what Ms Fitzherbert believes were inappropriate and perhaps derogatory comments that may reflect badly on the minister. But in fact it probably reflects a concern about the standards of behaviour in the chamber generally when we sometimes fall short of what the community's expectations of us may be and a concern that, perhaps under a bit of a pressure, in fact some of us may say things that on reflection may not be the wisest things or things that we want to be associated with. I will encourage my colleagues the Premier and the minister to reflect on those matters, and that is what the member is seeking.

The DEPUTY PRESIDENT — Order! The house now stands adjourned.

House adjourned 10.41 p.m. until Tuesday, 24 November.

WRITTEN RESPONSES TO QUESTIONS WITHOUT NOTICE

Responses are incorporated in the form provided to Hansard

Melbourne Metro rail project

Question asked by: Ms Wooldridge

Directed to: Special Minister of State

Asked on: 10 November 2015

RESPONSE:

As is standard for contracts of these values, Advisian was selected as the preferred tenderer by the Melbourne Metro Rail Authority (MMRA) following a rigorous tender process under the State's Probity Practitioner Services panel. Each contract was awarded following approval through the Department of Economic Development, Jobs, Transport and Resources procurement process.

MMRA CEO Evan Tattersall formally declared his previous employment with Advisian/Evans & Peck upon accepting a role with MMRA in October 2014, and was excluded from being involved in the tender evaluation process for these contracts.

Melbourne Metro rail project

Question asked by: Mr Rich-Phillips

Directed to: Special Minister of State

Asked on: 10 November 2015

RESPONSE:

OCM was appointed following a rigorous tender process under the State's Probity Practitioner Services-panel. OCM were appointed to the State Probity Practitioners Panel in 2011 during the term of the previous Government. OCM is a large probity advisory firm with offices across Australia, and has acted (and continues to act) on a significant number of major projects across the country. In Victoria the firm has been used by successive governments across multiple agencies.

Government contracts

Question asked by: Mrs Peulich

Directed to: Special Minister of State

Asked on: 10 November 2015

RESPONSE:

The details of consultancies and major contracts commissioned by Victorian government departments and authorities are reported in the relevant annual report. Contracts and tenders with a value greater than \$100 000 are published on the website www.tenders.vic.gov.au

I am advised that information relating to contracts across government with a value under \$100 000 is not held centrally by the Department of Treasury and Finance.

No contracts with a value under \$100 000 have been awarded to The Civic Group by the Department of Treasury and Finance since December 2014.

