PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 28 February 2008

(Extract from book 2)

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By authority of the Victorian Government Printer

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Legislative Council committees

Legislation Committee — Mr Atkinson, Ms Broad, Mrs Coote, Mr Drum, Ms Mikakos, Ms Pennicuik and Ms Pulford.

Privileges Committee — Ms Darveniza, Mr D. Davis, Mr Drum, Mr Jennings, Ms Mikakos, Ms Pennicuik and Mr Rich-Phillips.

Select Committee on Gaming Licensing — Mr Barber, Mr Drum, Mr Guy, Mr Kavanagh, Mr Pakula, Mr Rich-Phillips and Mr Viney.

Select Committee on Public Land Development — Mr D. Davis, Mr Hall, Mr Kavanagh, Mr O'Donohue, Ms Pennicuik, Mr Tee and Mr Thornley.

Standing Orders Committee — The President, Mr Dalla-Riva, Mr P. Davis, Mr Hall, Mr Lenders, Ms Pennicuik and Mr Viney.

Joint committees

Dispute Resolution Committee — (*Council*): Mr P. Davis, Mr Hall, Mr Jennings, Mr Lenders and Ms Pennicuik. (*Assembly)*: Mr Batchelor, Mr Cameron, Mr Clark, Mr Holding, Mr McIntosh, Mr Robinson and Mr Walsh.

Drugs and Crime Prevention Committee — (*Council*): Mr Leane and Ms Mikakos. (*Assembly)*: Mr Delahunty, Mr Haermeyer, Mr McIntosh, Mrs Maddigan and Mr Morris.

Economic Development and Infrastructure Committee — (*Council*) Mr Atkinson, Mr D. M. Davis, Mr Tee and Mr Thornley. (*Assembly*) Ms Campbell, Mr Crisp and Ms Thomson (Footscray)

Education and Training Committee — (*Council*): Mr Elasmar and Mr Hall. (*Assembly*): Mr Dixon, Dr Harkness, Mr Herbert, Mr Howard and Mr Kotsiras.

Electoral Matters Committee — (*Council*): Ms Broad, Mr Hall and Mr Somyurek. (*Assembly*): Ms Campbell, Mr O'Brien, Mr Scott and Mr Thompson.

Environment and Natural Resources Committee — (*Council*): Mrs Petrovich and Mr Viney. (*Assembly*): Ms Duncan, Mrs Fyffe, Mr Ingram, Ms Lobato, Mr Pandazopoulos and Mr Walsh.

Family and Community Development Committee — (*Council*): Mr Finn, Mr Scheffer and Mr Somyurek. (*Assembly*): Ms Beattie, Mr Perera, Mrs Powell and Ms Wooldridge.

House Committee — (*Council*): The President (*ex officio*), Mr Atkinson, Ms Darveniza, Mr Drum, Mr Eideh and Ms Hartland. (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Mr Delahunty, Mr Howard, Mr Kotsiras, Mr Scott and Mr K. Smith.

Law Reform Committee — (*Council*): Mrs Kronberg, Mr O'Donohue and Mr Scheffer. (*Assembly*): Mr Brooks, Mr Clark, Mr Donnellan and Mrs Maddigan.

Outer Suburban/Interface Services and Development Committee — (*Council*): Mr Elasmar, Mr Guy and Ms Hartland. (*Assembly*): Ms Green, Mr Hodgett, Mr Nardella, Mr Seitz and Mr K. Smith.

Public Accounts and Estimates Committee — (*Council*): Mr Barber, Mr Dalla-Riva, Mr Pakula and Mr Rich-Phillips. (*Assembly*): Ms Graley, Ms Munt, Mr Scott, Mr Stensholt, Dr Sykes and Mr Wells.

Road Safety Committee — (*Council*): Mr Koch and Mr Leane. (*Assembly*): Mr Eren, Mr Langdon, Mr Mulder, Mr Trezise and Mr Weller.

Rural and Regional Committee — (*Council*) Ms Darveniza, Mr Drum, Ms Lovell, Ms Tierney and Mr Vogels. (*Assembly*) Ms Marshall and Mr Northe.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr Eideh, Mr O'Donohue, Mrs Peulich and Ms Pulford. (*Assembly*): Mr Brooks, Mr Carli, Mr Jasper, Mr Languiller and Mr R. Smith.

Heads of parliamentary departments

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

Council — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

Parliamentary Services — Secretary: Dr S. O'Kane

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Mr PETER HALL

Deputy Leader of The Nationals:
Mr DAMIAN DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Mr Bruce Norman	Eastern Metropolitan	LP	Lenders, Mr John	Southern Metropolitan	ALP
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Eideh, Khalil M.	Western Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
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Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Guy, Mr Matthew Jason	Northern Metropolitan	LP	Smith, Hon. Robert Frederick	South Eastern Metropolitan	ALP
Hall, Mr Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William	Southern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Vogels, Mr John Adrian	Western Victoria	LP

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THURSDAY, 28 FEBRUARY 2008

Thursday, 28 February 2008

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.33 a.m. and read the prayer.

PARTNERSHIPS VICTORIA

Royal Children's Hospital project summary 2008

Mr JENNINGS (Minister for Environment and Climate Change), by leave, presented report, February 2008.

Laid on table.

PAPERS

Laid on table by Clerk:

Judicial Remuneration Tribunal Act 1995 — Statement of Reasons, pursuant to section 14(2) of the Act.

Subordinate Legislation Act 1994 — Minister's exemption certificate under section 9(6) in respect of Statutory Rule No. 9.

BUSINESS OF THE HOUSE

Adjournment

Mr LENDERS (Treasurer) — I move:

That the Council, at its rising, adjourn until Tuesday, 11 March 2008.

Motion agreed to.

MEMBERS STATEMENTS

Housing: affordability

Mr GUY (Northern Metropolitan) — As members will know, there is a problem in this city with low-cost housing, and there is a crisis in low-cost housing in Melbourne primarily because of Labor's flawed, failing Melbourne 2030 document. What we are seeing in this city is land prices going through the roof; as such, house prices are following the high land prices, thereby becoming vastly unaffordable for many Victorians. In fact I am informed that there are now 34 872 families on a housing waiting list in Victoria.

What is the Labor government's response to low-cost housing? I have been alerted to an advertisement that appeared in the *Heidelberg Leader*, the local newspaper in my area, for the sale of 24 units of low-cost housing owned by the state government in the northern suburbs.

Has anyone been kicked out; how much is the government going to profit; and who is the new developer going to be? This is Labor's response to the housing crisis in Victoria. It is not to help families, and it is not trying to get people into low-cost housing; it is to sell it off, to boot them out, to send them out onto the streets.

This is a disgrace. It is a reflection of Labor's failing 2030 document. It is an indictment upon the current government's attitude to people who are trying to get into low-cost housing, and it is further evidence that Labor has no plans or ideas about how to combat the housing crisis in Victoria.

Ingrid Betancourt

Ms PENNICUIK (Southern Metropolitan) — Saturday, 23 February, marked the sixth anniversary of the kidnapping of Colombian politician and presidential candidate Ingrid Betancourt by the FARC (Fuerzas Armadas Revolucionarias de Colombia) guerrillas in Colombia.

The vice-presidential candidate, Clara Rojas, who was captured with Ingrid in 2002 and former Colombian congresswoman Consuelo Gonzalez were freed by the FARC in January. This was largely due to the efforts of the Venezuelan president Hugo Chavez and raises hope for the release of further hostages, including Ingrid.

Four more Colombian MPs were released yesterday. The video found by the Colombian army showed footage, without sound, of Ms Betancourt sitting on a wooden seat in the jungle, looking very thin and pale. This provides welcome confirmation that Ingrid is still alive, although it is harrowing to see her in such a condition.

A heartbreaking letter written in October 2007 by Ingrid to her mother describes the hellish conditions of life in the jungle, being constantly on the move and the terrible physical and psychological toll on her and her fellow captives. She wrote in a letter:

> Well, as I said, life here is not life. It is a gloomy waste of time. I live or survive in a hammock hanging from two poles, covered with mosquito netting and a tarpaulin overhead which serves as a roof which allows me to think that I have a house.

I hope the Colombian government, with support from the French government and the wider international community, can negotiate a humanitarian agreement for

the release of all hostages and bring an end to this long-running tragedy in Colombia.

Local government: regional and rural Victoria

Ms BROAD (Northern Victoria) — I refer to yesterday's press release by the Leader of The Nationals in the other place, Mr Ryan, in which feedback was sought about regional development issues from country councils.

Packaged as a big announcement, this is nothing but a cynical game of catch-up, and country councils will see straight through it. They know from bitter experience that whatever issues they raise for action, Mr Ryan will have to scuttle back to his more senior Liberal colleagues in Melbourne to get those issues approved. They also know that during the Kennett government, Mr Ryan voted 1150 times to sack councils, cut services, shut schools, sack nurses and cut local government jobs in regional Victoria.

If his track record is not enough, Mr Ryan is still saying, 'Maybe we need to be able to compromise a bit for the greater good of being able to present a united front on the ABC's Ballarat morning show'. This cynical game of catch-up will be seen for what it is.

In contrast, last year the Minister for Regional and Rural Development in the other place undertook massive statewide consultations through a series of regional forums involving local government, industry representatives and key stakeholders to build on the achievements of moving forward. While The Nationals play catch-up, the Brumby Labor government will continue the meaningful partnerships it has with local government and regional communities to meet the challenges of the future and to make Victoria the best place to live, work and raise a family.

Land Victoria: electronic conveyancing

Mr D. DAVIS (Southern Metropolitan) — My matter today concerns the government's electronic conveyancing system, which shows all the signs of being a lemon.

In no way do I oppose the move to electronic conveyancing, it is just that the government's implementation of this system is proving to be a blunder — the system looks like it is a bit of a dog. The idea is to slug families when they purchase properties. Around 400 000 conveyancing transactions occur each year in Victoria, and the government is just creaming off additional money, because it has raised the fees for conveyancing done using paper forms. The unfortunate consumers of these services are now forced to return to paper conveyancing because of a lack of quality, reliability and certainty with the electronic conveyancing system.

The Law Institute of Victoria has made its position clear, as has the Master Builders Association of Victoria. The association wrote a letter, dated 3 September, which says:

> However, the building industry and consumers should not be punished for choosing one application process over another.

The Law Institute of Victoria has made it clear that it has great concerns about the new system. Until these issues, that also concern the banks are sorted out, the Minister for Innovation should not be imposing punitive fees on families.

World Cancer Day

Mr EIDEH (Western Metropolitan) — I wish to congratulate the Premier for announcing on Monday, 6 February 2008, which was World Cancer Day, further funding of nearly $6 million for research grants. That is an increase of nearly 300 per cent compared to last year's funding. Unfortunately one in three people suffers from this dreadful disease. The improvement in cancer services is one of the Victorian government's top priorities as identified by the Minister for Health in the other place.

This new funding will maintain Victoria as a top-class centre for cancer research and treatment. Therefore Victorians can feel assured that the government will maintain its continued commitment to the latest and most up-to-date treatments of the health system. Nearly $700 million was invested in medical research by the Victorian government. This included the establishment of the Olivia Newton-John Cancer Centre at the Austin Hospital, the appointment of a leading cancer surgeon Professor Robert Thomas as the state's first chief clinical adviser for cancer, and, recently, the introduction of new regulations on the use of solariums. All Victorians and my constituents will benefit from the increased funding to cancer research.

Ministers: responses

Mr P. DAVIS (Eastern Victoria) — Repeatedly I experience the situation that it takes months to get letters back from ministers on matters raised on behalf of constituents. I am sure this is a common problem for all members of this house. This raises the question of timeliness with respect to the government's dealings with people.

The government should be more efficient these days, or at least that is what we are being told by this government. Victoria has 1872 public sector organisations employing 240 000 staff at a cost of the order of $13 billion a year. The main performance indicator is their level of responsiveness to the people. That leads me to ask why it generally takes months to get a letter back from the government in response to inquiries on matters of community concern and why the answers are framed in the main to conceal rather than disclose information and to hinder rather than help.

This has been an increasing frustration of mine, and I think of all members, in relation to issues raised in Parliament and in ministerial correspondence. In particular I cite problems relating to East Gippsland — the timber industry, schools, public transport, national parks management, the Gippsland ports, and flood recovery support, to list just a few.

The responsiveness of the state's administration to the people has diminished over time. I hold a deep concern on that count, believing that a government should engage with people, serve their needs and explain its actions or the reasons it is unable to meet people's expectations fully. Premier Brumby has declared his government open and accountable, but I believe he needs to be more specific in both principle and practice — to commit to measurable performance standards around the way the government deals with and communicates with Victorians. Providing a prompt reply to a letter would seem to be a good starting point.

Heidelberg United Soccer Club: achievements

Ms MIKAKOS (Northern Metropolitan) — I rise to congratulate one of my local soccer clubs, Heidelberg United, which is part of the Victorian Premier League, for achieving 50 years since its establishment. The club was formed in 1958 by migrants from the northern Greek region of Macedonia and today is one of the most prominent teams in the Victorian Premier League. The club's most recent achievements include being a grand finalist in 2005 and a semi-finalist in 2006 and currently being in the top six on the ladder.

Heidelberg United Soccer Club is a grassroots club that has supported and continues to support disadvantaged youth in the Heidelberg area. The club has a reserve team, various junior teams and a veterans team, as well as a women's team that won the Hellenic Cup back to back in 2006 and 2007. The club encourages youth to participate in sport, which brings benefits to their health and social wellbeing.

The popularity of soccer is growing rapidly in Australia, with soccer currently being the no. 1 sport played by children in this country. As a soccer enthusiast I am pleased that the Rudd government will be supporting Football Federation Australia's bid for Australia to host the 2018 FIFA World Cup. I am hopeful that the bid will be successful.

I want to take this opportunity to congratulate the Heidelberg United Soccer Club, its president, Mr Nick Kartsakis, its members and the volunteers and supporters on achieving a significant milestone of 50 years.

Local government: regional and rural Victoria

Mr DRUM (Northern Victoria) — I was just down in my office compiling my member's statement about the secret waiting list this government has for elective surgery around the state. I was interrupted by the statement by Candy Broad who was having a go at Peter Ryan, the Leader of The Nationals, for daring to have the gall to actually go out and consult with local government! What on earth has got into The Nationals that they would dare go and consult? That is not our role; we have to sit back and let this mob take our water and do whatever they want — and be very grateful for the fact that this bunch of thieves — —

The PRESIDENT — Order! Mr Drum's reference to the government as 'this mob' and the use of other derogatory terms are inappropriate. I ask him to refer to those opposite as 'the government' or to use members' individual names.

Mr DRUM — It is interesting that we are being criticised for consulting with local government, even though we know this government has been the absolute gold medallist when it comes to cost shifting its policies onto local government. Local government is left in the situation of having fewer resources, which gives them only one opportunity — that is, to ramp up the rates of the local ratepayer and have services driven down.

We are being criticised by a member of the upper house who has decided to live in Melbourne and is never seen in country Victoria and would not know where country Victoria is. On behalf of her Labor government she wants to criticise The Nationals for consulting with local government. Good luck!

Council for the Australian Federation: meeting

Mr THORNLEY (Southern Metropolitan) — Last Wednesday I had the privilege of attending the Council for the Australian Federation meeting in Adelaide with

the Premier and the Deputy Premier. A couple of important things came out of that meeting.

Honourable members interjecting.

Mr THORNLEY — I am happy to report, Mr Finn, that we were warmly welcomed by the people of Adelaide. Firstly, the interim Garnaut report, which was, of course, commissioned by the states when we had a federal government that had no interest in this matter, was brought down. Obviously it contained some very disturbing conclusions about the impact of higher than expected economic growth on global emissions in the last few years and as a consequence the even more urgent need for significant action. If we had not taken action as states some time ago, and Victoria took a leadership role in this, we would not have had access to that important update.

Secondly, the Victorian government demonstrated real leadership in bringing the other states along on a range of issues about regulatory harmonisation, but in particular on the issue of side curtain airbags and electronic stability controls in motor vehicles. Through Victoria's leadership all the other states were persuaded to adopt that as a mandatory requirement by 2011. On our modelling we expect something like 40 to 45 lives to be saved per annum as a consequence of this. If that is replicated throughout the country, that will be very significant. That is an excellent example of the Victorian government's continued leadership in this area. That policy to save lives is in stark contrast with the hoon speed limit policy that the Liberal Party has yet to renounce.

Inner North Community Foundation: launch

Mr ELASMAR (Northern Metropolitan) — On 21 February I attended the launch of the Inner North Community Foundation at the Northcote town hall. The launch of this foundation was hosted by the City of Darebin and by Apprenticeships Plus, a not-for-profit organisation which is owned by the cities of Darebin, Moreland and Yarra. The purpose of this foundation is to provide unemployed and highly disadvantaged school leavers with alternative pathways and skills to enter the workforce. The chairman, Alan Brown, presented a cheque for $1 million. This money was provided by Apprenticeships Plus to kick-start the foundation. I wish them every success in their venture.

Nidal Asmar

Mr ELASMAR — On another matter, I am pleased to report that the Northcote-Preston senior sports award has been won for the second time by Nidal Asmar. I am very proud of our Australian-Lebanese younger generation who bring respect and a standard of excellence to their contributions to the Australian way of life. Whenever I go out in my official capacity to meet young people, especially students, my message is always the same; and that message is, 'Be the best you can be'. Mr Asmar has demonstrated his persistence and dedication to sport by winning this prestigious award, and for that I congratulate him.

Buses: Casey and Greater Dandenong

Mr SOMYUREK (South Eastern Metropolitan) — I rise to commend the Minister for Public Transport in another place on her initiative of launching a comprehensive review of local bus services in the cities of Casey and Greater Dandenong. Local bus services in the cities of Greater Dandenong and Casey have long been a cause of discontent amongst bus users in the two municipalities. The city of Greater Dandenong has a large ageing community which is reliant on bus services. Without these bus services this community can feel a sense of isolation. Conversely the city of Casey has a young demographic which is isolated by the tyranny of distance between isolated estates and activity centres and train stations. This review will assess the effectiveness of local bus services in meeting community needs by going straight to the source — members of the local community — for feedback. The review is part of the government's $10.5 billion transport blueprint *Meeting Our Transport Challenges*, in which $650 million was committed to improving local bus services. Most importantly, the people of Casey and Greater Dandenong will have a say in what is required from their local bus services by registering to attend public workshops or to make a submission to the Department of Infrastructure.

STATEMENTS ON REPORTS AND PAPERS

Auditor-General: *Agricultural Research Investment, Monitoring and Review*

Mr P. DAVIS (Eastern Victoria) — I wish to address the Auditor-General's report entitled *Agricultural Research Investment, Monitoring and Review* and dated February 2008, which was presented to Parliament yesterday. It is an excellent report which assists enormously in understanding the efficacy with which primary industries research is being delivered in this state.

Primary industries, and in particular agriculture, are important to the economy of the state. To put that in context, agriculture contributes $7.2 billion to the state

economy in Victoria and provides 20 per cent of country employment from the consequent engagement of the economic resources in regional areas. Agriculture is such an important industry that I think it behoves us to give it a higher priority than the government does, and that is reflected in the budget allocations that are made both to the Department of Primary Industries (DPI) but also particularly to research. In the budget the allocation to agricultural research is only 1.3 per cent of agriculture's annual contribution to the economy when in fact the Organisation for Economic Cooperation and Development benchmark for industry research and development is 2 per cent. The funding provided to agricultural research comes from a mix of sources and is not all provided by the state. It is quite clear that the level of research investment in Victoria with respect to agriculture is low compared to other industry sectors within Victoria, and relatively low compared to other states. It is certainly my view that this needs to be addressed.

In his report the Auditor-General found in part that despite an external review conducted in 2006 with respect to the research program, it does in fact lack strategic direction and is based on inadequate investment principles. He found that the program was insufficiently flexible to enable research to be adapted to emerging needs, and, of course, we understand that the emerging needs include adjusting to changes in climate variability and changes to international competition and the marketplace driven by technology, including genetic modification both in livestock and grains.

The Auditor-General also found the government is in effect failing to heed the farming community's views on research priorities. The report noted that as a result of all these shortcomings, the benefits of the non-commercialised agricultural research are not being captured fully, and the DPI's governance and administrative arrangements for intellectual property management need strengthening. This is very important. The whole purpose of agricultural research is to drive productivity improvements so as to maintain the competitive position of Victoria's agricultural sector within the Australian and global marketplace. If it is the case that we are investing in research and that research is not then being captured and applied, then there is little purpose being achieved with that investment. What I find strange is that whilst a report was prepared at the government's initiative in 2006 to deal with these particular matters, the government has ignored the findings of that research and determined therefore to simply continue as before without implementing its findings, which would have addressed some of these deficiencies.

The $96 million per year which is invested in the state government's research effort, including funds contributed from other agencies, is not all spent specifically on agriculture. Some of it is in relation to private forestry and a good part in regard to administration and therefore there is a fairly small capacity for research institutes, of which there are 19 around Victoria, to capture the benefit of public funding to undertake that important task of maintaining relevance in the marketplace. I would urge the government to implement the findings of the 2006 report of Professor Goran Roos, which set out a sound, workable plan so that the gap in the DPI's framework for capturing the benefits of research would be addressed.

Cobram District Hospital: report 2006–07

Ms BROAD (Northern Victoria) — In speaking to the 2006–07 annual and quality report of the Cobram District Hospital, which is the hospital's 58th annual report, I wish to acknowledge the president, Philip Pullar, and members of the board, as well as the chief executive officer, Nick Bush, and staff and thank them for their contribution to providing quality health services to families in the Cobram area.

The Brumby Labor government is also committed to providing high-quality health and residential aged-care services in regional Victoria, and that is why the government has increased bottom-line budget funding to the Cobram District Hospital by 51 per cent since the government came into office, resulting in the employment of more nurses and treatment of more patients. As well, funding for the after-hours clinic at the hospital has provided a successful after-hours service for the community.

The Cobram District Hospital is a 17-bed hospital which also has a nursing home and community health centre and runs its own private medical clinic, and it has been very successful in recruiting quality staff to a regional area.

I wish to congratulate the Cobram District Hospital on its achievement of the 2006 Premier's award for the most outstanding rural health service, presented at the Victorian Public Healthcare Awards. In paying tribute former Premier Steve Bracks said:

> In the past three years, the staff at Cobram District Hospital have done a remarkable job in reversing the fortunes of this small but vital rural community health service.

He said also:

> Staffing, triaging and medical credentialling were all issues for the hospital this time three years ago, but now there are

> extra staff including two registrars and there is now a defined credentialling process for medical staff.

The annual report lists many of the achievements of the Cobram District Hospital, including taking over running a Cobram dental clinic to ensure that the community has access to dental services.

I note that over the year a long-running safety issue for the community was resolved, with the closure of the old open water channel that used to run through the hospital grounds as well as residential and business areas of Cobram. I am pleased to see that this has happened following the installation of the new $23 million pumping station and water pipeline, which I had the pleasure of opening in October 2006. The new pumping station and pipeline and the reclamation of the old channel, making room for more parking and removing a barrier to further development, is a great example of what can be achieved through a high level of cooperation and investment between the community, the hospital, all three levels of government and Goulburn-Murray Water.

In conclusion I also wish to acknowledge the ongoing support of the community for the Cobram District Hospital through the fundraising activities of the hospital auxiliary, service clubs and many others, who help make government funding go further.

Youth Parole Board and Youth Residential Board: report 2006–07

Mrs KRONBERG (Eastern Metropolitan) — I am pleased to speak on the Youth Parole Board and Youth Residential Board annual report today. The meeting cycle of the boards is that they generally meet twice a month and during the period covered by the report there were 24 board meetings. The Youth Parole Board and the Youth Residential Board meet on the same day to consider cases that are scheduled for the respective board.

In his chairman's report Judge John Barnett advises that the 2006–07 period has seen similar numbers of young people sentenced to youth justice and youth residential centres as in recent years and that the proportion of paroles which were cancelled because of non-compliance with the set conditions or through re-conviction has remained at a similar level too.

The chairman stresses his concern for young parolees in that a significant percentage of these young offenders continue to display histories of complex needs. Such needs could be brought about by drug addiction, psychological and psychiatric disorders, intellectual disabilities and brain damage problems. Sometimes youth offenders suffered from a constellation of such afflictions. The resulting and inherent complexity of cases places great demands on custodial centres as they have to manage damaged people. If, as is often the case, there is little or no family support for these young offenders it is quite a dilemma finding suitable programs and accommodation for potential parolees. It is an ordeal for all concerned because of the paucity of supply of suitable accommodation. This means that parole is often delayed and sometimes compromised, which puts the entire process at considerable risk.

The solution offered here is one that we could institute on so many fronts: we could rehabilitate young offenders by offering new opportunities by way of educational and employment programs. Touching on my personal experience of teaching within the TAFE system for over 10 years, I gained direct experience with young offenders striving to re-establish themselves.

Sometimes their return to formal studies might look like a practical and suitable method of returning to fully participate in society. Unfortunately young offenders often suffer from conditions which affect their learning, such as attention deficit disorder and dyslexia. The boards were of the view that there was a need for much greater development of rehabilitative and employment programs as well as accommodation options for intellectually disabled detainees. The boards then stressed that they were in no position to develop such solutions to such far-reaching problems embedded in the detainees' communities; the boards look to the government to increase its commitment. The boards go on to emphasise that:

> During the year there were several cases when the Youth Parole Board was of the strong view that an earlier introduction and forward planning of disability services would have been of substantial benefit.

The boards ask that the government develop programs to cater for the needs of intellectually disabled offenders from the very first day of their detention, thus providing a smooth and reasonable transition from youth justice centres to specialist programs and accommodation options. Of particular concern to the boards is the lack of targeted services for intellectually disabled sex offenders aged under 18 years.

Mental health issues for parolees were then highlighted, because the boards believe such parolees are denied access to mental health services, particularly those which treat non-acute conditions. Because of the dearth of mental health services in rural and regional centres, the boards recommend that these regions develop a panel of local medical general practitioners who have

some special interest or training in mental health issues as well as general matters to which parolees can be referred. This is a desperate plight, and the boards are beseeching the government to look to providing funding for such an offering.

Many Aboriginal detainees also suffer mental health problems and intellectual disabilities. Their options for access to services are, again, extremely limited. In fact, Aboriginal detainees in general have limited access to services that would give them equal access to educational and employment opportunities.

Geelong Performing Arts Centre Trust: report 2006–07

Ms TIERNEY (Western Victoria) — I rise to make a statement on the Geelong Performing Arts Centre Trust annual report 2006–07. It is fantastic to see the diversity of performances that have been run by the Geelong Performing Arts Centre Trust, and as a result there has been a significant increase in the attendances, including the number of patrons attending performances at Costa Hall. Just over 223 000 people enjoyed a range of performances, which represented a 13 per cent increase on attendances in the last reporting period, which also was the 25th anniversary of GPAC.

A number of local artists and artists from other parts of the country were involved in a range of performances. GPAC, however, is very much a community organisation, and you can see through the lists of performances that a number of schools, local dance companies and callisthenics clubs utilise GPAC's premises at enormous rate of frequency.

The general manager, Sally Beck, acknowledged that the key highlights in the report included *Beauty and the Beast* by Lyric Theatre and *Footloose* by St Joseph's College, Geelong. I also mention that Ms Beck is currently on maternity leave, and I wish her well on the imminent birth of her second child. I also wish Ms Jill Smith, who is currently acting general manager, all the very best in fulfilling that role.

Also included as a highlight in the report is the state Labor government's announcement of a joint master plan project in partnership with the City of Greater Geelong worth $500 000 to explore a number of potential cultural, arts and related projects for the arts precinct in the area. I want to make particular reference to this because it is an exciting project that involves a range of people. The possibilities being canvassed in terms of infrastructure include an upgrade of the performing arts centre, a convention and exhibition centre, the possibility of a new civic centre, related developments such as an updated art gallery, library and hotel, and the possibility of other office buildings. I am looking forward to a meeting in Parliament House this afternoon on this very issue.

I also want to mention that Mr Tim Orton, the chairman of the Geelong Performing Arts Centre Trust, states in the report:

> GPAC is a Victorian government agency and relies on the support of the state government. We have maintained close working relationships with the minister and our local members and thank them for their ongoing support of GPAC.

With today's meetings and briefings with local members of Parliament, that is further testimony of the ongoing commitment that we have.

On a more grassroots and personal level, Jonathon Schuster, a Geelong local resident, won the Triple J Raw comedy competition heat at GPAC and went on to win the national final at the Melbourne town hall. His achievement is recognised in the report and I congratulate him for an outstanding effort. I also mention the support GPAC extends to local groups, with over $11 000 worth of tickets to shows donated throughout the reporting period. We can all talk about the need for infrastructure and investment in regional Victoria and we all know that is absolutely critical if we are to extend the benefits of a growing economy. The different levels of investment and infrastructure in regional Victoria are a key litmus test in ensuring that the whole state and all Victorians are able to share in the benefits.

When you look at reports such as the GPAC report you also recognise the importance of proper funding of the arts. If we make sure that we have key cultural impetus in our regional and provincial centres, it means that people will choose to live in regional Victoria and that it will become a preferred choice as a place to live, work, create and enjoy. I commend the work of GPAC and its excellent and succinct annual report. I congratulate the board and the staff of the trust and wish them every success.

Office of Police Integrity: exposing corruption within senior levels of Victoria Police

Mrs PETROVICH (Northern Victoria) — I rise to speak on exposing corruption within senior levels of Victoria Police as detailed in the report by the Office of Police Integrity (OPI). I welcome the report which demonstrates what a thorough standing judicial inquiry could achieve in uncovering individual and organisational corruption. I also encourage the government to adopt the inferred recommendations of

the OPI and establish a longstanding judicial inquiry with the jurisdiction to investigate all levels of government and not just police.

In particular, part one of the report entitled 'Exposing corruption' under the subheading 'Misconduct in public office' says that misconduct in public office is emerging as an important feature in the work of anticorruption agencies. This refers to a report by the Corruption and Crime Commission of Western Australia, a truly independent anticorruption body with the ability to investigate not only police but public service and government corruption at all levels. The report cites examples of misconduct by public officials, including inappropriately using and exposing confidential information to advance personal and private interests to the detriment of public interest. We are fooling ourselves if we believe that this level of corruption which exists in other states exists in Victoria only within our police force. It is clearly possible that a similar level of corruption exists within the Victorian public service and at other levels of government.

The OPI report identifies this type of misconduct in public office as an emerging, prominent and recurring theme in corruption investigations both here and in other jurisdictions. Of course those other jurisdictions have the benefit of independent anticorruption authorities, something that the Brumby government appears desperate to avoid. If it is good enough to investigate corruption within our police force, why is it not good enough to investigate the public service, local government and state government?

I would just like to read from the transcript of the OPI hearings. Obviously I cannot read it verbatim because some of the language is quite unparliamentary, but it starts off with a conversation between Mr Linnell and Mr Ashby, who are under investigation. Mr Linnell states that Sharon McCrohan was there because Brumby was there.

> Mr LINNELL: Mm and anyway I saw Shazz and I said —
>
> Mr ASHBY: 'What's going, baby?'.
>
> …
>
> Mr LINNELL: … I said, 'I'm just a bit worried, Shazz'. She goes, 'Oh, what about?'. She — oh, she goes, 'Are there any more corruption things to come out?'.
>
> …
>
> Mr LINNELL: And I said, 'Oh, this — I'm going to a place soon that I can't talk to you about.'
>
> Mr ASHBY: Yeah.
>
> Mr LINNELL: And — and she's quick as a — flash. She would be, I suppose —
>
> Mr ASHBY: Yeah, she's smart.

Mr Finn — Flash as!

Mrs PETROVICH — Yes. The response was:

> Mr LINNELL: 'What's that about?'. I said, 'I can't tell you'. 'And you have been called up?'. I said, 'Yeah, and I'm not happy'.
>
> Mr ASHBY: Mm.
>
> Mr LINNELL: And — and I left it hanging in the air …

The transcript goes on to say she freaked out:

> Mr LINNELL: No, and she freaked. And she's gone, 'You've … ruined my night' —

with some expletives thrown in —

> I said, 'Hello, join the club'.

And then Mr Linnell said he and Sharon needed to go and have a coffee.

That is one of the key points to all this, I think. It is clear that someone from the OPI should be looking at this. There is information that Ms McCrohan was present at a function with the Premier of the state of Victoria on that night. The other question of interest in the OPI transcript is that, although the conversation occurred between Sharon McCrohan and Stephen Linnell, it was assistant commissioner Ashby who was questioned about this conversation with Stephen Linnell. I would think that is hearsay evidence. Why was Stephen Linnell not questioned directly about his conversation with Sharon McCrohan if there was a further conversation over a cup of coffee?

This is all a bit dodgy, I think. I would just like to ask at this point: who is watching the watcher? It is also clear that police officers from the OPI leaked information to *Age* newspaper reporter Nick McKenzie regarding information about the Chartres-Abbott murder case.

Mrs Peulich — Leaks like a sieve!

Mrs PETROVICH — That is right, Mrs Peulich. This information appeared in the *Age* newspaper. It would appear to have come from a source which, under the confidentially obligations of the OPI, should have been investigated. But of course Nick McKenzie, Sharon McCrohan and the Premier, John Brumby, cannot be called before the OPI to determine the source of the information that they may be privy to. Why have they not been called?

Municipal Association of Victoria: report 2006–07

Mr EIDEH (Western Metropolitan) — I rise to speak on the 2006–07 annual report of the Municipal Association of Victoria. Before I do, I wish to acknowledge that, while local government may not be recognised in our nation's constitution, it is a key area for the provision of services for the community. Honourable members who have served in local government know only too well the great role that councils play and that the Municipal Association of Victoria is a great support for them.

Whilst I have had some experience in working with local government councils, this MAV annual report has certainly opened my eyes to the importance of having a big body such as the MAV representing local government. This report shows clearly the great role played by the Municipal Association of Victoria and by local councils across the state. In my parliamentary years I have been deeply involved at the community level in working with local councils, and I wish to praise them for their dedication to the community.

Members of this house would be aware that the Municipal Association of Victoria is a statutory body representing some 79 municipal councils across Victoria. Its goals are to support, assist, monitor and protect the concerns of municipal organisations in Victoria and to be recognised as the main driving force in lobbying governments at the state and federal levels to improve the services delivered by councils across Victoria.

Whilst state governments of any political persuasion may argue with councils at times, we are a democracy and we value their opinion, their concern for community and the many services that the state government would find far too bureaucratic to provide. Local government is responsible for local libraries; recreational facilities, including parks and reserves; local shopping centres; kindergartens and other child-minding services; garbage collection; local traffic management; and a range of local health matters.

Local councils are integral to disaster planning management, known as Displan; Meals on Wheels for the disadvantaged; handyman services for the elderly and other needy persons; local planning regulations; and much more. To list everything they do, every service, would require several pages of *Hansard*. They collect rates, impose fines and bring in income through a range of charges for their services but they also rely to a degree on government funding and especially on working together with the state government in areas of common interest. Councils lobby and work with the state government on a range of issues, and we are all aware of many of these issues over the years.

In 2006–07 the Municipal Association of Victoria lobbied on behalf of its members to obtain increased funding for local municipalities, including for skills shortages in maternal and child health services, and the emergency management capabilities of local councils and public libraries, and it contributed submissions to planning initiatives through Melbourne 2030. As a result of that advocacy it achieved an increase in funding of $4.7 million from the Labor government for libraries. It also received money from the state budget for services in maternal and child health and the early years, and a commitment of $20 million for the small towns water quality fund.

In many ways the association acts as the eyes and ears of government, advising us of the needs and concerns of people in small communities. In this way we work together on behalf of all Victorians. Finally I wish to acknowledge the contribution of Cr Joe Caputo, mayor of Moreland City Council and board member of the Municipal Association of Victoria. The city of Moreland is one of the most diverse and vibrant municipalities in my electorate. I commend the report to the house.

Office of Police Integrity: exposing corruption within senior levels of Victoria Police

Mr FINN (Western Metropolitan) — The Office of Police Integrity (OPI) report on exposing corruption within senior levels of Victoria Police was presented to this house earlier this month.

Mrs Peulich interjected.

Mr FINN — As Mrs Peulich pointed out, it could be described as a good read. Its comprehensive reports on multitudes of secretly — and some not so secretly — taped telephone calls give us some understanding of the internal politics of Victoria Police. It tells us in no uncertain terms that there is deep dissatisfaction within that grouping.

The report tells us that police are prone to gossip. This is hardly surprising. I know many police, and policing is their lives. Many could not imagine an existence outside the police force. It should not come as a shock that these men and women would speak to their fellow officers about something they regard as much more than a job. To them it is a vocation. Such discussions can hardly be described as acts of criminality.

This report is liberally sprinkled with assumptions, guesses, doubts and interpretations, and, I have to say, a fair bit of scuttlebutt. But does it come up with any firm proof of corruption? I could not find a lot. Melbourne's pre-eminent current affairs commentator Neil Mitchell probably summed it up best when he told his radio audience, 'There is no smoking gun in this report'.

Leaks are prominent subjects throughout this report. Interestingly enough the OPI has readily dismissed leaks of its own. The fact that the major findings in this report were outlined in the media two full days before it was presented in this Parliament leaves a gaping hole in the credibility and integrity of the OPI itself.

Mrs Peulich — Getting on the front foot.

Mr FINN — It was, getting in first, indeed. I will refrain from commenting on the major recommendations in this report, and I wish I could say everyone had done likewise. The performance of the Chief Commissioner of Police surrounding this report is, to say the least, astonishing. As soon as the OPI report was released, Chief Commissioner Nixon, like the politician she is, hit the campaign trail. She held media conferences, she did television interviews, and indeed she did the rounds of the radio stations. She publicly lobbied the Office of Public Prosecutions to lay charges against those named in the report. Never in the history of this state has any chief commissioner shown such total contempt for the separation of powers, but Christine Nixon smelt blood, and she was not going to let her opportunity go begging.

Many have concluded that Chief Commissioner Nixon is merely using the Office of Police Integrity as her personal weapon to smear and ultimately destroy her opponents within Victoria Police.

Mr Guy — It is the Labor way.

Mr FINN — It is the Labor way, as Mr Guy said. If so, there is true corruption. Now it seems we have the state government planning to elevate the OPI to a position above the law, and some have referred to it as 'Brumby's KGB'. With the willowy presence of a totally ineffectual police minister and with a power-mad Christine Nixon in charge we all have much to fear as to where it will all end. Perhaps one day the chief commissioner will recognise that she should be fighting real criminals in this state.

She should realise that people are fearful of walking the streets of Melbourne. She should realise that old ladies are being bashed in their own homes. She should realise that car theft is out of control. Indeed just a couple of weeks ago I was the victim of someone breaking into my car and stealing a particular item. So I am speaking from personal experience on that one.

Crime is everywhere throughout this state; Christine Nixon as chief commissioner and as chief law officer of this state just wants to play political games. She wants to get at those she regards as her enemies. You would like to think that a Chief Commissioner of Police might regard real criminals as her enemies. Sadly that is not the situation at all. In conclusion, I have only one thing to say to the chief commissioner: 'Get on with the job, or get out of the job'.

Office of Police Integrity: exposing corruption within senior levels of Victoria Police

Mr TEE (Eastern Metropolitan) — I, too, rise to speak on this report that exposes corruption within senior levels of the Victorian police. It is a bit like being in a parallel universe. I very much welcome this report. After reading this report you are left with a very clear impression that we have an independent, well-resourced and well-funded investigatory body with sufficient powers to do its job properly.

The Office of Police Integrity (OPI) is, as it should be, independent of government and, most importantly, is independent of the police, including Ms Nixon. It is a robust and determined outfit with an ability to identify and weed out any misconduct, and it has been a success story.

Some 150 criminal charges have been laid against former and serving members of Victoria Police. Obviously members of this house should make no judgement on the merits of the accusations made against individuals identified in the report. Those issues will be ventilated before the courts, and the courts must view that evidence free from the views and prejudices of members of this house. But taken as a whole, this report demonstrates the willingness, the commitment and the resources that the OPI has to identify and expose misconduct.

We know those powers are extensive. We know they include powers to force witnesses to answer questions, powers to intercept phone calls and powers to hold public hearings. What we have here is a permanent reform providing ongoing scrutiny of police conduct. The only way to counter police corruption is to watch constantly for the appearance of any corruption, build resilience and move swiftly to neutralise it.

The powers of the OPI provide a salutary warning to any rotten apples in the police force. The OPI will find you and expose you; there is no place for you in the

Victorian police force. Perhaps for me the most appealing aspect of this report is the clean bill of health given to the Victorian police by this independent body. As Mr Brouwer says in his letter of transmittal:

> The corrupting influences were contained to a few individuals.

I am sure this house will welcome that conclusion as well as Mr Brouwer's other conclusion, which is that Victoria Police, led by Chief Commissioner Nixon, is now in a better position to progress its strategic reform agenda. But instead of Mr Finn sharing the support for the Chief Commissioner of Police and her strategic reform, all we have is a biased, unfair and unfounded attack on the chief commissioner — a person with a reform agenda that has the overwhelming support of the police force and the Victorian public.

This report will give the community confidence that the chief commissioner and the rest of the police command have the support that they need to work to ensure that Victoria's police are free from misconduct and corruption. I congratulate the government for its ongoing support and commitment to the OPI, and I look forward to Ms Nixon continuing to build a police force that is the envy of the rest of the country.

Auditor-General: *Agricultural Research Investment, Monitoring and Review*

Mr VOGELS (Western Victoria) — I would like to make a few comments on the Auditor-General's report entitled *Agricultural Research Investment, Monitoring and Review*. The report shows the agricultural industry contributed $7.2 billion to the state economy and in so doing sustained many communities especially across country Victoria. It goes on to say that the national global competitiveness and climate change and decade-long drought are presenting unprecedented challenges to the future viability of the industry. Meeting these challenges and funding solutions will depend in large measure on the industry being supported by innovative, agile and strategic programs of agricultural research.

Generally the Auditor-General's findings were positive. However, in respect of the new rural funding arrangements the Auditor-General found a number of gaps. In last year's May budget we remember $180 million was set aside to build a bioscience research centre, which is really an amalgamation of a number of existing institutes and services already operating in metro Melbourne. While we all applaud the relocation of several different campuses across Melbourne into a single campus, I believe a lot of this expenditure will come out of the cost of jobs and other research work that is being done in country Victoria. This year alone we have had an abalone virus, we have had anthrax outbreaks, we have had fruit flies in north-eastern and central Victoria and in Melbourne, and we have had equine influenza. So the importance of the agricultural research investment cannot be overestimated.

An article in the *Weekly Times* of 25 April 2007 headed 'Science to lose 33 jobs' says that at least 33 per cent of Victorian plant and animal scientists in country Victoria face losing their jobs as the Department of Primary Industries refocuses its priorities. This article goes on to say that these scientists are among the 44 staff who have been told they were surplus to DPI's needs. Clearly the Brumby government is reducing services in country Victoria — and this is at the coalface; this is where the scientists are really needed.

The Auditor-General points out that DPI should increase flexibility and funding allocated to the research profile so that scientists can respond quickly and more rapidly to changing priorities. In a year where, as I said, there were many problems in agriculture, even though the agriculture division had a budget of $109.7 million at the start of the financial year, only $95.9 million was actually expended, so 15 per cent of the allocation was not expended. This is on page 15 of the Auditor-General's report. Page 35 of the report, under the heading 'Conclusion', states:

> Setting research priorities and making investment choices in a manner which provides the greatest benefit for the community is recognised internationally as a difficult and complex task. DPI has most recently attempted to meet this challenge by instituting a number of changes to agricultural research priority setting.
>
> Shortcomings in DPI's … funding allocation model included undue complexity in the decision-making process and problems with transparency, flexibility and accountability in funds allocated.

I just want to conclude by saying that it was not a smart move last year, one of the toughest years we have had in agriculture in country Victoria, for the DPI to put off 44 research scientists on the ground right across country Victoria — this report actually proves it as well — and the department needs to reassess its priorities.

Office of the Child Safety Commissioner: report 2006–07

Mr SOMYUREK (South Eastern Metropolitan) — I rise to make a statement on the 2006–07 annual report of the child safety commissioner. At the outset I can give the house a snapshot of the report. The first section is headed 'From the child safety commissioner'; the

second is 'Office of Child Safety Commissioner; and the third is 'Functions of the child safety commissioner'. The fourth section is headed 'Providing advice to the minister about child safety issues'. It is an interesting section, and I will visit that during my contribution today.

Another section is headed 'Reviewing the administration of the Working with Children Act and educating the community'. The section headed 'Monitoring out-of-home care services' is also very interesting, and I hope to touch on that during my contribution today. 'Conducting inquiries and reporting on the deaths of children known to child protection' is the heading of the next section, 'Future directions' is at page 18, and 'Finances' explains the subsequent sections. I hope to touch on 'Future directions' in my contribution today as well.

This year marks the commencement and embedding into practice of legislative reform that provides for even greater protection of Victorian children. The Children, Youth and Families Act 2005 demands that the paramount consideration in those making decisions on providing services under this act is that they be in the best interests of children.

Page 6 of the report lists the functions of the child safety commissioner:

> Providing advice to the minister about child safety issues
>
> Promoting child-friendly and child-safe practices in the Victorian community
>
> Reviewing and reporting on the administration of the Working with Children Act and educating and informing the community about that act
>
> Monitoring out-of-home care services
>
> Conducting an inquiry and preparing a report in relation to a child who has died and who was a child protection client at the time of his or her death or within three months of his or her death.

It is prudent to note that the Child Wellbeing and Safety Act 2005 defines 'child' as a person under the age of 18 and includes five specific functions for the child safety commissioner, which I have previously mentioned.

The mission of the child safety commissioner is:

> Promoting and improving the safety and wellbeing of all Victorian children

and the vision is for all:

> Victorian children — seen and heard.

At page 8, under 'Supporting parents and carers' in the section headed 'Promoting child-friendly and child-safe practices', the report refers to the Office of the Child Safety Commissioner and states:

> Empowering parents and carers to make informed choices about the services and people they entrust to look after their children has been a priority for the child safety commissioner. In support of this objective, the OCSC has produced a range of resources for parents and carers.

The literature, pamphlets and flyers — —

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

Murray-Darling Basin Commission: report 2006–07

Mr DRUM (Northern Victoria) — I wish to comment on the Murray-Darling Basin Commission annual report 2006–07. In the executive overview, the chairperson, Wendy Craik, not surprisingly refers to the extremely dry state that the Murray–Darling Basin is in at the moment. She mentions that:

> This demanded careful management of dams and weirs along the length of the river to maximise the efficiency of water delivery.

It has not been an easy task when the total inflows of the Murray system, excluding the Snowy scheme releases, are at record lows of just over 1000 gigalitres. The nearest comparable drought record was in 1914–15, with just over 2000 gigalitres in inflows. In effect the chair of the commission is painting a picture right from the start that 2006–07 was not only the worst inflow on record but was only half the previous worst since records have been kept. She goes on to say:

> … the prolonged dry spell, combined with the level of extraction from the river, led to very low flows through the Murray mouth …

This report was produced prior to the Victorian government's decision to take 75 gigalitres out of the Murray–Darling Basin cap through the north–south pipeline, leaving the Goulburn River around Yea. Any chance of the government moving to fix the irrigation system and return that water to the environment and the irrigators, such as has been outlined as creating opportunities in the national water plan, which also receives Ms Craik's attention in the report, has gone. When this report went to press, Wendy Craik was in print as saying that the proposed national plan for water security would create some challenges and opportunities. There will be more threats now, because this government will pour money into infrastructure

that will take water savings out of that area and put them into Melbourne.

It is also worth noting that the language used in this report is such that it prepares Victorians for an uncertain future. The government is using historical data to project the types of savings we will be able to take out of this new project. This report, in effect, warns that we are not to use historical data, because, with climate change and future uncertainty, we may not know what the intended flows will be tomorrow, let alone in 5, 10, 15 or 20 years time.

Page 52 of the report deals with the native fish strategy. This aspect came to the fore about one month ago when there was some uncertainty about the future of the trout industry in the Murray–Darling Basin. Again Wendy Craik refused to rule out that she would consider poisoning the trout in the Murray–Darling Basin in an endeavour to facilitate the native fish strategy.

The Nationals would be fiercely opposed to that type of implementation. We believe the trout industry in Victoria and New South Wales is well and truly established. Annually $25 million to $30 million is generated and turned over by the trout fishing industry.

There is an idea that the trout in the Murray–Darling Basin are mixed up with carp. We understand carp are a pest. They muddy the waters and cause damage to rivers. Any program which aims to eradicate carp in the basin should be supported, but if trout are included in that eradication program, that should be ridiculed and abandoned as soon as possible.

This report makes for very interesting reading. It also deals with Banrock Station in South Australia and records how that wetland project is going well. The Minister for Water Security in South Australia, Karlene Maywald — —

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

Attorney-General: freedom of information report 2006–07

Mr ELASMAR (Northern Metropolitan) — I rise to speak on the freedom of information report 2007. In 1982 the Cain Labor government introduced legislation to provide access to information to the general public on government processes and documents. The philosophy and the objectives of freedom of information are still the same today as they were then — transparent, open and accountable government. The population of Melbourne has expanded enormously in the last five years. In order to provide the services demanded by the community in general and its growing families, it is critical that appropriate infrastructure be put in place to facilitate the growth in our economy. However, limiting accessibility to confidential material is unfortunately necessary. It protects the business interests of companies who are willing to put billions of dollars into Victorian infrastructure.

In November last year amendments were made to the FOI legislation to make FOI applications easier and cheaper. The government is committed to modernising this legislation. Already many recommendations and suggestions have been implemented by government agencies and government departments in an effort to retain the principles of open government. Amendments to abolish application fees and the capacity of the Victorian Civil and Administrative Tribunal to rule on vexatious applicants who can jam up a government department with multiple requests — just because they can — are positive steps forward for private individuals.

The report has a comprehensive breakdown of all FOI applications lodged in the state of Victoria; it is interesting to note that the highest number of applications lodged concern Bayside Health, followed closely by Victoria Police.

After looking at the figures in the report, I was astounded by the sheer workload relating to FOI requests. Nevertheless in the interest of public accountability it is necessary to ensure that the government is transparent in its dealings and is open to scrutiny. I commend the report to the house.

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

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with the Charter of Human Rights and Responsibilities Act:

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 Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2007 (the bill).

In my opinion, the bill, 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.

Overview of bill

The objective of the Victorian Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 is to give effect to the cooperative commonwealth, state and territory scheme for the classification of publications, films and computer games set out in the commonwealth Classification (Publications, Films and Computer Games) Act 1995. The Victorian act provides for the enforcement of classification decisions made under the commonwealth act, prohibits the publishing of certain publications, films and computer games and prohibits certain material on online information services.

The bill amends the Victorian Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 to implement amendments consequential upon the commonwealth Classification (Publications, Films and Computer Games) Amendment Act 2007.

Human rights issues

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

Section 15(2) of the charter provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether this information be imparted orally, in writing, in print, by way of art or in another medium chosen by him or her.

The national classification scheme (established before the charter commenced) limits freedom of expression. The purpose of the scheme is to establish a regulatory regime for certain categories of publications, films and computer games. The scheme imposes restrictions on an individual's ability to access and to use certain types of films, publications and computer games. As such, it restricts an individual's ability to seek, receive and impart information.

However, section 15(3) of the charter recognises that the right to freedom of expression 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.

This bill does not impose further limitations on the right. The majority of the bill's clauses implement consequential technical amendments which do not impose further restrictions in relation to an individual's ability to access information contained in publications, films and/or computer games. Accordingly, they do not limit the right set out in section 15 of the charter.

The substantive amendments in the bill which implement amendments to offence provisions in the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 in relation to the exhibition and sale of a compilation of classified films under a different title from the titles under which the classified films were originally classified arguably enhance the right to freedom of expression. The amendments to the relevant Victorian offences are consequential upon amendments to the commonwealth act, which provide that a compilation of two or more classified films on the one device does not require the compilation to be classified (i.e., the compilation is not to be deemed a new 'film' which would require it to be classified under the commonwealth act). These amendments reduce the classification obligations imposed on industry and distributors and are likely to enhance consumers' access to film 'information'.

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

The bill does not limit any human right and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with, and does not limit, the human rights protected by the charter.

JUSTIN MADDEN, MLC
Minister for Planning.

Second reading

Mr JENNINGS (Minister for Environment and Climate Change) — I believe this bill has passed the Assembly without amendment and does not contain a section 85 statement. With confidence and surety, I move:

> That, pursuant to standing order 14.07, the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

> That the bill be now read a second time.

Incorporated speech as follows:

> The Victorian government is committed to ensuring that the regulation and enforcement of classification decisions in relation to publications, films and computer games complies with the cooperative commonwealth, state and territory regime for the classification and enforcement of these materials, the national classification scheme.
>
> Under the national classification scheme, the commonwealth Classification (Publications, Films and Computer Games) Act 1995 ('the commonwealth act') establishes the Classification Board and the Classification Review Board, which are responsible for providing a classification rating and consumer information for certain publications, films (including videos and DVDs), and computer games. This information assists consumers in making appropriate choices with regard to consumption of this type of material.
>
> The states and territories are responsible for the enforcement of the classification decisions. The Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 ('Victoria's act') provides for the enforcement of classification decisions made by the Classification Board and the Classification Review Board, prohibits the publishing of certain publications, films and computer games and prohibits certain material on online services.

The bill implements consequential amendments to Victoria's act to ensure that the enforcement provisions are consistent with recent amendments made to the commonwealth act by the Commonwealth Classification (Publications, Films and Computer Games) Amendment Act 2007 ('the commonwealth amendment act'). These amendments were agreed to by censorship ministers through the Standing Committee of Attorneys-General (censorship) forum.

In broad terms, the policy objectives of the commonwealth amendment act are to:

> clarify that additions to already classified films of descriptions or translations such as subtitling or captioning are not considered a modification to the film which would require it to be reclassified;
>
> allow authorised industry assessors to make classification recommendations and consumer advice to the classification board about films containing 'additional content', such as subtitling or captioning, released with an already classified or exempt film;
>
> confer responsibility for determining classification markings and the manner of their display on the commonwealth minister after consultation with participating ministers. This power was previously conferred on the director of the Classification Board. The amendments are required due to the commonwealth's decision to abolish the Office of Film and Literature Classification and fold the policy and administrative functions into the commonwealth Attorney-General's Department.

To ensure that Victoria's act is consistent with the commonwealth act specifically, and the national classification scheme overall, this bill implements the following consequential amendments:

> inserts a new provision which provides that a film that is contained on one device and consists only of two or more classified films is to be treated as if each film is contained on a separate device. This definition implements the classification requirements in the commonwealth act, which provide that a new application and classification of a compilation of already classified films on a single storage device is not required;
>
> amends offence provisions which require a film to be exhibited in a public place and to be sold under the same title as that under which it is classified, and without modification. This is to make the relevant offences consistent with the new provisions in the commonwealth act which provide that certain modifications to a film are not modifications requiring the film to be reclassified;
>
> makes technical amendments to ensure that the requirements for the display of determined markings and consumer advice for classified films, publications and computer games are consistent with the commonwealth act;
>
> makes technical amendments consequential upon, and ancillary to, the commonwealth's decision to abolish the Office of Film and Literature Classification consistent with the convenor of the review board having new statutory powers to manage the administrative functions of the review board independently of the board.

The main focus of the bill is to improve the operation of the national classification scheme and respond to the changing technological environment for entertainment media.

I commend the bill to the house.

Debate adjourned on motion of Ms LOVELL (Northern Victoria).

Debate adjourned until Thursday, 6 March.

FREEDOM OF INFORMATION AMENDMENT BILL

Second reading

Debate resumed from 7 February; motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

Mr DALLA-RIVA (Eastern Metropolitan) — On behalf of members of the Liberal Party on this side of the chamber I am happy to lead the debate on this bill. In November 2007 the bill was announced with much fanfare by the government when it said this was going to be a great reform to the Freedom of Information Act. The fanfare related specifically to the notion that FOI applications would be made available on the internet and there would be a capacity for people to apply under FOI for free. Later I will indicate that it is not necessarily free in the sense of what is proposed.

It is fair to say that there has been a significant growth in the number of applications under FOI in this state. I have raised the issue before in other discussions, but the freedom of information annual report, which was tabled in Parliament last year — and a subsequent one was tabled this year because the government did not quite get the figures right — indicated that there had been a substantial growth in the number of FOI requests under the last period of this government. Those on the other side will indicate that it is a great outcome that more FOI applications are now being made et cetera, but the fact is that FOI is being used more and more because this government has become more and more secretive and it is the only option that people now have.

We have seen that from some of the contributions today. Earlier Philip Davis raised an issue about getting requests from government departments, particularly ministers. He said that, despite there being literally hundreds of thousands of public servants now, trying to get some form of information out of the bureaucracy has almost become an art form in trying to manoeuvre around the many caves that exist in this government where information is being secreted. On the one hand the government will say that the increase in FOI

requests is as a result of it being more open, honest and transparent, but the reality is that if people could gain easy access to information there would not necessarily be a huge need for them to make these applications.

I refer to the amount of money received from FOI requests according to the media release from the Premier, John Brumby, on 20 November 2007. For the record it is important to understand that the amount of money that is claimed, the fee revenue reported in the annual report, is based on the $21.50 application fee. The fee revenue reported was $372 292.50. We need to understand that that is a relatively small amount in the overall context of the government budget, and exactly how much money the government is getting from the FOI applications needs to be put into context.

It is interesting to look at the number of exemptions the government has reported. As we see on page 9 of the annual report in table 3 headed 'Exemptions cited', most of the exemptions relate to personal affairs under section 33 of the principal act, and there were 3146 original decisions where exemptions were cited. Of those, 194 were internally reviewed and 22 went to VCAT (Victorian Civil and Administrative Tribunal) on appeal. The next significant item is 'Exempted by another enactment', a total of 1748, and then following down in order, 'Information gained in confidence' under section 35, and then 'Internal working documents' under section 30.

It is interesting to note that for cabinet documents — something very close to my heart — in relation to section 28 of the principal act there were only 67 decisions made, 10 internal reviews and 10 VCAT appeals. Certainly one of those would be on the matter relating to the EastLink case — it is probably not contained in this annual report but is in a previous annual report — where we sought to gain information via FOI about documents relating to the EastLink project. Before the 2002 state election this government stated that it would provide the then Scoresby freeway toll free, but, as we know, only a short period later it did a monumental backflip in that respect — and the rest is history. We sought to obtain documents under FOI, and I have to say that trying to get the information out was a very longwinded process, which even involved going to the highest court in Victoria and back. Ultimately the weight of the government coffers prevented me from continuing with that process. When you have been through the stone mill, as it were, it is disappointing to feel the grunt of the government using all its capacity to remove information that should be made available.

I will refer to other matters that have come to my attention. This bill has had immense media interest and concerns have been raised not only by the Liberal Party and The Nationals, but equally by the Greens and the Democratic Labor Party. Interestingly Labor has been out there batting hard to demonstrate that this is a good piece of legislation. From the outset I have to say that we have major concerns with the amendment bill as it stands. There are a range of issues throughout the bill that cause great concern not only to opposition parties, including minor parties, but right across the broad spectrum of those who wish to receive information or try to obtain information. It is fair to say that, while abolishing the $21.50 application fee — or $22, or whatever it may be — is an important step, it does not go to the heart of what the amendment bill is about. The explanatory memorandum of the bill says:

> This bill enhances the operation of the Freedom of Information Act 1982 … by implementing recommendations made by the Ombudsman in his report *Review of the Freedom of Information Act* tabled in Parliament on 1 June 2006 …

For those who may wish to know some background information, that report does not necessarily relate to me, but certainly the early stages of the Ombudsman's investigations related to the complaints that I had raised specifically with the Ombudsman a number of years earlier when we found that we were making simple applications under FOI and were constantly being blocked; in fact I was constantly being blocked. Almost every FOI application was being returned with the notations of either 'too voluminous' or 'need clarification'.

It is on the record here that at one point the government wanted clarification on what was meant by the word 'contract' or what we meant when we used the word 'document'. It wanted clarification on such trivial things that we would end up with letters in a similar vein to this: 'I refer to your letter dated last month that referred to your letter dated the previous month that referred to our letter dated the previous month that referred to our letter of the previous month which referred to your original letter relating to our original application'. It got to the stage where the documents relating to the application were thicker than the documents we were trying to get, in the sense of the communication back and forth. We had issues with certain FOI officers who, in my view, took it upon themselves to be guardians of the government rather than to act as free agents for the government. The fact is that this made it very difficult.

Early on I wrote to the Ombudsman requesting that there be a full investigation into that particular matter. That resulted in the initial September 2003 report by the Ombudsman. He completed a report concerning allegations of undue delay by departments in dealing

with FOI requests. As I said, this was as a direct result of the frustrations that we in opposition felt and the letters that we wrote to the Ombudsman seeking his assistance in dealing with the delays not only by the departments but also by the officers. We also made a number of requests of the Ombudsman to conduct reviews of our requests. Through that process the Ombudsman's officers came to the conclusion that things were not going to plan or as intended under the FOI act.

You would have thought the government would have reacted to the Ombudsman presenting his initial report in 2003, and in fact it did. It ramped it up. We ended up having quite heated discussions with the officers. There were further frustrations and further delays. Other conduct was aimed at frustrating the FOI act.

As we know, the Ombudsman has the capacity to undertake own-motion investigations. These investigations are not necessarily referred by any person but occur when the Ombudsman believes there is significant need for a matter to be investigated. The Ombudsman conducted an own-motion investigation, which is pretty significant in the sense that this is a government which, at the 1999 election, again at the 2002 election but probably not as much at the last election, had a mantra of being open, honest and transparent. We found that the process of FOI requests was a major concern.

In his June 2006 *Review of the Freedom of Information Act* report the Ombudsman made a number of key findings. The Ombudsman's office commenced its own-motion investigation in August 2004 and concluded with this report. The report was pretty damning of the Labor government's approach to the FOI act. It found that delay was a key issue. It found that 56 per cent of FOI decisions by government departments in 2003–04 were made within the statutory time frame of 45 days but nearly 21 per cent took more than 90 days. This is important in the context of this amendment bill because the bill provides for an extension of the statutory time frame by another 30 days, from 45 to 75 days.

As I said, the Ombudsman found that 21 per cent of decisions took more than 90 days. The government has said that on the recommendation of the Ombudsman it will extend the time frame by 30 days to 75 days, but nearly a quarter of FOI applications in this state will still take more than 90 days. My concern is that if we extend the time frame by an extra 30 days from 45 days to 75 days, 21 per cent of applications will not take more than 90 days but more than 120 days.

There are some good FOI officers and many do the work as they are paid to do, but some seem to think that they are subagents of a secretive state, that they are working for the government and that blocking FOI is somehow beneficial for them.

Mr Leane — Conspiracy.

Mr DALLA-RIVA — It is not a conspiracy. The tragedy is that government members opposite see it as acceptable for almost a quarter of FOI decisions to take more than 90 days. The Ombudsman recommended that it be extended another 30 days and the government has taken that up.

The problem I see is that there are significant issues about the time delays. If you look at the report, you see that it does not indicate that there are any systemic reasons for it to take that long before documents are provided. Our view is that in the circumstances it is necessary to provide this extension. If it is an issue of resources, that is a matter for the government to administer. As Philip Davis indicated earlier today, there are 240 000 public servants in the system. I make no comment on that other than to say that of those people clearly a lot will be working in the FOI area.

As an aside, one of the things we found through our internal examination is that in this term of office the government has added another component to the process of FOI. An FOI application goes in and there is the normal rigid process: there is notification through the normal system to the minister and the appropriate person, and it comes back down. Guess what the government put in? We now have media advisers attached to FOI. Each relevant area has some media advice on how to handle it. This government is more worried about the spin than it is about providing documents and information under a legitimate, normal FOI application.

The Ombudsman found in his report that 'many files demonstrated undue delay' — this is all outlined in the report — that the five days for ministers to note FOI requests were exceeded, and that in several cases that were examined the reasons given for claiming exemptions were misleading. He used the words 'were misleading'. They are not my words; they are his words. The report states:

> In several cases examined the reasons given for claiming exemptions were —

in the Ombudsman's words —

> misleading.

They are pretty significant words from the Ombudsman. He found that:

> … departments asserted requests were unclear or voluminous with little or no justification.

I have personal experience of that: 'Please clarify what you mean by the word "contract"', 'Please clarify what you mean by the word "document"', 'Please clarify what you mean by the word "clarify"'. It got to that stage. I think one letter that came back said, 'Please clarify what you mean by "clarification"'. I might be being a bit flippant about it, but it got to that stage. As I indicated earlier, if the departments spent time managing the FOI applications and seeking information it might be better, but I understand the government has now put processes in place to put media links into the system. Everything the government does has a media link. You cannot do anything in this government without some of the thousands of media advisers who are out there.

The police department has 101 media advisers — or 102 or 103, whatever it is; it grows every day — and meanwhile we have police stations like that at Hastings which cannot get police and an inspector is canned and railroaded by the government. They say it is by the hierarchy, but he gets canned because he is trying to tell the community what the true position is out there. What we have is a very secretive state that does not allow that. We are seeing that not only in FOI but also in every walk of life in this state. We even had debate yesterday about channel dredging in the bay. We put forward a proposition that information should be made more freely available. Did the government support it? No. It does not want to be open, honest and transparent. The mantra no longer seems to fit, and what we see here is another example.

Many government departments, as I said, assert that requests are unclear with little or no justification. Interestingly the Ombudsman found that government officers failed to give proper assistance to applicants who wished to amend their requests. That is right. There is actually a duty of care and a legislative responsibility under the principal act requiring officers to provide assistance to people making applications. For MPs and perhaps media outlets, that might not be so important, but when members of the general community ask for information that they believe is appropriate and right in the circumstances, they may find themselves in a position where they need support. But they have not got it.

The Ombudsman said there was an agenda to delay the requests. Who on earth would have an agenda? Why on earth would independent public officers have an agenda to delay requests? What was the underlying reason there? The Ombudsman obviously found that to be a significant issue and again it points to the situation as it stands. In a number of cases requests were said to be 'unclear' when they should have appeared as 'voluminous'. Government officers themselves did not know what the determination was. It is fair to say that if you are asked for all documents, records, emails and things relating to the Department of Human Services, they in themselves would be 'voluminous', but it appears that the requests were said to be 'unclear'. What do you mean by 'documents'? What is meant by 'DHS'?

The Ombudsman goes on to say that some decisions show little regard for the objects of the FOI act. I think that is important in the context of this debate and in the context of the amendment to part II of the act. The object of the act — and I will not read it in full — essentially says in section 3(1)(a):

> making available to the public information about the operations of agencies and, in particular, ensuring that rules and practices affecting members of the public in their dealings with agencies are readily available to persons affected by those rules and practices …

What the government is proposing under the new part II is the stripping of those objects from the act. Despite the Ombudsman making the very same point a number of years ago, the government is now having little regard for the object of the FOI act. It seems to be wanting to put into place a system that allows for what it believes is the good of the people. The reality is that this is not for the good of the people, it is for the good of the government to minimise information that goes out into the broader community and which should be made available under the existing part II. As it sits in the principal act, part II is very clear as to what is required. It is very clear as to what should be dealt with; and there is no finding in the Ombudsman's report that justifies the wholehearted removal of that section of the principal act, only for it to be replaced with a watered-down version that is managed by the Attorney-General.

We always hear the story about leaving Dracula in charge of the blood bank. This is what we are doing with this new part II. We are basically allowing the Attorney-General to set the guidelines — and that is absolutely dangerous in this secret state. I will get to that later.

The Ombudsman goes on to say that some departments took advantage of every available exemption to provide as little material as possible. I have been a victim of that; you become so whittled down, so battered and

bruised by the toing and froing of letters and requests for clarification. You are asked, 'Clarify what you mean' or, 'We do not understand what you mean by the words "human being"'. One request concerned my request for a contract. They wrote back and said, 'What do you mean by "contract"?'. I am not a lawyer but I could not believe it when it was very clear what I was asking for.

It got to the stage where we would have to attach copies of the actual documents we were seeking behind the FOI applications. That sounds silly, but we knew which document we wanted — we might have had a covering report or a statement from somewhere that specified that report — and we put a copy of that behind the application. However, they would still bounce it back and say, 'What do you mean? Please clarify what you mean'. It would be a document that had been on the government's website or that had been tabled or there would be something else there.

I recall the odd occasion where they took advantage — as the Ombudsman rightly said — of every available exemption. We would apply for something that should have been quite wide but we ended up with something that was about a millimetre wide. Sometimes you just got battered about because in opposition you simply did not have enough time to manage the bureaucracy.

In many cases, the Ombudsman goes on, statements of reason were inadequate. The Ombudsman found little evidence that multiple requests overwhelm the resources of the departments. This is a crucial piece of information for all members in this chamber to know. The Ombudsman found little evidence that multiple requests overwhelm the resources of the departments, so why on earth are we agreeing to an extension now from 45 days to 75 days when the Ombudsman found in his report that over 21 per cent of FOI applications exceeded 90 days?

I put it to members present that what is being proposed with this amendment, particularly the extension of time, is to allow those officers to extend their response to 120 days, so we will end up having three-month delays. They will go right to the 75th day. They will not want to go to 45 days where there is an automatic approach that should be taken; they will go to the 75 days and I can guarantee that they will extend beyond that because the evidence is quite clear that the ability is there.

The problem is that the list provided is by no means conclusive. The report lists many examples of delays, obstruction and misuse of the FOI act to thwart access to information about government activities. I can speak about the process from personal experience of fighting the government on one FOI application — one single FOI application — to try to get the public sector comparator, a document that should be made freely available. Surprisingly, such a comparator will be made freely available on the Royal Melbourne Hospital redevelopment, but it is not being made available on the EastLink project. The hospital is a public-private partnership, and so is EastLink. The hospital is government assisted, and so is EastLink. The government announced the hospital, and it also announced EastLink. So why would it not release the public sector comparator? The simple reason is that Victorians got fooled by the public sector comparator.

I feel sorry for Victorians and the people of the eastern suburbs who will be using the tollway for the next 30 years, when the government probably would have been told it could be for only 15 years at a lesser rate if a fair comparator had been used. But what the government did was to create a public sector comparator, and compare apples with pears. It said, 'We will have 100 000 cars go through the public-run toll', and then it compared that against the private operator's calculation. The private operator said, 'We will calculate it at 120 000 cars'. Naturally the revenue base is going to be higher — it has to be. The problem is that the public toll would have been, on my understanding, only over 15 years, not over 30 years. So the people who are going to be driving along that road for the next number of decades will get slugged. It is interesting also to note that EastLink is already getting ready to pay dividends to its beneficiaries. The tollway has not even opened, and it is going to pay out dividends! I was going to have a look at it on the appropriate website to see the report on the people whose remunerations are getting paid. I do not have any problem with it; they are entitled to it.

Mr Barber — What are they paying it out of?

Mr DALLA-RIVA — Exactly. What are they paying it out of? I can tell the house they know they will get a huge windfall. But could I get the information? Could I get that under FOI? No! So we ended up having to go through the whole process of the initial letters to and fro with the officers. We then went for an internal review, then to the Ombudsman. Then from the Ombudsman we went to the Victorian Civil and Administrative Tribunal. From VCAT the government then took me to the Full Court of the Supreme Court of Victoria, all the way along with a QC. All the way along there were QCs.

Mr Barber — Just one?

Mr DALLA-RIVA — The government had more: it had QCs, barristers, solicitors — the lot. Then we went back to VCAT, and the rest is history. We did not get access to the documents, even though initially we were granted access to them. That is an example of the openness and transparency of this government. It boils my blood when I think about it all the time, because you think you are doing what you believe is right for Victorians in trying to expose information and you just get crunched. So I understand when people come to my electorate office wanting assistance on FOI, and I know the emotion they go through and the frustration they feel under this government.

It is interesting to note that this is a party that consistently hammered the Kennett government under FOI. I have asked members of this chamber and people outside to review the amendment that is before the chamber. There are components of the bill that relate to the recommendations made in the Ombudsman's report, but the government has been very selective as to what it is proposing and putting forward, and it has been very selective and sneaky in the way it has drafted the legislation so that it maximises damage to any opponent.

The removal of the existing part II from the legislation is an example. That will absolutely strip back the capacity of people to obtain legitimate information. The capacity to extend the time will mean that members of the public will have to wait a significant amount of time to obtain information. I acknowledge that was recommended by the Ombudsman, and I understand that. I know the government will come back and say, 'How can you not agree with the Ombudsman?'. But, as I said, the Ombudsman found little evidence that the multiple requests overwhelmed the resources of the departments.

If the departments actually dealt with the FOI applications honestly and as provided by the act as set out in 1982, there would not be the necessity for delays. They would not have to embark on this stupid correspondence back and forth via letter and the stupidity of the way the process now works. They do not have to go to a media adviser who sits there and says, 'Let us look at this FOI. I tell you what, we will release it. We will release it on Friday night, and we will release it at the back door of Parliament House. By the way we have already leaked it to the *Herald Sun* or the *Age*, so the story is going to run anyway'. If members think I am joking I can tell them I have actually been a victim of that. I have had FOI documents lodged at the back of Parliament House on a Friday afternoon, after fighting for them for months and months and months. And guess what; the government had already given the report to a journo and the journo was going to write the story anyway. It is just amazing. But that is because the government has the media advisers linked in now. It has media advisers everywhere that link in, and they now even link into the FOI process. If any government member gets up here and says that is not the case, I will tell them they are being sorely misled in that respect.

I will go to the conclusions of the Ombudsman's review that are relevant to the bill. The Ombudsman made three separate recommendations — the first one being legislative recommendations. As I said, a range of amendments suggested by the Ombudsman are incorporated in part 3 of the bill. The matter of contention for the opposition relates to the 30-day extension to the 45-day rule that now applies, which effectively stretches out decisions to 75 days. We see this as not appropriate. Whilst I understand the concerns raised by the Ombudsman, in our view it is not a significant enough issue to warrant that extension.

It is interesting to note in relation to that extension, which is proposed in clause 11(1) of the bill, that the *Sunday Age* editorial of 25 November 2007 noted in relation to this bill:

> The only significant change is to slow the release of information from a dribble to a drip. Brumby has extended the response time for FOI requests from 45 days to 75 days. It beggars belief that the best solution to freedom of information officers failing repeatedly to meet the 45-day deadline was to give them even more time.

I think that says it all and sums it up fairly simply, and we agree wholeheartedly.

If it is about resourcing, then the government should take some of the media advisers and spin doctors out of their current roles and put them where they are actually needed. It should stop employing 102 media advisers in Victoria Police and it should stop employing the thousands who are out there already. It could put those people into assisting the FOI process so that we do not have delays. The government should get them responding to the requests that are made legitimately not only by members of this place and by media outlets but also, as I said, by the vast majority of people out there who are making applications for a legitimate reason.

The government seems to be very afraid to release information. Only yesterday, as I mentioned before, this government fought not to have information about the bay dredging process publicly released. Why? What does the government have to hide? What is the problem? It just beggars belief.

The second group of recommendations in the Ombudsman's report concerned process recommendations. From my point of view these were not controversial; they relate to the processes the various FOI units should undertake. In my reading, there appeared to be no legislative changes attached to those recommendations.

The third component was the administrative recommendations; the Ombudsman made nine of them. The two that are contentious in terms of the amending bill relate to the proposed substitution of part II and new part VIA as proposed by the bill. It is these parts of the bill that are the most controversial, because they really go against the purposes of the act as they were in 1982 when a Labor government introduced FOI legislation.

What purpose does the existing part II serve? It is important to go back and look at what the existing part II of the principal act was about, because the government is proposing to substitute a new part II, as outlined in clauses 4, 5 and 6.

In his report the Ombudsman quoted former Premier Cain on part II of the act. At the time Premier Cain said:

> If freedom of information legislation is to work effectively, two fundamental problems must be overcome. Firstly, persons must be aware of the existence of documents that might be of interest to them. Secondly, persons must be able to identify what they need to inspect by first being able to make a wider search.

The Ombudsman went on to observe:

> Part II of the act addresses those problems by requiring government agencies to publish statements concerning the organisation and the functions of the agency —

under section 7. The existing part II gives life to the first object of the act, that being under section 3(1)(a) of the principal act, as I indicated earlier. That relates to:

> making available to the public information about the operations of agencies and, in particular, ensuring that rules and practices affecting members of the public in their dealings with agencies are readily available to persons affected by those rules and practices …

The rules and practices need to be made available as public information so that the public knows what it can seek to get. But the government is proposing with its new part II to restrict that so that the Attorney-General will determine the guidelines that allow information to be released.

The government proposed to do this essentially because it was not making that information available. If you are not doing it, what do you do? You get rid of it! It sounds logical, but what about enforcing the provisions of the act? I know there are arguments about the act having been there since1982, but it seems to have operated effectively for the last 20 years or so. It just happens to not work under this government. Why? As I said, the government should get rid of some of the media spin advisers and get them working where they should be working.

It is important to put on the record the current practice established by existing part II. It sets out an extensive range of information that all departments and agencies are required to publish; it details their activities, internal laws and processes. As an example, the cabinet register lists all decisions of cabinet, and is obviously subject to the Premier's discretion. As another example, relating this to my own experience, there is in existence a Victoria Police manual which details the protocols for police interaction with the community. A third example could be general guidelines on departmental and agency application of discretion in making decisions in awarding grants and so on.

However, the real practice undertaken by this government has been not to publish the majority of information required to be published on the grounds that it would be too onerous for each department and agency to fulfil the obligation in part II. In fact, and this is important, since 1999 the premiers have used their discretion to avoid listing any cabinet decisions on the register. They were there before; they were there 'even under the secretive Kennett government', as we hear the government say, but the government does not even put them on the register anymore.

The Ombudsman recommended that part II be reviewed as a matter of urgency, and we understand that, but that it be reviewed while giving consideration to adopting a system of publication schemes on the model of the United Kingdom freedom of information act. The Ombudsman's recommendation was based on the United Kingdom model, but I do not see that here. What we see here is a system that is not what the Ombudsman recommended.

Mr Barber — It is the Rob Hulls model.

Mr DALLA-RIVA — That is exactly it, Mr Barber.

Mr Barber interjected.

Mr DALLA-RIVA — The United Kingdom model is very clear; and people in it report to a freedom of information commissioner who establishes what information should be released and how it should be released — not a government minister.

Mr Barber — A minister for whom the act applies to his department!

Mr DALLA-RIVA — That is right. A minister for whom the act applies to his department. As I said before, this is about Dracula being in charge of the blood bank! 'Trust me, I am sitting here, I am protecting it!'. Meanwhile he is eating it all away.

Mrs Peulich — He talked about conflict of interest when in opposition.

Mr DALLA-RIVA — Conflict of interest is an important issue here because there is very much a conflict of interest. The Attorney-General will establish the guidelines, which he oversees and manages. I might be wrong, Mr Barber, I might be a conspiracy theorist with this, but I wonder if the Attorney-General will seek guidelines that will be protective of his government and his own department. If you were a betting man, if you were involved in the racing industry, you might have a bet on that, but I do not know any mates in the racing industry that I support, so we can leave that for another day. The facts are that we find it very difficult to support this new part II. What will happen to the new part II under this amendment?

Mr Barber interjected.

Mr DALLA-RIVA — As Mr Barber has already indicated about the Attorney-General, we are being asked to respond to the government's failure to meet its disclosure obligations by removing those obligations. That is essentially where it is at. If the government's new part II were to proceed, the amount of information made available to the public would be determined wholly at the discretion of the Attorney-General, which presents a fundamental conflict of interest and a regression to the government's so-called commitment to openness and transparency.

The removal of the existing reporting requirements would make it more difficult for any applicant to lodge a valid request by removing a prime source of information about the activities and processes of every government agency. There will not be one government agency that will not have the Attorney-General's fingerprints on it, which means the information will not be made available. It will be good to see how the government reacts under the proposed new part II. The opposition's view is that it will not support the new part II for the reasons I have outlined earlier. It is not the model that is applied and recommended by the Ombudsman. It is a model that is not supported in the broader sense, and it is a model that will actually bring further problems to people trying to gain general information in the public domain. This is not about the government being more open and transparent in relation to the part II provisions. It is actually a retrograde step and it is a step that in the longer term — people may not see it now — will be damaging to those who are trying to find information of a general nature.

As I said earlier, this government and its officers make it very difficult, and if you are not succinct about the information you are after, you will not get the information, because they bounce it back and forth, almost to the point where you struggle to try to get the information. How on earth, under this new regime of part II will it be more easily available? It beggars belief. The opposition will not support the entire new part II of the amendment bill.

The other administrative aspect that we have concerns about — I have spoken about the time extension and we believe that is not an appropriate mechanism for the government — is part 4, which deals with vexatious applicants. The Ombudsman recommended that the Victorian Civil and Administrative Tribunal be given the power to declare a person a vexatious applicant with the effect that further applications by that person may be made only with the consent of VCAT. That sounds straightforward. I can understand the issue of vexatious applicants. When I was shadow Minister for Corrections I knew of vexatious persons and I remember legislation in this chamber to give power to prisons in terms of that provision so that prisoners did not make unwarranted vexatious applications to the Supreme Court or other courts. There was the capacity for the Supreme Court to rule that person to be a vexatious litigant for the purpose of any litigation that may occur.

What this government has done is extend it well beyond what the vexatious applicant was. If we look at the current system, what it is saying is that any person in this state can be declared a vexatious applicant. The underlying and fundamental principles of natural justice are thrown out with part 4 of this bill. Natural justice will be taken away by the Attorney-General in relation to vexatious applicants. They will be in a position where they are proven guilty before innocent. All that needs to occur under new part VIA is to determine that you have made an application under section 61C, which says that your application has 'the effect of obstructing or otherwise unreasonably interfering with the operations of the agency or agencies'.

I ask members present: who on earth would say that any FOI application does not upset or interfere with the operation of a department? The very nature of an FOI application is that you will at some point interfere or

obstruct an agency. If, for example, you are asking for payroll data or information about an agency, of course you will be interfering or obstructing the operations of the agency.

You might have legitimate reasons for asking for that information. You might have information that certain people on that particular database are Labor mates. You might have information that relates to other matters of which you need to gain the full information — if you are lucky, if it is in the public domain. If the new part II goes through, that information may not be in the public domain. How on earth are you then going to find it? How on earth would you know it is there? I have already argued that case.

The new part VIA essentially will mean that you are guilty until proven innocent. Let me be very clear about the situation. As the opposition's FOI spokesman, I, along with my colleague David Davis, who is responsible for scrutiny of government, would most likely put in more FOI applications than other members. We have a long history of putting in FOIs. We have had a long history, you could argue, of obstructing or unreasonably interfering with the department. For example, if I have 40 FOI applications in place, after I have put in the last one a certificate could be issued by the minister or an agency to say: 'Mr Dalla-Riva has overstepped the mark. He has put in too many FOI applications'. They could then go to VCAT and have me declared a vexatious applicant, for no reason other than that their view is, as the act says, that I am obstructing or unreasonably interfering. VCAT will make a literal interpretation of that. There is no negotiation either way about the interpretation of that.

The proposal in clause 20 to insert new subsections 61A(3) and (4) means that until the determination is made, you will be prevented from placing any more applications. The 39 other applications I have in place would be held until I am either determined to be a vexatious applicant or not. I put it on record that it might be that my 23rd FOI application is seeking very important information that, if it were released, would be quite damaging to the government. If I were in government and this new proposal was in place, I might say: 'We are going to have Mr Dalla-Riva declared a vexatious applicant on his 39th FOI application, but we want to do that with the intent of holding up that other FOI application, because we know that if Mr Dalla-Riva gets that bit of information, it will be damaging for this government'. I am not being a conspiracy theorist, but that is what this legislation allows. It allows — —

Hon. T. C. Theophanous — It sounds like a conspiracy to me.

Mr DALLA-RIVA — I was waiting for Mr Theophanous to bite. This is the minister who was in the Cain and Kirner governments and was in opposition during the Kennett government. This is the same minister who would have been attacking Kennett on FOI. He would have been sitting there and ranting and raving for hours on end, hand on heart, saying, 'Oh, Lord, the world has fallen in. FOI has been destroyed'. Yet he will support these amendments today, which actually make FOI in this state worse than it has ever been. People do not yet quite understand the impact of these amendments. These amendments go very much to the heart of what FOI is about.

New part VIA can apply to MPs, it can apply to journalists and it can apply to the Blue Wedges group. It can apply to any organisation or an individual. The definition covers anyone who has made multiple requests that impact on the work of departments or agencies. As I said, it is all laid out in proposed section 61C, which talks about the effect — that is all it says:

> … have had the effect of obstructing or otherwise unreasonably interfering with the operations of the agency or agencies.

It goes to the very serious issue that people will have no natural justice. They will not have the capacity to have the matter heard. All their applications will cease to be active until such time as a determination is made by VCAT.

From my personal experience, having been through the process of fighting the government for nigh on three years on one FOI application, there is no reason why an application cannot be made concerning an MP at some point when it is felt necessary to try to stymie an applicant seeking to gaining access to information that may not relate to that particular FOI request but to another FOI request that we do not know about. It will only be determined once it has been established. Not only that, these amendments remove the Ombudsman's capacity in vexatious applications. There is no capacity for the Ombudsman to even review such an application until it goes to VCAT, so a person stands condemned as a vexatious applicant until that time.

I cannot believe Mr Scheffer, with his principles, will stand here and support this.

Mrs Peulich — Mr Pakula would!

Mr DALLA-RIVA — Mr Pakula might. I do not want to make any assertion, but I know Mr Scheffer in terms of his debate. What he often stands for is about ensuring natural justice. Mr Scheffer knows this full well. I will be disappointed if he does support it. He should be agitating to the Attorney-General.

Mr Pakula — Just you worry about your position!

Mr DALLA-RIVA — I am just putting on the record that I believe there are some members here who, if they had the capacity to vote as they wished on certain provisions of this bill, would not support it.

Mrs Peulich — Minister Jennings probably would not support it.

Mr DALLA-RIVA — I cannot speak for others, but I know from being here and sharing some time with members of this chamber, there are some. I do not wish to single out Mr Scheffer, but I know he has a strong view on issues such as this. This would be one particular case where I think he may be agreeing in silence.

On other information on clauses for discussion, it is important to put on record the changes to personal information under clauses 7 and 13. The bill broadens the scope of information considered personal for the purposes of exemption under section 33(1) by changing it from unreasonable disclosure of 'information relating to the personal affairs of' any person to 'personal information about' any person.

This brings the definition into line with the Information Privacy Act. Clause 8 of the amending bill extends the ambit of documents not available through FOI because they are otherwise available. They include documents that contain information available on the website of any agency. This clause will allow the government to hide information within the website of any agency. This would allow a document to be excluded from consideration under an FOI application to another agency but without the agency having to advise that the document has been excluded. That is a bit longwinded, but the bottom line is secrecy. The clause has been put in there, and it will mean that publicly available documents will become less available under this clause.

Clauses 9 and 10 remove the $22 fee for applications. However, it is important to note that the bill does not actually remove all charges. People think an application will be free, but the bill will not remove the charges for getting documents printed and the like. Also the bill will not remove the charges outlined in section 22(1) of the principal act, which controls unreasonable applications for voluminous documents by applying significant fees. On the odd occasion I have had to pay $300 to $400 in fees to get voluminous documents. So it does work on the odd occasion, but I knew what we were looking for; I do not know what we are going to be looking for in the future. If members support part 2, it will be on their heads, as we do not know what we are going to be looking for.

The small access fee under clause 12 — that is, costs of access to documents less than 1 fee unit — is $11.02, thanks to the consumer price index increases that this government loads on Victorians every year. The agency can waive that charge, and on the odd occasion it has even waived that charge for me when I have applied for only a small number of documents.

The bottom line in terms of where we stand is that we believe the introduction of new part 2 should be opposed. We think it is a backwards step, and we will be looking forward to support from the government in that respect. We believe the extension of the time increase from 45 to 75 days is not justified. I repeat what an article in the *Sunday Age* states:

> It beggars belief that the best solution to freedom of information officers failing repeatedly to meet the 45-day deadline was to give them even more time.

We agree. We can see no justification for that particular provision. Whilst the Ombudsman raised those concerns and made that recommendation, if you read the report, you see there is no legitimate argument for that. Even in his own report the Ombudsman said he found little evidence that multiple requests overwhelm the resources of the departments. As I said, if the government got serious and started employing the people needed to do the work instead of spin doctors, we might actually get a result in the longer term.

The other part deals with vexatious applicants. We have much concern with this, as we believe protections already exist. There are existing vexatious litigant powers. Under section 24A of the principal act repeated requests can knock out such instances. Under section 25A(1) voluminous requests can be dealt with. Under section 25A(5) certain classes or all classes of documents are exempt. As I indicated earlier, you can actually apply the rule of financial capacity under section 22(1) and apply charges to control unreasonable volume. So the argument that this type of draconian legislation is needed to deal with vexatious applicants needs to be given further consideration. It is a provision which the opposition will struggle to support as it stands.

Let us get to the bottom line. The proposed reforms to the FOI regime offer little or no benefit to Victorians

seeking information from their government. At best Victorians stand to save some money for applications via the waiving of the application fees and other associated costs. What is the exchange? Victorians will give up the right to access significant amounts of information under part II of the act. An applicant will face further and longer delays for the release of documents and run the risk of being declared a vexatious applicant.

The Ombudsman made substantial recommendations, which the government suggested would guide its reforms, but instead the government is proposing a system which makes it less likely that the Ombudsman's recommendations will be taken up. For the government to respond to problems with part II of the act by changing the requirements to suit the current lack of compliance is absurd and in direct contradiction to the Ombudsman's recommendations. Further, to specifically exclude the Ombudsman from intervening in vexatious applications undermines the Ombudsman's credibility and capacity to protect Victorians in their dealings with this government.

The bottom line is that the claims that the reforms contained in this bill will increase openness and transparency are merely false and very much misleading.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Major projects: regional and rural Victoria

Mr DALLA-RIVA (Eastern Metropolitan) — I direct my question without notice to the Minister for Major Projects. I ask the minister: how many current major projects funded by his government and managed by Major Projects Victoria are located in rural and regional Victoria?

Hon. T. C. THEOPHANOUS (Minister for Major Projects) — I thank the member for his question. May I first of all say that the major projects portfolio is a very important one. I talked about that in the house yesterday when I listed how many important projects there are. Whilst those projects are in the Melbourne area, nevertheless they will have significant impacts on regional Victoria as well. In particular the Melbourne Convention Centre — —

Mr Guy — The Melbourne Convention Centre?

Hon. T. C. THEOPHANOUS — The convention centre is not just for Melbourne, it is for the whole of the state. May I mention one development we are looking at, which is the new Melbourne Markets that will be located in the Epping area. I would be interested to know whether or not the Liberal Party supports that.

Honourable members interjecting.

The PRESIDENT — Order! The minister is fully aware of my previous rulings with regard to debating answers, and I remind him of them.

Hon. T. C. THEOPHANOUS — I am interested because I know we have had strong support for the project from The Nationals. I wonder whether that support will continue given that the Liberal Party opposed it vehemently and did not want the markets to be shifted from Footscray.

We are embarking on many projects which will have an impact on regional Victoria in a variety of ways. I have mentioned some here in the past. The Hepburn Springs Bath House is one which comes to mind. It is an important facility that will benefit that region. It will deliver a significant amount of tourism into that part of Victoria. It is not the only project that has been delivered by this government into regional Victoria.

I might answer the member by saying that the amount of infrastructure that is being built in regional Victoria is much greater than anything that was ever done under the previous government. Some of that comes under Major Projects Victoria and some comes under other portfolio responsibilities.

Honourable members interjecting.

Hon. T. C. THEOPHANOUS — The fact is that we are upgrading rail, for example, which you shut down in regional Victoria. The fact that we are now rebuilding rail in regional Victoria might not be important to you; you might not care about rail projects in regional Victoria, but it seems to me that you should look at the combination of projects that this government is involved in, both those done by Major Projects Victoria that are specific to particular locations — like the one at Hepburn Springs — and others. If you look at the impact of some of these other projects, like the market, which will obviously be a huge benefit for regional Victoria and is supported by The Nationals but opposed by the Liberal Party, you see that they are very important projects. But I do not know where the coalition stands on the relocation of the market.

If you look at all of the other infrastructure that is being developed in regional Victoria, whether it be schools, transport, freight or a whole range of other capital investment — —

Mr Guy — It is not your portfolio.

Hon. T. C. THEOPHANOUS — We are a government, Mr Guy. While I would love it to be the case, not everything is done under my portfolio.

Honourable members interjecting.

The PRESIDENT — Order! I am sorry to interrupt the minister, but the fact is that I am reflecting on the adjournment debate last night, and this question time is starting rapidly to descend into the same dark hole that we got into last night. I remind all members on both sides that interjections are unruly. I have already explained that the minister is not able to debate answers. I remind members on my left that, if they want to continue to interject, they will provoke the minister into the sort of response that one would expect — that is, to debate the answer — which I will find inappropriate during the course of this question time.

I ask for members of the house to consider what I am saying and restrict interjections so that they will not provoke the sort of response they have provoked to date. If that is not possible, then I will start handing out the warnings, and I will start removing people from the chamber. It is entirely their choice.

Hon. T. C. THEOPHANOUS — The previous government did nothing in regard to infrastructure in regional Victoria. I have identified the Major Projects Victoria projects. There is also the Geelong cultural precinct, which is another important project that we are delivering through Major Projects Victoria. But many of these projects are designed to benefit regional Victoria, such as the Melbourne Markets relocation, which is supported by The Nationals, opposed by the Liberal Party and supported by the government.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — I thank the minister for his non-answer, but the fact is that there are a very few major projects in these areas. Can the minister therefore explain why the $3.1 billion desalination project and the north–south pipeline project are not being managed by Major Projects Victoria, or is this just an admission from the Premier that he has no faith in his major projects minister?

Hon. T. C. THEOPHANOUS (Minister for Major Projects) — The government established Major Projects Victoria as a specialist delivery agency for projects that were designated by the Premier. Major Projects Victoria has never had more business in its construction profile than it has today. It is building a range of very large projects, some of which I told the member about yesterday in relation to projects in Melbourne.

The projects that are important for us in regional Victoria include some of the Major Projects Victoria projects, but they also include projects that are being built within other portfolio responsibilities. Of course the desalination plant is one such project, as are some of the other water projects. We have a water minister who is responsible for those projects, which will be delivered in an appropriate way through that set of arrangements.

The government has a number of ways in which it delivers major capital projects in this state, one of which is through Major Projects Victoria, but major projects are also delivered through VicRoads, through public transport arrangements and through a range of other arrangements. I can only reiterate for the member that Major Projects Victoria has never had more business than it has today.

Planning: activity centres

Mr PAKULA (Western Metropolitan) — My question is to the Minister for Planning. Building up Melbourne's activity centres to foster more sustainable and vibrant communities is a fundamental principle of Melbourne 2030. I ask the minister to advise the house on the progress of activity centre development in Melbourne.

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Pakula's question. I know that in his region he has activity centres, in which he is no doubt interested, and he has been very supportive of the work in and around the transit city activity centre in Footscray. I know he has been very active and will continue to be very active in this space.

What is important about these activity centres is that part of our policy is to make sure that we develop vibrant hubs right across Melbourne where people can work, shop, relax and live. Generally the premise is that they have good access to public transport. This policy also offers opportunities for people in Melbourne to have a range of different types of housing. We know that in some instances there is a reluctance to be informed about the need for different housing types, but we should appreciate that what we are seeing in relation to the ageing population is the need to age in place. One of the great ways we can provide for ageing in place and for ageing in the suburb you have lived in is to concentrate these developments around activity centres. I suspect that as we get older none of us necessarily want to move from the area where we have developed

our networks, links and contacts. We do not want to have to relocate to somewhere else because of our age and the lack of housing diversity in any one area.

Activity centres give us a great opportunity to build an array of different housing types in and around a concentrated area close to public transport. We have to do this in a responsible and sustainable manner. This is part of our policy — policy, policy, policy. I say that four times because I know there are some in this chamber who do not have policies at all. Structure plans are important to make this work happen. Precinct structure plans in these areas which are currently being developed in conjunction with local government — —

Honourable members interjecting.

The PRESIDENT— Order! If Mr Leane or anyone else wishes to converse across the chamber, it is fine, but it is not to be done while we are sitting. If members want to have a conversation with someone on the other side of the chamber, they should go outside.

Hon. J. M. MADDEN — The precinct structure plans, or master plans for these areas, help provide the foundation for change. They also help define the direction for future growth. We know there are people in this chamber who do not have any policy, and they seem to say, 'Don't allow for development, don't allow for change and don't allow for growth in Melbourne'. Basically the precinct structure plans for these activity centres articulate how change will take place and growth will be measured.

We are seeing that being taken on board by some very proactive councils. Banyule City Council is embarking on a significant revamp and revitalisation of the Greensborough principal activity centre. This will be an outstanding development right across the board. It is a very big partnership between state government, local government and the private sector. We will see a plan that will involve new aquatic facilities, new retail floor space, new job opportunities and new housing choices, as I have already mentioned, and they will be in proximity to each other and there will be good links to public transport. It will also be a benchmark for environmentally sustainable development in the future. I would like to congratulate the Banyule council on being proactive in this space.

As well as that, the City of Darebin has embraced an activity centre concept and has developed a 20-year blueprint for Preston that will see the retention of the vibrant qualities of that community as well as looking to the future. There will be improved urban design outcomes, particularly around the oval, the market and the town hall, which are iconic locations in Preston. The council's plan provides for better pedestrianisation of the area, particularly in relation to the town hall. It will link the town hall with the retail spaces, and there will be a public transport interchange around the Preston market precinct.

These plans involve us in partnerships with local government and the private sector. They are an opportunity to manage the growth and the demand we are seeing right across the community. People are voting with their feet and coming to Melbourne.

I am also looking forward to the outcome of the Melbourne 2030 audit that will inform us and assist councils to manage and continue to manage the growth and change that we are seeing right across these activity centres. At the end of the day this investment, this activity and this strategic alliance or partnership with local government and the private sector mean that we are ensuring that Victoria is a great place to live, work and raise a family.

Water: desalination plant

Mr O'DONOHUE (Eastern Victoria) — My question is directed the Minister for Planning. I refer to the government's proposed desalination plant on the Powlett River at Kilcunda. I note that the Minister for Water in the other place has referred the matter of an environment effects statement to the Minister for Planning to determine. I also note that the proposed pipeline route travels through a significant amount of private land and that, if it is installed, it will impact on farmers and other private land-holders. I ask: what consultation will the minister have with private landowners in determining the proposed route for the desalination plant pipeline?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member's question, because we know what an important project this is. We also know that when you have projects of this magnitude, or any major projects that are significant, there will always be contention. The opposition in particular has been calling for an EES (environment effects statement) process. Everyone has been calling for it in that region — I suppose I can generically say that. We have delivered an EES process; we have said there will be one. I have also just recently released a scoping document, so not only do people have an opportunity to comment on the EES process, they also have an opportunity to comment on what should go into the EES process.

I suspect that the supplementary question will be about the pipeline from the desalination plant through the land that has already been mentioned. But I would encourage everybody in the community who has an opinion on the desalination plant, if they feel strongly for it or strongly against it — we are sometimes not quite sure where the opposition stands on these issues — to have an input into the process and inform the process. No matter what they feel or what their concerns might be, they should have input into the process. In particular, if they are worried about the scope of the EES process and about whether it is big enough or will take into account the likes of properties along the pipeline route, now is the chance to have some input into what the scope of the process should be.

I encourage members of the community to make submissions and make comments on the EES process so that I can be informed, the department can be informed and the community can continue to be informed. Whatever decision is in relation to this project, doing that will mean it goes through a full and thorough process and people can have confidence in not only the project but also the process.

Supplementary question

Mr O'DONOHUE (Eastern Victoria) — I thank the minister for his answer. Will the minister guarantee that the debacle that has been imposed by the state government on private landowners with the South Gippsland natural gas pipeline will not be replicated if the proposed desalination plant proceeds?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member's question, but the important thing for the member and for all members of the chamber to appreciate is that they should not go out and scaremonger when we have a very significant project for the state like this. They should not go out and scaremonger. If they are going to go out and inform the community, they should advise people to be involved in the process. I would encourage Mr O'Donohue — if he has constituents who may have some concerns about the project or if he has constituents who might be concerned about where a pipeline might go — and other members opposite to inform their constituents and clarify the process for them.

We have already advertised that process, we will continue to advertise the process and we will continue to advertise it as the process moves through the documents involved in that process. I would encourage Mr O'Donohue to not only inform himself but to inform his constituents in a manner which does not scaremonger but allows them to have input so we can make sure that if anybody has any anxieties or any concerns about the project, the process or the other impacts, they are heard. They can make informed comment and inform the process, so that we all know at the end of the day where the impacts lie and understand how we can mitigate or offset those impacts.

Planning: coastal strategy

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Planning. Climate change impacts such as rising sea levels and erosion are becoming more evident than ever across the Victorian coastline. I ask the minister to advise the house what action is being taken by the Brumby government to ensure Victoria's planning system appropriately responds to these issues across our state.

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member's question. I know that he is particularly interested in these sorts of matters — and aren't we all interested in matters of coastal management? They are very topical at this point in time. They are not only topical, what we are seeing is a change in population growth and the effect of people desiring a sea change — which is a prospect for anybody around the place. There is the prospect of sea changes applying greater pressure on land use right along the coast.

The other important component about Victoria is that, unlike some of the other states, because this state is geographically quite concentrated, there is a lot of pressure on the coastal areas across the state. We have policies and strategies in relation to this. I know that is a bit of a contrast to the other parties in this chamber, because they are bereft of policy on the other side of the chamber when it comes to this matter. Can I just say, President — —

The PRESIDENT — Order! No, the minister cannot at the moment. I remind the minister of two points: I have already ruled on debating answers, and I remind him of his inability to criticise policy or comments from the opposition. He is simply asked to answer a question without debating or causing a debate.

Hon. J. M. MADDEN — Thank you very much for that guidance, President. I am pleased to advise the house that there are a range of policies and exciting initiatives under way in relation to this space. Coastal areas and communities will continue to be, and need to be, appropriately planned for.

Today I want to mention that I am working in conjunction with my colleague the Minister for Environment and Climate Change to protect and enhance the natural ecosystems and landscapes of the coastal as well as the marine environments. I am also keen to ensure that we have a sustainable use of natural coastal resources. As well as that, we have to be conscious of the social and economic balance in relation to enhancing and protecting the coastline.

The government is very proud of the Victorian coastal strategy and the work of the Victorian Coastal Council in the development of the strategy. In 2002 the strategy was released; in 2007 it was revised; and recently it underwent public consultation. It incorporates a number of policy directions on better planning around our coastline. This is particularly important at a time of not only sea change but also climate change.

What we know about climate is that it is putting greater pressure on coastal areas, particularly in relation to extreme weather occurrences and the potential for coastal erosion. In fact we could see a significant impact on some of the low-lying coastal areas. What we do not want is to have urban sprawl or coastal sprawl spreading into these areas. That would not only potentially undermine the magnificent natural attributes of these areas but could also put the landowners or land users and the assets located upon the land at significant risk.

This is part of an ongoing body of work we are doing to make sure that we manage, in conjunction with local councils, much of the capacity. That includes better recognition, support and guidance for resolving these ongoing and historically difficult issues, such as dependent uses and inappropriate subdivisions in particular.

I know that from time to time the opposition has asked questions about some municipalities and some issues in some of the low-lying areas. There is no doubt about the degree of difficulty some councils are having in this space. This is really to make sure that we support them, complement their work and give clarity to it. What we do not want is people and councils finding themselves in significant difficulty around the low-lying coastal areas. As part of that we are working in collaboration with the Minister for Environment and Climate Change on the Future Coasts initiative.

Just to show that not only do we talk the talk but we walk the walk, earlier this month I called in an application — and the difference between the parties is that I explain; the planning minister in this government explains why we call things in, as opposed to the opposition — for a 28-lot subdivision at Eastern Beach, Port Fairy. This is a sensitive site with eroding primary sand dunes and low-lying, flood-prone land sandwiched between the coastal edge to the south and the Moyne River to the north.

This is a matter that we have to get resolved and tidied up, but we do not want to put people, assets or the natural environment at risk, given those significant issues. Our commitment is to make sure that in these matters we protect not only the environment but also people's assets and livelihoods and also to make Victoria, because of all this, a better place to live, work and raise a family.

Healesville Sanctuary: Australasian grebes

Mr D. DAVIS (Southern Metropolitan) — My question is for the Minister for Environment and Climate Change, and refers to the purchase or trade by the Healesville Sanctuary from the Alice Springs Desert Park of three Australasian grebes. Is the minister aware that the three birds, which arrived at Healesville Sanctuary on 11 August 2007, had all either died or disappeared by the end of August, and could this outcome not have been predicted when moving birds between such temperate extremes in the middle of winter?

Mr JENNINGS (Minister for Environment and Climate Change) — This is quite a coup by Mr Davis, because it is one of the very rare occasions in my life as a minister when I have been asked a question that I have had absolutely no briefing on or have no knowledge about. It is a one-off, so congratulations to Mr Davis for finding a one-off in relation to the level of briefing that has come to me.

I will seek the information that he has requested. I do not know offhand about the wellbeing and safe handling of the species in question, but I will be very keen to do my research in relation to this question. Unfortunately at this point in time I cannot furnish the chamber with an answer, but I will be very happy to do so subsequently for both the member and the house.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I thank the Minister for Environment and Climate Change for his indication that he will come back with a detailed response, perhaps later today or sometime quite soon. In this context I ask whether the minister could address the following aspect as well: is this the standard of animal welfare we are to expect from Zoos Victoria, and will he now conduct a detailed inquiry into this and

other examples of appalling animal welfare management in Victoria's zoos?

Mr JENNINGS (Minister for Environment and Climate Change) — The member probably ignored my substantive answer. I stick to my substantive answer, but I will go beyond it to indicate that there has already been an evaluation of a number of reported incidents of unsafe handling practices and animal welfare issues relating to the performance of Zoos Victoria. I have looked at a range of those unfortunate incidents and what are sometimes overinflated descriptions of unfortunate incidents or accusations that may relate to animal welfare issues at the zoos. I have been particularly mindful to examine each and every one that has been brought to my attention. The incident the member has mentioned today was not included in briefing material I have received to this point in time, but I am very happy to add to the scrutiny I have already been undertaking.

The result of my examination, consideration and discussions of these matters with Zoos Victoria is that Zoos Victoria has established an animal welfare peer group review process that will add to the scrutiny of animal welfare issues. It will make information available not only to the board but also to me to ensure that the community can have greater confidence in animal welfare matters.

When I issued press commentary that indicated my degree of scrutiny of those matters and the establishment of those additional processes, I indicated that if specific instances are drawn to the attention of the Bureau of Animal Welfare, which has a memorandum of understanding with the RSPCA (Royal Society for the Prevention of Cruelty to Animals), there are formal requirements for those agencies to examine animal welfare issues. This goes beyond the scope of the responsibility of the zoos to all matters of animal welfare. Those processes may be warranted and may be undertaken by those appropriate agencies. I will not do anything to stand in the way of the appropriate scrutiny of those issues. In fact I encourage the appropriate scrutiny, because there are heads of power in those agencies relating to animal welfare issues.

Within what I am responsible for, we can add to the armoury the independent scrutiny of what Zoos Victoria does. I remind all members of the community that there are statutory obligations on the Bureau of Animal Welfare and the RSPCA in terms of animal welfare issues.

Royal Children's Hospital: redevelopment

Mr EIDEH (Western Metropolitan) — My question is to the Treasurer, John Lenders. Can the Treasurer explain to the house how using a public-private partnership for the Royal Children's Hospital provides value for money for taxpayers?

Mr LENDERS (Treasurer) — I thank Mr Eideh for his question and for his interest in providing good health options for Victoria and value for money for Victorian taxpayers in delivering those options. Mr Eideh asked about the public-private partnership. I think the first thing is that I alluded in the house yesterday or the day before to some of the things the children's hospital will do. It is a classic part of infrastructure being built by the Brumby government to provide a service that is needed, and to do so in a modern, responsive fashion for the 21st century.

We have a state-of-the-art hospital being built, and 85 per cent of the rooms are designed for single occupancy. Those in this house or the community who have had children who have been ill would appreciate the capacity for a family member to stay in a room with a child if need be. The changing needs of patients and families have been at the forefront in this. Further than that, next to the new children's hospital there will be a 90-room hotel, which again has been designed to allow families who wish to stay with a child to do so.

In response to Mr Eideh's primary question about the value for money of the hospital, I am happy to tell the house that this project will cost, in net present cost terms, $946 million, which includes a lot of the maintenance for the next 25 years. If we go to the public sector comparator and look at what this would cost through a traditional build-and-spend in the state, it would be of the order of $1.016 million. What we have seen through the Brumby Labor government using the best procurement method possible and valuing this against the public sector comparator — —

Hon. T. C. Theophanous interjected.

Mr LENDERS — One billion dollars, that is right, Mr Theophanous. We have seen a 7 per cent saving in this project, which is $70 million that can now be invested in the community in other health infrastructure areas.

What we are seeing from this is a significant saving. Part of that has come through the procurement model. The project includes food shops and a gymnasium for people working at the hospital and people visiting the hospital, and, as I mentioned, a 90-room hotel next to

the hospital. This is a state-of-the-art, environmentally friendly hospital with all sorts of facilities built in under this value proposal, including black water which can be used for the gardens and a range of other things.

The most significant aspect of this is the extraordinary service delivery for young Victorians and their parents. Beyond that, this is also an example of this state Labor government honouring its commitment to transparency. The details of this project were tabled in both houses of Parliament today — by my colleague Mr Jennings in the Council and by the Minister for Health in the Assembly. What we are seeing is part of our commitment going into the last election to be transparent. We have put the details of this not only in a report to Parliament but also on a website.

We are seeing a good procurement process, a process which sees value for money for the state, fantastic delivery of a great human service, openness and transparency, and some money to spare from the savings for further investment in human service infrastructure. This is good procurement. This is value for money. This Brumby Labor government has led the nation in these projects to get these exact same outcomes. It is open; it is transparent. These are the things that make Victoria an even better place to live, to work and to raise a family.

Bushfires: prevention

Mrs PETROVICH (Northern Victoria) — My question is directed to the Minister for Environment and Climate Change. The minister will note that the opposition has taken a keen interest in public land management and in proper control burns being carried out. I am pleased that the government has now made a commitment to burn 130 000 hectares, although there is plenty of room for improvement in management techniques. Is the minister aware of, and will he explain to the house, the approach by Parks Victoria and the Department of Sustainability and Environment to permanent firebreaks, the protection of water catchments and prescribed burning of public-private land interfaces on town boundaries?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mrs Petrovich for her ongoing interest in this area. There have been a range of circumstances in the chamber during question time when I have covered a lot of the material embedded in her question. I am very happy to continue commentary within the chamber and, probably more importantly, within the community about the understanding of the importance of these issues. On a number of occasions I have come before the house and talked about the significance of providing appropriate planning and approval processes in relation to strategic firebreaks. I commented on that on a number of occasions during the fire season. I am glad that we now agree on the scale of fuel reduction burning that is to take place and has taken place during the course of the last two years. The only discrepancy might be which part of the year and whether you account for a calendar year or the whole of a year. Ultimately between one fire season and the next, which I think is the best way to measure it and my preferred way to measure it, we will reduce the fuel load in the state of Victoria by about 130 000 hectares. I am glad we acknowledge that.

I am pleased to say that the parliamentary Environment and Natural Resources Committee's examination of the matters that relate to the question has provided an opportunity for members of the community to engage in debate on these issues and for people who work with me — Parks Victoria and the Department of Sustainability and Environment — to put on the public record their approach to these matters. I think it would be very timely during the course of this year to consolidate this material, through both the commissioning and the distribution of the ENRC considerations and the government's responses to them. The community could then be better armed to know, in terms of appropriate fire management techniques and the issues embedded in the question, how we may mitigate the risk of fire now and into the future and how we can engage communities, particularly those on the urban interface, on how to deal with those issues.

I could stand here for about 3 hours, but I will not do so because I would not be very popular were I to do so. I take it that at the heart of the member's proposition is that our community will be in a better position if we distil this material and make it available to the people of Victoria. I am committed to doing so during my life as the minister responsible for this portfolio — and I hope I stay in the portfolio long enough to do that. My intention would be to try to deal with it within a time frame of this year.

Supplementary question

Mrs PETROVICH (Northern Victoria) — I was hoping the minister might expand on the water catchment aspects of my question, but I hope this supplementary question may draw that out. When will steps be taken to protect our wetlands, moss beds and water catchments to ensure that these burns are truly ecological?

Mr JENNINGS (Minister for Environment and Climate Change) — I will not try to be finicky about

the definitional issues within that question. Part of the great challenge is to find the right prescribed burning techniques that allow for the appropriate degree of burning, whatever the size of the mosaic or the intervention in terms of the burning, to make sure that it is most appropriate to protect the ecological values that are actually contained within that burn area.

In fact there is a lot of science that underpins that, because different species and different biodiversities will require different burning regimes to maintain them to the maximum degree or to maximise the degree to which it is a discrete firebreak. There is a lot of science that relates to this question, and that goes to the heart of why this is a very complex issue that the community perhaps cannot quite get its head around at the moment on the basis of the information that is available to it.

I can assure the member that I am actually working very comprehensively with the people who work with me — the Department of Sustainability and Environment and Parks Victoria — to try to make sure that we have better cumulative knowledge of the practitioners who undertake those burns and that we have a greater understanding of the values in terms of protecting environmental values, as the member is indicating.

At the interface of catchments are very complex and important issues that need to be resolved. I think the community is generally accepting that there is a need to intervene, given that it is a time of climate change and given the pressures that will be on the land in terms of the risk of fire in the years to come. It is a broader community engagement that is required to understand these issues.

Clean Up Australia Day

Mr ELASMAR (Northern Metropolitan) — My question is to the Minister for Environment and Climate Change. Can the minister inform the house of how the Brumby Labor government is encouraging Victorians to do their part in Clean Up Australia Day?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Elasmar for providing me with the opportunity to talk about the lead-up to Clean Up Australia Day, which is Sunday, 2 March, and to provide the house briefly — and I am sure it will be my best intention to do it briefly — about an event that I will be involved in as soon as tomorrow along the Barwon River in the Geelong region in an attempt to encourage a very timely engagement of members of that community and to encourage other members of other communities to think about their engagement in the Clean Up Australia Day activities.

I am pleased to say that I will be joined by representatives of the Parliament and certainly representatives of the City of Greater Geelong, Barwon Water, the Barwon Regional Waste Management group and the people who have been involved in the rehabilitation of the Barwon River. The latter group has been doing great work for a number of years. Indeed they have organised the equivalent of $1 million worth of work in the last six years. They have actually been doing a lot of hard work to make sure that the Barwon estuary and the wetlands that are associated with the Barwon River — —

Mrs Coote — Do you know where the Barwon starts?

The PRESIDENT — Order! Mrs Coote may think she is hiding, but I assure her that the all-seeing eyes can see her.

Mr JENNINGS — Regardless of where it starts, I know where it ends: it ends by going through the Barwon Bluff marine sanctuary and ends up in Bass Strait, and that is where this work will be undertaken. It is a very important estuary that underpins the quality of life for a variety of shorebirds who travel from as far as away as Siberia, Japan and China. They are pretty keen to get to the end of the Barwon River!

Tomorrow, with the engagement of 31 schools and the local community, we will be participating in a Clean Up Australia event which will see a partnership between Parks Victoria and Clean Up Australia. Parks Victoria has entered into an agreement with Clean Up Australia to support its activities for the next three years, and this will be a shining example of bringing together schoolchildren from across the region to participate.

It will not just be me there; I will not be the highlight of the event as far as the schoolkids are concerned. Ian Kiernan from Clean Up Australia is joining the event and will be happy to share the knowledge and capacity of the Clean Up Australia movement, which has done great things. During the life of Clean Up Australia Day over 200 000 tonnes of material has been gathered. That is the equivalent of 4.7 million wheelie bins of rubbish. That is quite an achievement.

The Clean Up Australia website tells me that there is a bit more work to be done, because perhaps as many as 7 billion cigarette butts end up in our waterways and in our parklands across this nation. People could clean up their act, improve their health and actually clean up the

environment by one effort if they all stopped smoking and stopped distributing this material. It is actually a significant issue in its own right. When you consider that 80 per cent of the rubbish that ends up in the waste stream can be recycled, it is an important matter for us to remember.

Whilst this is a community engagement, and I encourage members of the Victorian community to participate in the next few days in the lead-up to Clean Up Australia Day, I just want to remind people that the EPA (Environment Protection Authority) takes its responsibilities seriously in this regard. In fact we are reinforcing litter laws. A decade ago something of the order of 460 prosecutions were undertaken by the EPA in a year. The most recent annual figure is 23 522 prosecutions. We want to make sure that we have the appropriate enforcement and the appropriate community engagement with recycling and cleaning up Australia.

Gaming: Melton

Ms HARTLAND (Western Metropolitan) — My question is for the Minister for Planning. On Monday night the Melton Shire Council approved an application from the Hawthorn Football Club and Tattersall's to put 80 new pokie machines into Caroline Springs. Clause 52.28 of the planning framework states that its purpose is:

> To ensure that gaming machines are situated in appropriate locations and premises.
>
> To ensure the social and economic impacts of the location of gaming machines are considered.
>
> To prohibit gaming machines in specified shopping complexes and strip shopping centres.

Page 13 of the council's planning report says that it considered cash grants/contributions of $155 000 per year from the applicant. Does the minister consider it appropriate for councils to trade off these decision guidelines for cash?

The PRESIDENT — Order! I am of the view that Ms Hartland is in fact seeking an opinion, or it was very close to sounding like she was seeking an opinion, which is not admissible, but I will give her the opportunity to rephrase her question.

Ms HARTLAND — Can the minister confirm that it is appropriate for councils to trade off these guidelines for cash?

Honourable members interjecting.

Mr Barber — On a point of order, President, if I can be of assistance, it is in relation to a planning scheme that is in fact the minister's own section of the planning scheme and it is about the interpretation of how that part of the planning scheme actually works.

The PRESIDENT — Order! I will allow the question, and I remind the minister he can answer it as he sees fit.

Hon. J. M. MADDEN (Minister for Planning) — Thank you very much, President, for your guidance in relation to this matter. Although I have not been briefed specifically in relation to this matter or the decision of the council on this specific proposal, no doubt I will seek to receive a briefing about it in further detail.

I make the point that local government bodies are the planning authorities in the vast majority of cases across this state. Of course from time to time there will be occasions when, for one reason or another, people within a community — or even the applicants themselves — are not satisfied with the decision or the basis of the decision or, sometimes, the mechanism by which the decision is made or even the agreements that are entered into in relation to the decision by the council.

There are forums for those who are dissatisfied with those decisions. There is the Victorian Civil and Administrative Tribunal as a mechanism. If there are other issues in relation to what they may feel are or are not appropriate decision-making processes for the local council itself, they can take that up with the Minister for Local Government in the other place. But it is important to realise that in the vast majority of instances local governments make decisions in relation to planning matters. They seek to make those decisions, and, if from time to time a planning minister intervenes in that decision-making process for whatever reason, that does cause some anxiety at local government level.

Mr Barber interjected.

Hon. J. M. MADDEN — The important component here is that, as I mentioned, Mr Barber, I have not been informed directly of the specific decision in this matter, but what I can say is that if there are issues as to what is appropriate or inappropriate and the mechanisms by which those decisions have been made, they will be scrutinised. Of course if there is a need for any intervention, whether it be by me as planning minister or the local government minister, then I am sure we will be informed through our departments of those matters and due consideration will be given to them.

Supplementary question

Ms HARTLAND (Western Metropolitan) — I thank Mr Madden, but the answer did not actually clarify what I was asking for. The 80 machines will suck about $10 million a year out of the community and the cash grant is $155 000 per year. The $10 million impact was not referred to in the planning report. Does the minister feel he can give an opinion, or can he state the government's purpose in terms of the economic impact of these machines and whether this issue has been adequately addressed under clause 52.28?

The PRESIDENT — Order! I ruled on Ms Hartland's initial question that she cannot ask for an opinion, and she has just asked for another opinion. I am ruling that out of order.

L'Oréal Melbourne Fashion Festival

Ms BROAD (Northern Victoria) — My question today is for the Minister for Industry and Trade. I note that the Melbourne international fashion festival is taking place next week. Can the minister inform the house of how the Brumby Labor government is supporting the fashion festival so that it can continue to contribute to the Victorian economy and remain a highlight of our major events calendar?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank the member for her question. Sunday marks the start of the Melbourne fashion festival, which is a great festival. An agreement was reached with the Brumby government in order for that festival to continue for the next five years. I know the press keenly follows all the events in the fashion festival and both our major newspapers are involved in it. I would recommend that they assign high-level journalists to follow this event and report on it. Last year this festival attracted 234 000 people. More than 13 000 people came from interstate or overseas to attend the various events. This is a fantastic part of our major events calendar. It adds about $50 million to the Victorian economy. It is one of the events that help us to contribute to what is a growing industry. In fact the design — —

Mr Guy — To contribute to your wardrobe!

Hon. T. C. THEOPHANOUS — It does help contribute to our wardrobe — —

Honourable members interjecting.

The PRESIDENT — Order! Mr Guy is warned.

Hon. T. C. THEOPHANOUS — Because hopefully people will go out and spend and buy and add to their wardrobes as well. Of course you, President, are always immaculately dressed and set a very good example for the rest of us. I must say that I cannot live up to the standards that you have set in the house, but for your information and because — —

Mr D. Davis — Is it relevant to the question?

Hon. T. C. THEOPHANOUS — It is very relevant to the question. President, I thought you might be interested to know that today I am wearing a Travellers suit, tailored in Collingwood, Melbourne. It does use Zegna cloth, I am afraid to say. I am also wearing a shirt which was tailored in Melbourne, under the Keval label, and shoes by Bantalesi — I do not know where they are made, but they are nice shoes. I might say that they have all been purchased on a Commonwealth Bank MasterCard, even the tie, which I am sad to say is Giacomo from Milan.

Mr D. Davis — On a point of order, President, I think the rulings on props are very clear — that members are not to use props in the chamber — and I seek your guidance on the use of the member's dress.

The PRESIDENT — Order! I am going to cut Mr Davis a bit of slack because he is the Leader of the Opposition, but I remind the house about frivolous points of order.

Hon. T. C. THEOPHANOUS — Whilst we can be frivolous about this industry, the fact of the matter is that it employs a significant number of Victorians in a range of activities. This international festival creates jobs and investment. The exports from our design industry alone have now reached $600 million annually, so this is a very significant industry for Victoria and one I hope we are able to grow. We are seeing new retail brands opening all the time, thousands of interstate and international tourists, and the addition of stores like the Prada store that will soon open in Collins Street as well as those in the Aldi chain and other chains that are contributing to the retail sector within Victoria. All this is developing a creative industry, a fashion industry we can be proud of and an event which adds to our international profile as the major events capital of Australia and perhaps of the world.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Treasurer) — I have answers to the following questions on notice: 971, 1042, 1043, 1062–64, 1544, 1545, 1549.

Sitting suspended 12.57 p.m. until 2.04 p.m.

FREEDOM OF INFORMATION AMENDMENT BILL

Second reading

Debate resumed.

Mr BARBER (Northern Metropolitan) — Let me talk about not so much the freedom of information legislation as the concept. It was once said:

> When information which properly belongs to the public is systematically withheld by those in power the people soon become ignorant of their own affairs, distrustful of those who manage them and eventually incapable of determining their own destinies.

Ironically that was a quote from Richard Nixon, the former President of the United States of America. He used words that are quite important, when he said, 'When information which properly belongs to the public'.

This is information that belongs to us. It is primitive to characterise what we are talking about here today, particularly in the way the government describes it, as some sort of right of access to information held by or belonging to the government. In fact from the moment information is created by the government, it belongs to the people: we have funded it; we funded the public servants in their work which has created the raw data or information and a paper trail about how they are doing their work. It is not so much that we have some kind of right to access it, but we literally own it.

The proper determination of a freedom of information act is to create a system whereby that ownership can be shared. Information, as we know, is not something that is used up through using it. It is not like we are sharing out a physical good or service where for one person to use it means another cannot. Information can be used over and over again. Equally profound is a quote from a debate held on 14 May 1996:

> No person who understands the importance of government accountability, who knows that a person's individual rights and freedoms are sacrosanct, who believes in a fair go for all and not just a privileged few, can simply stand by and allow the most basic tenets of democracy to be torn apart. I guess that is why we on the opposition side of the house are proud to be members of the Australian Labor Party. We are members of a party with a tradition of assisting the underdog. We have a tradition of actively representing the less powerful and the less well-off.

That extract was from the first speech made by Rob Hulls, the new member for Niddrie — now the Attorney-General — to Parliament. Today we will put those sentiments and fine words to the test.

In another debate on freedom of information amendments in May 1999 the now Attorney-General had this to say:

> The second-best way to abolish freedom of information legislation is to slowly chip away at it — to slowly pull it apart piece by piece, clause by clause and word by word. That is exactly what the government has done since it came to office. From the start of the Kennett government's term in office it decided that it did not want to be scrutinised by Victorians, Parliament or the opposition. The Kennett government has slowly ripped apart freedom of information.

If it were possible to die from the effects of irony, I would probably be being resuscitated right now, but that is what is going on here.

No matter what gloss the government is going to try to put on it today, the bottom line is that it is chipping away bit by bit at freedom of information legislation. It is hardly offering in this bill any new kind of revelation as to how it intends to make information more available.

Mr Hulls said that was the second best way to abolish freedom of information, and I know what he thought the best way was. It is the terrible culture that exists in the Victorian state government, from the level of ministers through departmental secretaries right down to the individual making decisions throughout the public service. I can say this because I have been making freedom of information requests for over 20 years. I returned to making them recently as a member of Parliament, and I have never seen it so bad. Back when I was a youngster, it was common enough to write a freedom of information request to a department and receive back a letter detailing the documents. The department would say, 'We believe these are the documents relevant to your request. Please tell us which ones you are interested in'. On some occasions I got the whole lot. When there was only a small number of documents, the department just mailed them to me without any further ado.

Right now the way freedom of information is being handled across the length and breadth of state government is absolutely appalling. That starts at the

top. If we were to change that culture, leaving aside the black-letter law, it would need to start at the top with a very clear statement from the Premier himself. It would have to be led by example by all the ministers. Departmental secretaries would have to realise that, whether it is regarding FOI or in select committees, they are servants of the people and that the Parliament and members of Parliament stand in the place of those people between elections.

To give members an idea of what FOI applicants are up against, I will quote from a few recent letters that I have received on some FOI requests I have made. In this case I was asking for a consultant's report that had been prepared on the Epping to South Morang rail extension project. We already knew of one consultant's report, and we knew there was another one out there. Here is the quote:

> This report has been prepared in respect of a project which, I am informed, is still under active consideration. The report is a working document comprising preliminary estimates and cost projections. Being a preliminary work, it is both uncertain and highly speculative in nature. It forms one part of a project-scoping exercise being worked upon and awaiting final determination.
>
> As a consequence, I conclude that releasing a preliminary work before the project is fully formulated is not in the public interest. Such release would prejudice the integrity of decision-making processes and create unnecessary debate regarding a matter yet to be decided.

But after it is decided, then we can debate it — that is one person's view.

Here is another letter. This is in relation to Auspoll, which it seems received very large amounts of money from a range of state government departments to carry out quite politically sensitive polling and analysis basically on behalf of those departments. Auspoll itself says it deals with highly politically sensitive issues, and it lists some. It is helping departments to work out what public opinion is and then shaping it. There is nothing wrong with that, in and of itself. It is only that, come election time, Auspoll, having developed all this intellectual property and done all this research on the public purse, changes hats and becomes the Labor Party's campaign pollster, using the exact information in sensitive areas — for example, water, environment, education — to then shape the Labor Party's message. This is the response of the FOI officer:

> I reiterate earlier advice, merely requesting access to every document held by the department that may relate to Auspoll —

not that that is what I did —

> would be an unreasonable diversion of the department's resources to process your request. Advice received indicates that over 600 pages would need to be considered on one project alone.

There is the benchmark for this FOI officer: if he has to read 600 pages of material to determine if it is able to be released, that is too much — that is voluminous. Never mind the size and complexity of some of the other projects. This is a small thing. This is about a quarter of million dollars worth of work that I wanted documentation on. They would not tell me what documentation existed. I had to guess its existence. But they did tell me that at that point it was going to be too much anyway. As I said, that was 600 pages that they would have had to read, and that was too much.

Another response in relation to the Department of Sustainability and Environment, again on Auspoll, states:

> The Department of Sustainability and Environment is satisfied that the work involved in processing your request would divert its resources substantially and unreasonably from its other operations.

Remember that phrase. I will come back to it when we talk about what is in the bill. Further, the letter states:

> … there is a large volume of documents which have been created and fall within the scope of your request … some 1800 pages … The effort to copy, review and collate all these documents would be both difficult and time consuming.

It would be three and a half reams of paper. Moreover it states:

> … there are only a small number of staff within the department's communications branch with sufficient knowledge and understanding of the documents to assists the FOI unit to undertake the task of assessing documents for release under the FOI act.
>
> …
>
> In late September 2007 the FOI unit was expanded to three full-time staff to reflect the increasing volume and complexity of requests being received by the department. At the time of your request, we also had another 51 freedom of information on hand. The FOI unit also has responsibility for administering the department's obligations under the Ombudsman Act and the Whistleblowers Protection Act.

That was in a letter responding to an FOI request. The department is telling me that it is not resourced properly. That is meant to form part of its decision guidelines to determine whether I get the material or not. I so do not care. It is breathtaking!

When it comes to the bill, what does it do, apart from those small matters such as reductions in fees and so forth, which we agree are good things? Personally the

reduction in the fee does not make much difference to me because it is simply rebated against any copying costs that I have to pay. It does not actually save me any money, but I suppose in those instances when the request is met in full and there are no handling or printing costs, someone will save $22.

The three main issues that have been raised by this bill are time limits, part II statements and the question of the vexatious applicant. In relation to time limits, we could debate the different aspects of the black letter law here all day long and argue whether it should be an extra 45 days, 30 days or 15 days. As adequately described by Mr Dalla-Riva in his contribution, since the practice bears no practical relevance to what is in the statute in terms of time anyway, it is nonsensical to argue about what the statute should say. It just does not end up that way. The first thing that someone does when they take an FOI request from you and they do not like the look of it is to belt it back over the net and say, 'I do not understand your request', and that stops the clock. The statutory number of days required to process a request bears no real resemblance to the actual calendar days and the expanse of time that generally passes. If I were able to, I would love to ask members who are present on the government side — through you, President — how many of them have ever made an FOI request to any level of government.

An honourable member interjected.

Mr BARBER — So we admit that I am actually the expert in the room on FOI requests. If government members have not made an FOI request, they might come in here and talk about what the act says, but they do not actually have any experience.

In relation to the part II statements and the proposal to change them, I am generally uncomfortable about taking things out of statute and leaving them to the discretion of a minister. Generally speaking I would rather the minister be bound by an act. There is an increasing trend for acts to sketch out broad responsibilities and then leave things to regulations and so forth. In some ways it is a retrograde step. If the Attorney-General had been able to come us, the Greens, and say, 'Yes, we recognise there has been a big problem in the past. It is adequately described in the Ombudsman's report. Part II statements were a good idea at the time' — we are talking about the early 1980s — 'Generally they have not been used the way they should have been. I want to make some major improvements in this area. I want to drive change through my government, and I need flexibility to draft detailed and forward-looking regulations'. If he had been able to come to us and say that, then I suppose we could have taken it on trust or worked something out, but we have never heard anything like that.

We know how it works in the United Kingdom. There is the information commissioner. That person is the auditor-general of information in some ways, and they are an independent officer who oversights this area. We are in the information age now, so it is no longer simply about documents; in many cases it is about raw data. Most departments have a document management system, and if it were just about documents they could process requests internally; that is how they keep track of correspondence and gain access to each other's files. I am familiar with one that operated when I was at the Yarra City Council called TRIM. That certainly allows you to keep track of all documents that are within an organisation at a given time. So why is it that in the information age some sort of public interface to that system could not be accessible at all times?

Recently the Environment Protection Authority set up a monitoring station across the road from my house. I rang the EPA and asked, 'What are you monitoring and how do I get the data? I would just like to know how green is my valley. What are you measuring there, and can I see it?'. That stumped those EPA officers. Why is it that a department at the time it starts creating information — whatever sort of information that is; information about the environment, information from an Auspoll study, estimates, or public transport ticketing data — cannot have an up-front information release strategy? It could say, 'We are from the EPA. We are about to do some monitoring. Before we even create that data, let us have an information release strategy that is transparent and everybody can understand'.

Otherwise it seems that as government gets larger and more complex it will just continue to create more and more and more data — sometimes inadvertently; generally for its own purposes — and we will be in a kind of an arms race just to keep up with the volume of it, and now it is telling us you cannot make voluminous requests. It seems that a forward-looking government could begin a real revolution through the use of information technology.

But the provisions in this bill that deal with 'a vexatious applicant' are the most troubling. Let us have a look at the wording of the bill. I have stood in rooms of people who are active citizens of various sorts and read out the exact wording of the government's bill and asked them what they think of it. You can hear the air rush out of the room. New clause 61B(1) states:

> On an application under section 61A(1), the Tribunal may make an order declaring the person to be a vexatious applicant if it is satisfied that over a period of time —
>
> (a) the person has made repeated applications under this Act in relation to the agency or agencies or Minister or Ministers; and
>
> (b) the repeated applications involve an abuse of the right of access, amendment or review under this Act.

So the test is that you have made repeated applications over a period of time, which is unspecified, to a minister or ministers. If I have made 10 applications to 10 different ministers or departments over 10 years, that fits this test. That is wide open. Anybody — you do not have to be a lawyer; you just have to have common sense — could read that and know that is absolutely wide open with respect to the period of time and the level of activity that could capture you.

Then we have a further definition contained in new clause 61C as to what is abuse of right of access:

> Without limiting section 61B, the repeated applications involve an abuse of the right of access, amendment or review if the repeated applications were made for the purpose or have had the effect of obstructing or otherwise unreasonably interfering with the operations of the agency or agencies.

In other words, it is virtually the same as the grounds for refusal that already exist in the act, which is that the application is voluminous. Earlier I read out what a particular FOI officer's view of 'voluminous' was: 600 pages. It is not simply about a situation where your purpose is to obstruct or interfere with an agency or that you are doing it for revenge; it applies if the application has had the effect of obstructing or otherwise unreasonably interfering, leaving out your own particular motivations completely. Your motivations could be exactly those purposes described at the front of the principal act. The object of the act is to make information more available. You could be doing it for exactly those purposes, yet be vexatious because in some person's judgement you inadvertently interfered with somebody else's workload.

This is very chilling for any active citizen who regularly makes use of the Freedom of Information Act. Members could think about it from the point of view of the Media and Entertainment Arts Alliance. For those members on the government side who claim to have trade union credentials, this is industrial legislation targeted at journalists, every bit as brutal as some of the other stuff that has been brought into specific industries, such as the building industry — this is industrial legislation targeted at journalists. If you, as a journalist, get pinged by this and become a vexatious applicant, it is not your employer who is found to be vexatious: it would be you as an individual, and that label follows you if you move from one employer to another.

The Law Institute of Victoria (LIV), not exactly a radical organisation, had this to say very specifically about the provision:

> We note that agencies and ministers already have significant powers to refuse access to information where requests will unduly burden the proper administration of government. Under section 25A of the act, the agency or minister dealing with an FOI request has discretion to refuse access to documents where processing the request would 'substantially and unreasonably divert the resources of the agency from its other operations' or in case of a minister …
>
> The LIV understands that on rare occasions the current FOI act may not provide adequate means for agencies to deal with applicants acting in bad faith …
>
> … the LIV notes that the 'vexatious applicant' test in the bill does not contain a requirement of bad faith on the part of the applicant.
>
> The LIV submits that the proposed test creates overly broad powers which may unfairly and unduly restrict access to information of vital public interest where an applicant is acting in good faith.

There is no test as to whether the information that is sought is in the public interest, the Freedom of Information Act is simply creating too much work.

Further, the institute's document says:

> … the LIV considers it would be unfair to declare a person to be a vexatious applicant where the applications were made in good faith. The LIV is particularly concerned this provision may prevent applicants from accessing information which is clearly in the public interest.

The LIV correctly points out not only the impact that it might have on an individual but that the bigger concern is that information, which is clearly in the public interest, may fail to be exposed. The LIV draws the comparison with section 21 of the Supreme Court Act, which has a vexatious litigant provision and which, by the way, has been used on about five people in 10 years. The LIV notes that the court must be satisfied if a person:

> … habitually, persistently and without reasonable ground instituted vexation legal proceedings. This test requires that the behaviour of the litigant be vexatious, rather than the effect of that behaviour on the other … parties …

If I were launching a Supreme Court writ against somebody every day of the week, I would probably be considered a vexatious litigant; but if I were a journalist, an MP or an active citizen and making an FOI application every day of the week, I would be doing my job. Then the LIV refers to the human rights

charter, which Minister Hulls is very proud of, and states that it:

> … may be inconsistent with section 15 of the charter, given the purpose of the FOI act stated in section 3. We recognise that under section 7 of the charter, human rights may be limited. However, section 7 of the charter provides that 'a human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society'.

The government has not demonstrated anything here today. It has simply taken the Ombudsman's report where he makes, without virtually any discussion, the recommendation that there should be a vexatious provision, sent it off for parliamentary drafting, got it back, sent it off to cabinet and then, without any, I am sure, backbencher input, it has landed here. Now government members have to turn up to try to justify it. The minister has handed members a peashooter and told them to storm the enemy trenches. I am sure there will be a great amount of discomfort from government members when they get their turns on this.

It is unfortunate the government has brought this particular provision forward at this time, because the vexatious provisions in other legislation are currently being reviewed by the parliamentary Law Reform Committee. I am sure that reference would have come from the government to that committee, because it did not originate in this house. It is meant to report by 4 December 2008. The brief the committee has been given is to review the effectiveness of current legislation in relation to vexatious litigants, which is fair enough. The Law Reform Committee should be given the opportunity to do its job.

If members have any doubts that this is going to be abused if it passes, they should read what I found when I was inadvertently looking for other vexatious provisions in acts in other states. I ran across a bulletin from the Victorian Government Solicitor's Office, dated December 2007, about this particular legislation. The government solicitor notes that:

> The Freedom of Information Amendment Bill 2007 … was introduced into the Victorian Parliament by the Attorney-General, the Honourable Rob Hulls, and received its second reading on 22 November 2007. It is anticipated that the bill will be passed in an early session of Parliament in the new year.

Not so fast, Attorney-General — the upper house might have something to say about that! You become more horrified as you read the bulletin, because clearly the Victorian Government Solicitor's Office is revving up the public service by saying, 'These provisions will soon be here. Get ready to use them'. Paragraph 23 of the bulletin, dealing with the discussion of vexatious applicant procedures, says:

> This change is expected to operate as a deterrent to applicants making repeated and often substantial applications.

Even that wording is looser than the wording of the act. If the government solictor had reproduced the actual wording of the act, then there may have been a valuable function in terms of explaining what the test is. But this bulletin widens the issue — it goads people in the public service and says, 'It is going to be really great. You are going to have this really wide-ranging provision'. Paragraph 23 says:

> The new provisions seek to prevent applicants abusing the FOI system by taking up valuable tribunal time —

not that he speaks on behalf of the tribunal —

> wasting public resources and harassing agencies who are required to respond to their repeated and often substantial applications.

That is more goading. He goes one step further, and we should remember that this bulletin is dated before legislation has even been passed, and says at paragraph 24:

> It is suggested that agencies keep detailed records of the number of applications, content and the time taken to process applications.

In other words, the hint is: 'Start building files on these people now, because when the bill passes, which we expect and hope it soon will, you will be ready to go and you will be ready to pin them'.

The Federation of Community Legal Centres has also expressed very strong concerns to me about this legislation. In promoting some awareness in the community of what is going on in Parliament, we received a great deal of feedback from active citizens groups, often at a local level, who are trying to get information about toxic materials which may be in their communities as well as a range of other activities. The Blue Wedges coalition has been after information for a long time and has concerns about how this legislation could be brought to bear on it.

Let us face it, folks, the first person they ping under this provision is not going to be an MP and it is not going to be a senior journalist with high-level resources and a high profile. They are going to go after some individual, some funny little man, who is pursuing an issue that only he cares about — —

The PRESIDENT — Order! This is a minor point, but I would prefer it if Mr Barber referred to people in

this chamber as 'members', not as 'folks'. We are not folks in here; we are members of Parliament.

Mr BARBER — Thank you for that, President. I do become a little informal sometimes when I am telling a story.

My real concern is that this provision will be brought to bear on an individual with few resources to defend himself or herself, who has a cause that nobody is particularly fussed about. That will then be used to put a dampener on other community groups. Other groups will have to think twice before they submit an FOI application or several applications, and so forth.

No matter how nutty someone might think these sorts of community groups and individuals may be — and they do not have to be from my side of politics, they could be from the extreme right of politics — they, not we as members of Parliament, are in fact the lifeblood of keeping the system honest. Institutions like Parliament function only because of the people out on the steps at the front of Parliament who make sure they function.

The role of information in society is incredibly important. I remember a person from the Ukrainian green movement telling me that at the time of the Chernobyl nuclear disaster, almost no-one in that country knew it had happened. We were all watching it live on TV on the other side of the Berlin Wall, but in that country nobody knew what was going on. But one thing that the people observed was that overnight the local product markets had become full of an amazing variety and amount of foodstuffs of a quality like they had never seen before. All of the good-quality food used to get sold over to the West for hard currency; but the West was not taking any foodstuffs from the area because there was a nuclear meltdown going on. Suddenly people in the Ukraine had all this fantastic food including meats and cheeses they had never seen before.

The only people inside the former Soviet Union who were environmental activists were in fact scientists and medical practitioners because they were the ones who had the data in their hands to measure the quality of air or who had patients come to them, and they had collective records of respiratory problems and other problems in a given area. Of course photocopiers were kept under lock and key; if you wanted to make a copy of something, you had to get permission to do it. That starkly shows that information is in fact the whole basis of democracy. Something like what is being proposed here today is absolutely vital and cannot be lightly pushed through; objections cannot be lightly pushed aside.

I will now foreshadow some amendments. At the committee stage of the bill the Greens will propose to delete the complete or entire vexatious provision in the bill. It has been badly thought out and badly conceived. We have had some dialogue with the government about alternatives and about a compromise position, but the government has not taken up those options and has not followed through with it. So we are not going to put compromises on compromises forward just for the government's benefit. How it deals with this bill is now in the hands of the government. We will be moving to delete that provision.

We will also be moving to delete the extended time limits. I understand the Liberals will move a similar or same amendment, and if they do not move theirs first we will move that. We still have some concern about the part II statements. I have been shown a copy of a government amendment that may go some way towards ameliorating that. It requires that the Ombudsman have the opportunity to comment on the government's proposed rules for what is contained in a part II statement. I presume the government will move that, and we will support it. For the present moment that is all I have to say.

Mr SCHEFFER (Eastern Victoria) — I have listened carefully to the previous two speakers from the Liberals and the Greens. Perhaps we should come back to the substantive legislation and review for a moment some of those things that we agree upon.

Clearly I speak in support of the amendments to the Freedom of Information Act. We need to start with recalling the purpose of this bill. Its purpose is to update the 1982 Freedom of Information Act and to strengthen public access to information held by a range of public agencies. As other members have looked at the 2006 *Review of the Freedom of Information Act* conducted by the Victorian Ombudsman — —

Mr Barber — On his own motion.

Mr SCHEFFER — On his own motion. It is important to remember, as the Ombudsman reminds us, that a similar bill was first introduced into the Victorian Parliament by the Thompson Liberal government back in 1981, and that in 1982 the newly formed Hawke federal government was responsible for passing the first Freedom of Information Act in Australia. It was after that that the Victorian Freedom of Information Act was introduced into this Parliament by the Cain Labor government. That imperative towards greater openness

and access to government was shared by all political parties at that time in the 1980s. The legislation that came out of those years was groundbreaking and has made a real difference to the way we think about the relationship between government and citizens' rights. That is what has informed the debate here today.

The Victorian legislation is grounded in the belief that individual citizens have the right to know what information about them is held by the government and that the government must be made accountable through public scrutiny of the documents it holds. The legislation is also grounded in the belief more broadly that active democratic participation is premised on an informed citizenship.

Under the current act members of the public can get hold of documents that relate to their own personal affairs and to the workings of government agencies. The type of agencies that we are talking about from which people can make these requests are ministers and their departments — and a lot of discussion has focused on that particular part of the powers that individual citizens have — local government, semi-government agencies and statutory authorities as well as public hospitals, community health centres, TAFE colleges and schools.

Open access to information about individuals that is held by these agencies is, as I have said, an important way that people can feel confident that the information that is held is appropriate and accurate. Under the act a person who discovers, through making an application for information, that a government body holds information about them that is wrong has a right to appeal to have that information corrected or removed altogether.

The overall objectives of the amendments in this bill are contained in the government's 2006 election commitments in a document called *Strengthening Our Democratic Institutions*. The election came after the Ombudsman's report was released, so Labor committed that it would reform the Freedom of Information Act in line with the recommendations produced by the Ombudsman's review. Labor also agreed to remove the conclusive certificate provisions of the act, except where it involved areas of national security, and committed to update the act to take account of the impacts of the dramatic expansion of the internet and to enlarge the availability of basic information.

Over the 25 years since its introduction a number of changes to the act have been made by successive governments. In 1993, shortly after it was elected, the Liberal government of Jeff Kennett introduced an application fee and extended the definition of the meaning of 'cabinet documents'. In 1999 the same government amended the act once again so that information would not be released to an applicant if the information identified a public servant or a third party. Our view was at that time and still is that those amendments made it harder for citizens to get hold of the information they were seeking because in the first instance they had to pay, and secondly more documents were made unavailable to them because they were classified as being cabinet in confidence.

After the 1999 election the current Labor government also amended the act, this time to narrow the cabinet and commercial-in-confidence provisions and exemption limitations. The government removed the $170 the Victorian Civil and Administrative Tribunal fee in those cases where an agency does not make a decision. It also required the minister to explain his or her decision publicly when appealing against a decision that had been made by VCAT. Labor also removed the blanket ban on releasing information that contained the name of a public servant or a third party.

As I said, the amendments contained in the bill derive from recommendations made by the Victorian Ombudsman in his review into the operation of the act. He found some important things, which Mr Dalla-Riva has already rehearsed but which I will go through again. He found that there was a great delay in processing FOI requests and that that was a major issue in government departments and in Victoria Police. He was concerned about the lack of quality in the reasons given by departments for the decisions they had made and about the poor level of assistance given to people making applications for the release of information. He made recommendations to change the legislation and to lift the performance of the Department of Justice in the leadership it provides in guiding other departments on how they should be fulfilling their obligations under the act.

The Ombudsman found that the 10 government departments and Victoria Police receive 18 per cent of all FOI requests — we are talking about just less than a fifth — but are responsible for something like 67 per cent of applications to VCAT. He also found that while 77 per cent of all those making requests for information receive full access to the information requested, only 36 per cent of those making requests to government departments and only 31 per cent of requests to Victoria Police are given full access. He found that in 2003–04 only 56 per cent of FOI decisions were made within the 45-day requirement, and that there was an improvement in 2005. He found that nearly 21 per cent of

departmental decisions took more than 90 days to be made.

They are all very serious things that the Ombudsman wrote in his report. To its credit, the government has taken the Ombudsman's findings seriously. It has considered them and has acted to improve performance in government departments — and that is the essence of the issue here today. On receiving the report the Attorney-General immediately announced that the government would implement all the changes that the Ombudsman recommended so as to improve the administrative processes, and that the government broadly supported the legislative recommendations made by the Ombudsman.

Clause 1 sets out the main purposes of the amendments. They are there to make sure that more information should be available to the public on the internet. It has already been noted that when the legislation came through in the early 1980s there was no such thing as the internet. The amendments provide for more information to be available without the need for a formal FOI request. They remove application fees and allow government departments to waive charges of less than $11. These are all positive changes and are fairly uncontroversial.

The amendments remove provisions relating to conclusive certificates. It is important to remember that at present if a cabinet document is being applied for, an agency can ask the Department of Premier and Cabinet to issue a conclusive certificate which establishes that the document that has been applied for is exempt as a cabinet document. At the moment the applicant is unable to appeal to VCAT to have that decision overturned or reviewed. Under the changes proposed in this bill the FOI applicant will be able to ask VCAT to review the decision. That is also a very positive change.

The next provision is one of the contentious issues we have been debating today. The bill provides for a person to be declared a vexatious applicant. I appreciate that this issue is controversial. The two speakers before me expressed very fulsomely their concerns that citizens' rights will be diminished by this provision. But the fact is that not all FOI applications are made in good faith. For whatever reason there are people who make multiple applications for no good reason, and responding to those requests wastes time and resources and does not serve any useful purpose. Importantly the Ombudsman looked at this issue, and he acknowledged this in his 2006 report. This is not something that has come from the government out of some kind of executive imperative to restrict access to and the free flow of information. It is something that came out of a serious examination of this issue by the Ombudsman, who wrote it up in his report in 2006.

As a consequence of that review the Ombudsman recommended that the FOI act should give VCAT the power to declare as a vexatious applicant a person who fits the criteria. These individuals can still make applications but they can only make them with the consent of VCAT. The amendments do not prevent anyone from applying for a document under the act. Proposed sections 61A and 61B set out the process to be followed in those rare cases where an individual has over a period of time made repeated FOI applications aimed at wasting the time of people working in the agency to which the application is directed.

These provisions are not aimed at regular members of the public, journalists or MPs, for example; all of them have a right to seek access to documents under FOI legislation. The government has gone to some lengths to put in place safeguards to ensure that citizens and organisations have the right to apply for and receive access to documents under this legislation. Applications to have a person declared a vexatious applicant can only be made through the president of VCAT. The individual concerned has the right to be heard and may apply to have the order set aside or varied.

Mr Barber — Wow.

Mr SCHEFFER — Mr Barber can say 'Wow', but these provisions being set in place are important. They are transparent and open, and they are outside the control of executive government. They are in the realm of the courts, and that is important.

It is very important to protect third parties that may be adversely affected in this way. The act as it now stands provides some protections. The act allows for a document to be refused where the release would involve an unreasonable disclosure of personal information, where the release of information would disadvantage a commercial undertaking, or where the disclosure would not be in the public interest.

In his review the Ombudsman recognised that consultation is an important part of the process because it ensures, as far as possible, that the rights of third parties can be protected, and he recommended that the time allowed should be extended by up to 30 days. As I understand it, the granting of an extension will be accompanied by a written statement from the minister or the agency, and the applicant will be notified.

The provisions contained in the amendments to the FOI act will strengthen the capacity of individuals and

organisations to obtain information that they seek from government. I commend the bill to the house.

Mrs PEULICH (South Eastern Metropolitan) — I rise to make a few comments on the Freedom of Information Amendment Bill 2007. I do so not from the point of view of a practitioner like Mr Barber or Mr Dalla-Riva, although I have put in the odd freedom of information request to local government or even one of the government departments. I do so from the perspective of a person who has actually lived under a Communist regime. I have the very strong belief that access to information is a key foundation of our democracy.

Having seen how this government operates and how it seems to systematically chip away at various democratic processes, I have very grave concerns. I listened with great interest to the very compelling cases put forward by Mr Dalla-Riva and Mr Barber on this legislation and the many concerns they share. In terms of the chipping away at democracy, I hasten to add that I do not wish to reflect negatively on the previous speaker, Mr Scheffer, who no doubt is very genuine in the things that he says and believes. Unfortunately principle seems to be one thing, and implementation and retaining political office are another thing when it comes to this government. Everything is to be sacrificed in the interests of keeping political office for as long as possible, irrespective of the cost.

I would like to begin looking at FOI but the thing I would like to mention in context is the deplorable manner in which the select committees have been treated. The minister who is responsible for the administration of this legislation has determined that a all-party select committee of the most important democratic institution — this Parliament and the house of review — should not have the right to access documents or to access information from witnesses it calls to appear before it. Not only that but he took the unprecedented action of writing to potential witnesses and advising them that they did not need to comply. In my view a censure motion should have been moved against the Attorney-General in the other place for that particular act. I am absolutely astonished that he has been able to get away with it politically. It is absolutely deplorable and unforgivable.

The select committees have been treated with contempt. I similarly have grave concerns about the manner in which some forms of this house are being whittled away by, in particular, the new practices being adopted by ministers in relation to the adjournment debate. The minister's response last night was basically an attempt to gut the rights of members of Parliament who have been elected to this place by their constituencies. Each upper house member of Parliament has been elected to represent a constituency of 450 000 people. According to the new tactic adopted by the government, members here are not entitled to get a response from the relevant minister should the minister at the table decide to discharge the matters raised.

The PRESIDENT — Order! On the question of relevance.

Mrs PEULICH — I am weaving a theme, President, which is crucial to the issue before the house.

The third aspect concerns the Scrutiny of Acts and Regulations Committee and the manner in which that has been used. This is best highlighted by the amendments in relation to the channel deepening project, when the government used its human rights charter and its supposed commitment to the privacy of individuals as the grounds for refusing the publication of information in real-time to the entire community; that information is considered vital to this project.

The examples continue. Then we have the Auditor-General's reports — and, dare I say, I think some of the Auditor-General's reports have been fantastic but the reports seem to be becoming narrower and narrower, certainly far more narrow in the breadth of audits than has existed ever before in the history of my service to this Parliament, including the time when I served under the Kennett government.

We now come to FOI. I agree with Mr Dalla-Riva. When it comes to politicians, power, cabinet colleagues and hanging onto government, I would much rather have these important principles enshrined in an act rather than have them being decided by ministerial discretion or regulation, because to be quite honest I am very circumspect, as I think are most members of the community about — —

An honourable member interjected.

Mrs PEULICH — Yes, but in particular this particular minister. I recall very clearly the rantings of that particular Assembly minister in relation to the importance of holding royal commissions into police corruption and into the chipping away at democracy by the previous regime — yet every single example of chipping away at democracy can be traced back right to his ministerial doorstep.

I turn to the Freedom of Information Amendment Bill now before the house. I think Mr Scheffer said every person — and no doubt he meant it — has the right to seek information but unfortunately often is unlikely to

get it. We have seen the practical measures: the tactics that are used to stall, to drag out and to obfuscate.

In only recent days my office has put in a request. We have had, firstly, a telephone call seeking clarification of certain words and subsequently we received a plea for a further extension of two to three weeks, and so on. In addition to that I received the first response from the department telling me that there was no relevant correspondence on this particular matter. My request was actually about the Mordialloc bridge; members may not be surprised that I put in an FOI to find out some of the background details. The response I received was that there was no relevant communication, when in fact there had been some. I had written to the minister, and he had written back to me. For starters that clearly shows that there is a problem in the administration of the act as it currently stands.

I am a great believer in information being available on the internet. I supported the Kennett government's online policy, which was at the forefront of policy. That government appointed the first minister for IT. Parlynet and all of those initiatives were actually implemented then, because we believe that information is crucial to the operation of our democratic system. We also believe in the regular performance and publication of all sorts of indicators that people should have the right to access in terms of the performance of departments and authorities, where decisions are made on behalf of the public using public money. That is why under the Kennett regime we began and supported the regular publication of local government indicators so that the public could use those measures to judge the performance of their local councils.

I was very surprised to see in the recent Auditor-General's report on local government that there was not even a page looking at the trends in local government rates. Let me say under the guise of somehow providing a more participatory democracy and enhancing access, this government has actually acted to narrow access. In its editorial of 7 February 2008 the *Herald Sun* said that under the state Labor government the 1982 Freedom of Information Act had evolved into freedom from information.

Mr Scheffer proceeded to read the purposes of the bill and, as I mentioned before, I think the purposes are probably very honourable but it is their execution that leaves a lot to be desired, especially when we consider what was said when the first Freedom of Information Act was introduced in 1982 by then Premier John Cain. He said:

> Freedom of information is very closely connected with the fundamental principles of a democratic society and is based on three major premises:
>
> (1) The individual has a right to know what information is contained in government records about him or herself.

As a general rule this government has probably been reasonably effective in that, just from a general perception. I think serious problems have emerged with all the other elements. He also said:

> (2) A government that is open to public scrutiny is more accountable to the people who elect it.

I think we run into troubled waters there.

> (3) Where people are informed about government policies, they are more likely to become involved in policy making and in government itself.

One out of three it is not a great record for the government. This is just another case of the Brumby secret state. We have seen it advancing in a particular direction, but it is not a direction that makes me feel very comfortable. It should not be a direction that makes members opposite very comfortable.

Under this bill the government will be giving itself significant power over what information is made public and is giving itself a sweeping capacity to extend time limits by a further 30 days. The average length of time for response by the commonwealth government for most of the FOI requests made to it was 30 days, yet this government wants 70 days. I see no reason why you need double the length of time needed by the federal government.

I agree with Mr Barber. To some measure I believe in fact members of Parliament and journalists are targeted by this. I recall a former colleague of mine, Geoff Leigh, who no doubt would have been deemed to be a vexatious FOI applicant, being told by VicRoads or by the minister's department that a special FOI officer had been hired just to deal with his requests.

Mr Lenders — Vexatiously vexatious!

Mrs PEULICH — Let me say I am comfortable with that.

I support the Liberal Party position on this. I think we have to be very wary of the provisions which have the capacity to declare people or individuals vexatious, especially when a subsequent application may render or place earlier applications in limbo. I am still very circumspect about that. I believe it is totally unnecessary to prolong the time frame, and I intend to support Mr Dalla-Riva's position on this legislation.

Ms HARTLAND (Western Metropolitan) — As Mr Barber has already covered very well all the arguments that we have, I wish to address only the issue of vexatious applicants. Before I was elected as a member of Parliament I was active in a number of community-based organisations. One of my roles was to help the organisations I belonged to and other people to make freedom of information applications. In the year that I have been in Parliament I have also acted in that role for a number of community groups. What really concerns me about this is how long it will be before those community members or I are regarded as vexatious applicants and do not have access to this information. For community groups information is an absolute right, and it should be seen as something that should never be allowed to be legislated away by government.

Mr TEE (Eastern Metropolitan) — This bill is indeed another significant step on the road to improving accountability, access and transparency, which have become the hallmark of the Brumby Labor government. As we know, information is power, and this bill is about increasing the community's access to information.

I must say the opposition's contribution to the debate has been interesting; it has a touch of unreality about it, for a couple of reasons. Firstly, opposition members seem to have spent a bit of time traversing the Ombudsman's very thorough report, but they have also talked of their own experiences about issues they have had in relation to FOI. At the same time as identifying areas where they think there might be room for improvement they say they are looking at opposing some of the very recommendations that the Ombudsman has made to try to make the improvements. It is almost as if opposition members are locked into this position of constantly complaining, but when a way forward is provided by an independent third party, the Ombudsman, they are looking at opposing it.

This is not an inconsistent approach from the opposition. We know that the opposition has a conflict in relation to its past history with FOI. When in government the Liberal Party took the axe to the FOI legislation. It took every opportunity to gut the FOI legislation. No stone was left unturned in its attempts to stifle debate and to stop the electorate accessing documents. It was the Liberal Party that legislated to extend the definition of 'cabinet documents' to exclude more documents from public access. It was the Liberal Party that introduced the application fee to discourage public access. It was the Liberal Party that put a blanket ban on information that identified a public servant or a third party, again to close down public access. The changes made by the Liberal Party met that objective: there was a significant reduction in the number of FOI applications.

Through this bill the government is taking another important step in extinguishing that dark Liberal government legacy by abolishing the FOI application fee. It was interesting to listen to Mrs Peulich's contribution, because in fact previously she voted in favour of the application fee. It will be interesting to see whether she will now vote against that application fee that she previously voted in favour of.

A number of other important changes are being progressed by the bill. In particular it will ensure that Victorians have a lot more access to government information by posting information on the internet and by expanding the ability to lodge FOI applications online. The abolition of conclusive certificates for cabinet documents, except in the case of national security, will ensure that in future no government can use these certificates to arbitrarily block FOI requests and avoid being open and accountable.

Some of these changes go beyond the recommendations of the Ombudsman and make improvements or add to them, but in essence the bill implements in full the recommendations made in the Ombudsman's report. The report and the legislation are indeed testament to the importance of having an independent body or authority, someone who can stand back from the political fray and see things from the broader and bigger picture perspective. I think FOI is one of those areas which represents the importance or the high-water mark in terms of making sure there is an independent, third-party judgement in dealing with these issues. At its core the FOI legislation involves a balance between the public right to access documents and the ability of government to obtain information to make informed decisions. The reality is that politicians are often too close to get that balance right. For that reason I think it is vital that we hand that responsibility over to a third party with expertise to consider and make those considered recommendations.

The Ombudsman is ideally suited to making sure that we have the FOI regime right and that we have the balance right. As would be expected, the Ombudsman conducted a detailed, thorough investigation, and his recommendations are very considered. The investigation began in August 2004 and resulted in the release of a discussion paper in 2005. A final report was produced in June 2006. As I said, the consultation process involved the delivery of a discussion paper, which again canvassed views and sought public input.

So the recommendations we have today that are being fulfilled by this legislation are the product of a process that took nearly two years.

In addition to the legislative amendments a number of administrative and procedural recommendations were made which government departments have already implemented. Those recommendations and the government's acceptance and implementation of those recommendations has resulted in a 30 per cent reduction in complaints to the Ombudsman about FOI requests. We have received recommendations, the recommendations are being complied with, and the Ombudsman has seen a reduction of some 30 per cent in complaints in relation to FOI. Again, I suspect that the bill, if implemented, will provide greater access and fewer complaints.

I point briefly to just a couple of recommendations. The first is that the government review part II of the Freedom of Information Act. Part II, as has been indicated, was brought in in 1982 when government was much smaller and simpler and produced less information and there was no internet. The Ombudsman found that the information that should be available by way of part II's provisions is already available through the internet and in annual reports, so the Ombudsman concluded and recommended, quite rightly, that part II be repealed and replaced, and that is what this bill does. It would be surprising for people to oppose the bill in that regard, with the outcome that the bill stayed in its 1982 form.

The Ombudsman quite rightly found that we need a different vehicle or mechanism to make sure that the public receive relevant and useful information. That is the process this bill puts into place, by providing that the Attorney-General issue guidelines for the publication of documents. I should add that the Ombudsman has already commented on this aspect of the bill. On his internet site there is an article by the deputy ombudsman, who says in relation to the role of the Attorney-General:

> In line with the Ombudsman's recommendation, the bill seeks to simplify the act by removing the requirement that an agency must publish a part II statement.

The deputy ombudsman goes on to say:

> It is encouraging that the Victorian government proposes to implement the Ombudsman's recommendations and has taken additional steps to make information more accessible to members of the public.

Again, we have the Ombudsman making recommendations and the government providing in this bill an implementation of those recommendations. On the internet today you will find the Ombudsman approving the course that the government has outlined. I should add and foreshadow that the government intends to further strengthen this requirement in the bill by moving an amendment which would seek the Ombudsman's involvement in the oversight of the Attorney-General's guidelines so that the Ombudsman can report on those guidelines in his annual report, which is of course tabled in Parliament.

The other recommendation of the Ombudsman that I want to pick up on involves the extension by 30 days of time for FOI determinations to allow consultation with individuals. Again, in support of this recommendation I refer briefly to the comments of the deputy ombudsman on these provisions on the website. He wrote:

> In line with the Ombudsman's recommendation, the 45-day time period within which an agency must determine a request under section 21 of the act can be extended by 30 days to provide for consultation by agencies with individuals, businesses and other agencies that may be affected by the release of the documents relating to:
>
> > The personal affairs of any person …
> >
> > Trade secrets …
> >
> > Material obtained in confidence …

Again, we have a recommendation and the bill implementing it. On the website today you will see the Ombudsman's tick of approval for the way this government has moved to implement those recommendations.

On the issue of vexatious litigants, the Ombudsman, at page 62 of his report, writes:

> There are instances where persons have submitted numerous requests to an agency in circumstances which show the requests are not made in good faith. In one case one person made 60 requests to an agency. While these are rare cases, they have the potential to cause a great waste of time and resources within the agency or agencies to which they are directed.

The Ombudsman recommends:

> … that VCAT —

that is, the Victorian Civil and Administrative Tribunal —

> be given power to declare a person a vexatious applicant, with the effect that further requests by that person for access to documents under the act may be made only with the consent of VCAT.

Again, the bill implements that recommendation and, as Mr Scheffer has identified, there are, as there should be, a number of clear and stringent conditions which

constrain when or how those provisions can be used. We know that, as Mr Scheffer has indicated, a relevant application can be made to only the VCAT president, not to an ordinary VCAT member. The test is twofold: there must be both repeated applications and the applications must be an abuse of the right of access. We have a two-stage process.

The bill goes on to identify the type of circumstance that is an abuse of process. 'Abuse of process', according to the bill, is where the VCAT president is satisfied that there have been repeated applications and that they are obstructing or otherwise unreasonably interfering with the operations of the agency or agencies. Again, the wording of the bill very much echoes the recommendations of the Ombudsman. It is almost as if the Ombudsman has written the bill himself. Again we have the government working hand in glove with the Ombudsman — an independent statutory officer, independent of government — to make sure we implement the recommendations made by the authority.

There are, of course, a number of other safeguards. As you would expect, the applicant must be heard. The applicant who is declared a vexatious applicant can make additional freedom of information applications with the leave of VCAT, and VCAT has to allow those additional FOI applications if the application is not an abuse of the right of process. VCAT has the right, at any time, to vary or revoke the order.

To be clear, it is a two-pronged attack. You need a large number of FOI applications, but that is not enough. There needs to be a purpose, there needs to be a motive or the outcome needs to be an obstruction or interference with the operations of an agency.

It is worth noting that provisions in the Supreme Court Act 1986 which deal with vexatious litigants will have a similar purpose and under the Supreme Court Act, since 1930 only 14 people have been declared vexatious litigants.

Mr Dalla-Riva — Fourteen!

Mr TEE — Yes, 14 since 1930.

Mr Dalla-Riva — You are just indicating to us why you do not need it.

Mr TEE — This house is safe. The government has set up an independent umpire. It has given it full access to conduct a thorough review. Let's get it right: we had an independent umpire to have a thorough, public review; we had a discussion paper. We had a final report, which we implemented. Members here may complain about FOI, but they have not as yet accepted the recommendations that that independent umpire has made.

On the other hand the government has accepted the recommendations and implemented them in full. The opposition's response lacks independence and judgement. It lacks the ability to do what this bill does — that is, address any of the concerns that have been raised through the consultation process.

The opposition has refused to accept the independent, impartial and carefully considered changes provided by the Ombudsman. As I have said, this is completely consistent with the track record of the Liberal Party in relation to FOI — a track record which means they have no credibility in relation to FOI. The community sees through their spurious opposition to the bill.

Mr D. DAVIS (Southern Metropolitan) — It is with a high level of concern that I rise to make a contribution to the Freedom of Information Amendment Bill, and I say that because in my view the Freedom of Information Act is one of the pillars or cornerstones of our democracy. In saying that I am prepared to pay tribute to some of those who have come before us in this area. I give credit to the Cain government for introducing the Freedom of Information Act in its initial form in Victoria, and I do that without any grudge because I believe it was an important step.

The Freedom of Information Act was maintained all the way through the Kennett period, but was amended a number of times. I pay tribute to Jan Wade, a former Attorney-General, who extended freedom of information to local government for the first time; until that step under the Kennett government, freedom of information had not applied to local government. I am prepared to concede that steps were taken by this government in its early days to strengthen aspects of the Freedom of Information Act that govern freedom of information access in this state.

In essence what freedom of information does is give a right to people to access certain information. It does that within certain parameters, and there are limitations on what documents people can access. With a heavy heart, what I want to put on the record today, as somebody who has used freedom of information extensively for more than a decade, is to indicate to the chamber that the current government in recent years has increasingly behaved irresponsibly with the Freedom of Information Act and has begun to routinely frustrate attempts by applicants to obtain information. The government and, in particular, the Attorney-General are fond of quoting statistics that show the overwhelming

number of freedom of information requests are fulfilled in full reasonably swiftly.

That is true when one considers the total numbers, but what that covers or misses is that the overwhelming bulk of applications for freedom of information documents concern information in the medical or health sphere — that is, personal information that people are accessing about themselves. If you look at the total number of applications — and in the interest of brevity I will not go through long lists of numbers — that is the case. Also, in the interest of brevity, I will say that Mr Dalla-Riva has covered many of the points that the opposition needed to make. In his contribution he dealt with the Ombudsman's report and other key matters that are the antecedents of this bill, at least in part.

My point is that when it comes to FOI requests of a more controversial nature that go to the heart of government and governance in this state, the situation is very different. FOI requests are routinely refused, and obstruction is the order of the day. This government has become a truly secretive government committed to opposing and preventing the release of information.

I could talk for a month on this and go through requests case-by-case, but let me just put one case on record today. It is a current application I have with VicUrban. This is indicative of the attitude of the government — the obstruction, the chicanery, the trickery and the focus on preventing information entering the public realm. I sought two years of board minutes and agendas from VicUrban, a statutory authority which publishes an annual report that is tabled in this Parliament. The government has sought at every step to frustrate my application. A directions hearing was scheduled. The government had sought to delay the directions hearing several times. We got to a directions hearing recently and the government had still failed to produce its section 24 statement that tells us how many documents there are, the names of the documents, the date the document was produced and its reason for refusing to release each individual document. This is a very simple thing. We know, following the directions hearing, that there are 49 documents involved. The commissioner at the Victorian Civil and Administrative Tribunal ordered the government to produce within seven days a list of those documents. The commissioner also ordered a new hearing date for the full directions hearing and that the section 49 statement with the reasons for refusal of each document be produced prior to that. This is an FOI that has now been live for more than 210 days.

This is the sort of nonsense that goes on. I would say to the chamber that VicUrban, a major statutory authority, has its board minutes and agendas sitting on a shelf in some folders. It could lift them down and photocopy them. If there were names or other things that needed to be deleted, it could delete them, photocopy the documents and post them. It could be done in a seven-day turnaround. But no, after more than 210 days we still do not have a list of the 49 documents with the reasons the government is refusing in each case.

I have to say I am a regular FOI applicant. Under the government's definitions here I would be considered vexatious. The Attorney-General, a sinister individual in this context, would no doubt be prepared to use those powers to freeze many of the applications that I have afoot. I do not think it is just about me or members of Parliament, although members do have specific duties and specific roles in protecting their electorates, understanding what is happening in government and holding it to account. Members of Parliament are only one category. Make no mistake: these vexatious provisions are aimed straight at the heart of the media in this state. This is about nobbling the media. This is about the cutting out of information. This is about closing down debate, closing down information and preventing disclosure of embarrassing and uncomfortable information for this government.

It is not just politicians or the media; it is community groups. This chamber spent a lot of yesterday debating matters around information on channel deepening. Let me just pick one community group as an example — Blue Wedges. I only pick them because of the debate yesterday. Blue Wedges is an important group. I do not agree with everything it says — I make that very clear — but I have met with its members many times and I see that their attitude is important in exposing points publicly, in challenging government and holding government to account. A group like that has an important role within its particular chosen topic or area of interest in holding government to account.

I have not spoken with Blue Wedges on this issue, but it would not surprise me if it had made a number of FOI requests on channel deepening. That would not surprise a single person in this chamber. Blue Wedges would be targeted as a troublesome group, critical of government with lots of FOI requests. It would be attacked as a vexatious applicant and have its applications frozen in a strategic way by this government. I am very concerned about the future of democracy in the state. I have always supported the expansion of FOI provisions and always supported the right of the community to know. I, throughout my parliamentary career, have sought to ensure that there is greater transparency and accountability in government.

I want to put on the public record some comments that the Premier, Mr Brumby, made during a period when he was opposition leader. He is described as 'state Labor leader' in the document I want to put on the record here. It is titled *Restoring Democracy* and is Australian Fabian Society pamphlet 55. In the document he talks about the 'democratic partnership'. I will quote some short sentences here, because I think they are indicative of what is important in some of these examinations today:

> At the heart of our society is the most important partnership of all: the democratic partnership. I define this partnership as open, transparent, and honest government, genuine participation and decency in public life.
>
> …
>
> Real democracy for Victorians means far more than casting a vote every four years.
>
> …
>
> The cornerstone of a healthy democracy is a government which is honest, accountable and engaged.

I would say that Mr Brumby and Mr Hulls have strayed a long way from those principles. I would say that what they said in the 1990s is very foreign to their attitudes and behaviour today.

In this bill we see an attempt to close down access to freedom of information. There is one positive provision: a reduction in fees. But counterbalanced against that is an increase in the time allowed from 45 days to 75 days. I can tell you that that would not have helped me with the VicUrban case, which is at 210 days and still counting. I still have not seen a section 49 statement to advise us of the 49 documents. I just cannot believe how long it takes to compile a list of 49 documents and explain why it is refusing access. Perhaps the department does not want to come out and say why it is refusing access — because it is on its third list of generic reasons for doing so.

I also put on record my concerns about part 2 of the bill and the lists and information that the government will commit to publishing. I accept that there is a mild improvement in the Ombudsman's reporting to Parliament on aspects of that, but I do not believe the fundamental level of control that the Attorney-General will exercise is healthy for democracy. I specifically reject any level of trust in this Attorney-General, who is one of the most untrustworthy individuals we could see. He is an individual who is committed to protecting the government at all costs even against the interests of the community. I for one, and I know many others, am very concerned about the use the Attorney-General or a successor would put those changes to.

As I said, it is part 4, which contains the vexatious applicant provisions, that I am most concerned about — that is, the ability to chill FOI requests to prevent key people, such as members of Parliament, members of the press or other media or community groups, which are often less powerful when it comes to managing complex legal cases and may not have access to resources or people who have the skills and ability to match the highly paid silks that the government is prepared to hire, from undertaking proper scrutiny of government and fighting these cases one by one.

I accept that on one level a lowering of fees may lead to more applications. That is not an unlikely event, although I make the point that the so-called 'vexatious applicant group' was not a problem in the 1980s. The government has produced no particular evidence that it was a problem. I have spoken to experienced FOI officers and I know that that was not a problem.

There is a lever in the general provisions in relation to the Victorian Civil and Administrative Tribunal. With the disputed FOI cases that move to VCAT — that is, the serial cases or those that are problematic in some way — the tribunal can use the general provisions available to it as a court to deal with vexatious litigants as opposed to vexatious applicants. The idea that you can pre-emptively chill dozens, or even more, of requests made by a person or organisation to hold the government accountable is very sinister.

I do not want to say a lot more. It is a very worrying set of provisions that the government has introduced. The opposition is very concerned about a number of those provisions.

Mr KAVANAGH (Western Victoria) — I firstly have to admit that freedom of information has not traditionally been a very high priority for the Democratic Labor Party. Although the DLP was a pacesetter in policy for many years, perhaps its salad days preceded the time of FOI. Nevertheless it does seem desirable and perhaps even necessary for a free and open society and government for people, particularly those in the opposition, to have access to the information of the government. An effective opposition is extremely necessary for effective government, in my opinion, and FOI is an important tool for oppositions.

Against those considerations it seems to me that the cost to the government is also a relevant consideration. Although people will say that a service or product is free, what they really mean is that everybody else in the state is paying for it. We should be aware of the

burdens, among many others, that are imposed on other people by expensive FOI applications.

The government has negotiated with me and offered some compromises on the legislation, and on that basis I have agreed to support most of the bill. I am concerned by the experiences recounted today by Mr Dalla-Riva and Mr Barber, which do suggest that there has been a deterioration in the quality of service provided to people applying for information. I hope the government addresses that. Mr Barber is probably correct in saying that it is a result of a problem in the culture of the public service. The government should take note of Mr Barber's contribution and indicate to its employees that they are to serve and not hinder the people who are applying for information. Indeed I recently had an experience consistent with those related by Mr Dalla-Riva and Mr Barber. Information was refused, and the review against that decision was undertaken by the person who made the initial refusal, which does not seem to be in accord with natural justice.

I will support most of the government's bill. However, I will also support the proposed Liberal amendment to limit the provisions against vexatious applicants.

Ms PULFORD (Western Victoria) — Much of the legislation that the government has brought to this place follows a 2006 state election commitment. The purpose of the bill is simply to implement the recommendations made by the Ombudsman in his report on the review of the Freedom of Information Act, which was tabled in this place on 1 June 2006. The changes are designed to modernise the Freedom of Information Act and to limit the conclusive certificate provisions in the FOI act to matters relating to national security.

It was Labor that introduced the FOI act in 1982, and when the Bracks Labor government was elected in 1999 we started work to undo the rampage through the FOI legislation during the Kennett-McNamara years. In 1999 the exemption for cabinet documents was narrowed, as was the exemption for commercial-in-confidence documents, and a waiver was introduced of the $170 Victorian Civil and Administrative Tribunal fee for refusals made on the basis that an agency did not want to make a decision. Ministers are now required to explain a decision to appeal a VCAT ruling. Labor also removed the blanket ban on the release of information that identified public servants or third parties.

Since the government was elected FOI requests have increased by 50 per cent, and 97.4 per cent of FOI requests have resulted in documents being provided. The Liberals say they are committed to FOI, but their record tells a different story. During the Kennett-McNamara years there were two occasions when changes were made to the act, and they had the effect of decimating it. In 1993 an application fee was introduced and the definition of 'cabinet documents' was extended.

In 1999 a blanket ban was put on the release of documents that identified a public servant or third party. We certainly remember the wheelbarrows of documents that marked the end of the Liberal-National coalition government in 1999.

This bill abolishes the application fee for FOI requests and importantly implements all legislative recommendations made by the Ombudsman. The bill makes good on a promise made to the Victorian people at the last state election to remove conclusive certificate provisions in relation to cabinet documents. The bill also modernises the practice of FOI by acknowledging widespread use of the internet and increasing the ability of the public to make FOI requests online. It also places a requirement on government departments and agencies to increase the amount of information that is publicly available online. With those few words, I will conclude by noting that it took a Labor government to introduce FOI legislation in this state, and it takes a Labor government to continue to support and enhance it.

Mr EIDEH (Western Metropolitan) — I rise today to speak about the Freedom of Information Amendment Bill. The FOI legislation was a groundbreaking reform by then Premier John Cain II, and it has truly been a remarkable piece of legislation that has significantly improved rights for the average people of our great state.

However, during the Kennett years the legislation was significantly restricted, and burdensome application fees were introduced not to cover costs but to put off those who could not afford such fees. The Brumby Labor government is committed to greater democracy, to openness in government and to acting in the best interests of the community at large. This amendment is further proof of that commitment.

Fees will be abolished. Agencies and departments will be encouraged to offer information online for greater access by the public. They will also be encouraged to cooperate more with public requests for information rather than going through the formal aspects of FOI requests. This is aimed at helping people gain information that affects them. This is targeted at strengthening democracy in Victoria.

A number of recommendations by the Ombudsman to streamline and improve the service of FOI will also be enacted. I am sincerely proud of the commitment that successive Labor governments have made to freedom of information in Victoria and the leadership role that has seen other states quickly follow our lead. I hope other states and territories follow this lead, and I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

The DEPUTY PRESIDENT — Order! In regard to clause 1, which a committee would normally deal with at the outset of its deliberations, I am of the view that there would be some difficulty in the committee's determining its position on clause 1 ahead of reviewing some of the other clauses, because clause 1 might mean that amendments proposed to other clauses could not be proceeded with. I seek the committee's agreement to a deferral of clause 1 until later in the committee stage.

Mr DALLA-RIVA (Eastern Metropolitan) — I move:

That consideration of clause 1 be postponed until later this day.

Motion agreed to.

Clause postponed.

Clauses 2 and 3 agreed to.

Part heading preceding clause 4

The DEPUTY PRESIDENT — Order! I call on Mr Dalla-Riva to move his amendment 2 to delete the part heading preceding clause 4. I believe this is also a test for Mr Dalla-Riva's amendments 3 to 5, which involve the omission of clauses 4 to 6 and to amendment 12. Mr Dalla-Riva may therefore foreshadow those related amendments.

Mr DALLA-RIVA (Eastern Metropolitan) — I move:

2. Part heading preceding clause 4, omit this heading.

This relates to part 2 of the amendment bill headed 'Publication of certain information', which is the heading for clauses 4, 5 and 6. The Liberal Party, as I outlined in my main contribution, sees that part II to be inserted by this part cannot be tolerated under the proposed regime. We are of the view, quite clearly, that the Ombudsman in his report made note in his administrative recommendations at page 9 that part II should be reviewed as a matter of urgency, giving consideration to adopting a system of publication schemes on the model of the United Kingdom FOI act.

Provided by the government in the amendment bill, it appears this is not the case for a range of reasons, and most notable is that the responsible minister for establishing those guidelines is the very person who has the oversight of that particular act — that is, the Attorney-General. The Liberal Party notes that it is unacceptable in a sense that it is not clearly what was indicated by the Ombudsman. We note that this is proposing to strip back the existing part II in the principal act and to put in a totally new regime which actually dumbs down, as it were, the capacity for information to be made freely available as it should have been ordinarily.

I wish to explain briefly why we will be opposing those clauses. Currently, as was indicated, the first principle of part II in the principal act, as it stands, is to ensure you have information that is available in the broader community. Once that information is broadly available you can extract down into applying some FOI applications to the various parts of information. What we have concern about is that there is no consideration given as to how that is to be established. As I said in debate, it is like giving Dracula responsibility for the blood bank, because essentially it is allowing the Attorney-General to set the standards. The Liberal Party will be moving amendments to oppose the part 2 heading and the subsequent clauses 4, 5 and 6.

My only question to the minister is that if part II is to be reviewed, giving consideration to adopting a system of publication schemes and the model of the United Kingdom, given that Labor speakers talked about the amendment bill being an exact replica of what the Ombudsman suggested, why is it that the government has not adopted the UK model as proposed by the Ombudsman in his June 2006 report?

Hon. J. M. MADDEN (Minister for Planning) — I note Mr Dalla-Riva's concerns in relation to the United Kingdom model, as I understand it. The recommendations from the Ombudsman were that part II be reviewed, giving consideration to the UK FOI act. Also part of the recommendations from the Ombudsman were that the Attorney-General might consider issuing or approving guidelines for publication of requirements for departments and other agencies

within broad guidelines that could be prescribed by legislation. Rather than add another layer of complexity and another layer of bureaucracy — often we are criticised by the opposition for enlarging the size of the public service — this is really a way of the Attorney-General providing that scrutiny and making sure that the guidelines will be oversighted by the Ombudsman anyway. I understand that there are other checks and balances coming from Mr Barber, and this is a way of building those into existing systems rather than developing a new system and putting another overlay of bureaucracy and cost.

Mr DALLA-RIVA (Eastern Metropolitan) — I note the minister's last comment was in respect of having oversight by the Ombudsman. Perhaps the minister can indicate in the amendment bill as it stands now where that is specified.

Hon. J. M. MADDEN (Minister for Planning) — That is in the foreshadowed amendments that will be moved by the government.

Mr DALLA-RIVA (Eastern Metropolitan) — It is what you love about this government; it has already assumed the vote in this chamber on an amendment that has not been put. I thought that may have been the case. In summing up the part II statements, because it is clear that the government will not relinquish on this, in the Ombudsman's report interestingly he said there were a number of agencies that expressed support for the repeal of part II, which is at page 51 of the report, and that other agencies favoured retaining part II. I am curious about which agencies the minister knows of favoured retaining the existing part II, and if they did why the minister is still moving towards repealing the existing part II.

Hon. J. M. MADDEN (Minister for Planning) — I do not have that information in front of me at this time, but I am happy to seek to provide that information to Mr Dalla-Riva by making that request of the Attorney-General.

Mr BARBER (Northern Metropolitan) — I indicate that the Greens will support the amendment. The government has made much of implementing the Ombudsman's recommendations, but in this one particular case it has decided not to. In doing that, I would also say that we are aware of the government's foreshadowed amendments, and we will support them when they are put forward.

The DEPUTY PRESIDENT — Order! If there is no further discussion of amendment 2 to clause 4, I propose to put the amendment to the chamber. As I have indicated, it is my view that amendment 2, which proposes deletion of the part heading preceding clause 4, is a test for amendments 3 to 5, which involve the omissions of clauses 4 to 6 and for amendment 12. If Mr Dalla-Riva's amendment 2 is agreed to, the minister's proposed amendment to clause 4 will have been tested and will not be proceeded with because, in effect, the committee would have agreed to omit clause 4. Mr Dalla-Riva's amendment 2 is a test for a number of matters. The question is that amendment 2 proposed — —

Mr TEE (Eastern Metropolitan) — I am not sure whether that is the case.

The DEPUTY PRESIDENT — Order! Mr Dalla-Riva's amendment would eliminate clause 4, so the government cannot very well proceed with an amendment to an eliminated clause.

Mr TEE (Eastern Metropolitan) — As I understand it, the Attorney-General's statements would still be in place and a review of those statements would still be undertaken by the Ombudsman.

The DEPUTY PRESIDENT — Order! I will have the clerks look into that matter. But at this point I will put amendment 2 standing in Mr Dalla-Riva's name to the test.

Committee divided on amendment:

Ayes, 20

Atkinson, Mr	Hartland, Ms
Barber, Mr	Koch, Mr
Coote, Mrs (*Teller*)	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pennicuik, Ms
Drum, Mr	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr (*Teller*)
Hall, Mr	Vogels, Mr

Noes, 20

Broad, Ms	Pakula, Mr (*Teller*)
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Smith, Mr
Jennings, Mr	Somyurek, Mr (*Teller*)
Kavanagh, Mr	Tee, Mr
Leane, Mr	Theophanous, Mr
Lenders, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Amendment negatived.

Clause 4

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

Clause 4, page 6, after line 33 insert —

"(7) The Ombudsman must include a report on the standards issued under this section in the annual report to Parliament made under section 25(1) of the **Ombudsman Act 1973**.".

Basically clause 4 repeals the current provisions of part II of the Freedom of Information Act 1982 and substitutes a new part II, which provides for the publication of certain information. New section 7(1) in new part II requires agencies to publish information in accordance with the standards issued by the Attorney-General. This amendment inserts new section 8(7), which requires the Ombudsman to include a report on the standards in his annual report to Parliament.

Mr DALLA-RIVA (Eastern Metropolitan) — Will this be an annual event or is it just a one-off?

Hon. J. M. MADDEN (Minister for Planning) — No, as I mentioned, it would be a report on the standards in his annual report to Parliament, and that would be continuous.

Mr BARBER (Northern Metropolitan) — The Greens will support this amendment.

Amendment agreed to; amended clause agreed to.

Clause 5

The DEPUTY PRESIDENT — Order! The listed amendment that Mr Dalla-Riva had proposed — to invite the committee to omit this clause — lapses because it was tested earlier.

Clause agreed to.

Clause 6

The DEPUTY PRESIDENT — Order! I invite Mr Dalla-Riva to formally move his amendment.

Mr DALLA-RIVA (Eastern Metropolitan) — I am of the view that that has been tested.

The DEPUTY PRESIDENT — Order! I am also of the view that that has been tested.

Clause agreed to; clauses 7 to 10 agreed to.

Clause 11

Mr DALLA-RIVA (Eastern Metropolitan) — I invite the committee to omit this clause. While there have been indications in the debate about the time extension, we have heard evidence from a range of people saying that the time allowed — that is, the current 45 days — is sufficient. To extend that period by another 30 days flies in the face of what is fair in the community; I know the government will have a reply on that.

The facts are that the Ombudsman, even in his report, indicated that the delays were not necessarily as a result of poor applications but more about the internal processes and the culture, as Mr Barber said earlier, of blocking and trying to slow down the process.

As I indicated earlier, the *Sunday Age* of 25 November indicated that the best this government could do was to:

> slow the release of information from a dribble to a drip. Brumby has extended the response time for FOI requests from 45 days to 75 days. It beggars belief that the best solution to a freedom of information officers failing repeatedly to meet the 45-day deadline was to give them even more time.

The editorial in the *Herald Sun* of 7 February also says quite strongly that:

> … the new bill conversely blows out the maximum response time by 30 days … Extra resources should instead be devoted to reducing the 45-day maximum.

I ask the minister: has consideration been given to allocating additional resources to ensure that even the additional 30-day rule would be met should we fail on this amendment?

Hon. J. M. MADDEN (Minister for Planning) — It is not so much about the resource issues in this instance; it is really about a procedural issue in just contacting individuals who might have private or personal information. It is really about having sufficient time to make contact or give the opportunity to make contact with those individuals who might have some private information or privacy issues about that information and seek clarity as to whether they have views in relation to that private information or the release or the impact of the release of that information. It is really a matter of providing sufficient opportunity to really make contact with those individuals or individual.

Mr BARBER (Northern Metropolitan) — The Greens will support this amendment and would have moved the same amendment had the Liberals not done so. The government has not made out its case for the

need for an extension of time. While it has been characterised as allowing more time to consult with people on matters of their personal privacy, the bill relates to three different sections. Additional to matters of personal privacy are the matters of corporate privacy, if you like, and trade secrets, and also matters communicated to ministers in confidence.

Given the typical blow-outs that most FOI applications are suffering, it is certainly true that under current provisions the government or an FOI officer has options here, one of which is to release the material and delete, under section 25, parts of it that relate to personal privacy. Personally, I would rather have the documents back straightaway with some deletions if it was felt necessary in relation to these sorts of matters than this being used as just another reason to blow out the time line.

Secondly, if there is to be any debate about statutory time limits, as has been said many times today, the real world processing times bear absolutely no relationship to those in the law. I think it was Napoleon who used words to the effect that it is not necessary to hide the truth forever but simply until that truth is no longer relevant.

Mr Dalla-Riva, who talked about the example of his FOI application about EastLink, would be able to attest to that. He may end up getting the information, but the thing will have been built. That serves the government's purposes perfectly. It is no longer particularly relevant to inquire into a highway that has already been built. No matter what anybody comes in here and says today, this is simply another ploy by the government to blow out time lines.

Hon. J. M. MADDEN (Minister for Planning) — I think Mr Barber has failed to recognise that the recommendation by the Ombudsman was:

> I recommend that section 21 be amended to extend the period for making a decision by up to 30 days where consultation is required under section 34 —

of the act. Mr Barber would be the first person to criticise either the process or the government or the officer if information was not released because it contained some information. Whilst this might take slightly longer, there is every chance that he will receive information he may not have been entitled to receive because of the consultation process. I think in many ways we understand from his contribution to the debate that he is a serial FOI requester.

Mr Barber — I am vexatious!

Hon. J. M. MADDEN — Are you vexatious? I would never have put him in that category, but if Mr Barber wants to claim that himself, they are his words, not mine. I would say that this provides you with the opportunity to receive information, the release of which by an officer may have been quashed because it had some sort of private information in it. This will most likely give the member greater access to greater information, even though he may have a degree of impatience as to when the information might be released. The Ombudsman himself has recommended that extension.

Mr DALLA-RIVA (Eastern Metropolitan) — I am just fascinated by the members and the minister on the other side. My first question, which the minister probably does not need to respond to, is how many FOI applications has the minister made? It fascinates me. Members opposite come here as though they have some experience or expertise in it. You really need to go through the process to understand just how difficult it is to get information now.

Clause 11 inserts proposed section 35(1A). While that relates to clause 17 in particular, it is enclosed in this clause. That was never intended initially. It seems to me that it has been slotted in here. Proposed section 35(1A) relates to documents containing material obtained in confidence. Can the minister give me any reason for this slippery insertion of this proposed section 35(1A)?

Hon. J. M. MADDEN (Minister for Planning) — I know we have got a room full of conspiracy theorists when it comes to FOI, but in relation to matters of information, matters of privacy, matters of liberties, at the end of the day there will always be a degree of conflict about who has entitlements over another. In this instance this is really about matters of privacy. It is not to say that the information will not be released. It probably gives the opportunity to release more information, as I mentioned to Mr Barber. It was a recommendation by the Ombudsman. I know there is always a degree of impatience among members of the chamber and members of the public who make requests because they want to use the information sooner rather than later. They want to access it and process it sooner rather than later. Do we not all in a world where speed is the currency? But this is a matter of double-checking to make sure that there is not the unwarranted release of an individual or an organisation's private information, which they are entitled to protect.

While transparency is absolutely necessary, we also have a privacy commissioner who is very conscientious about reminding all those in government, and no doubt those in the corporate sector, about issues of privacy. I

am sure that if information was requested in relation to Mr Dalla-Riva and Mr Barber, they would want to have some say as to whether that information should or should not be released. This is an opportunity for a safeguard for individuals rather than being about governments trying to conspire against members of the opposition parties.

Mr BARBER (Northern Metropolitan) — I do not know if the minister is going to find this hypothetical, but if I am a member of a community advisory committee attached to the minister's department in relation to some matter — it could be Melbourne 2030 — and that community advisory committee has minutes, is that personal and private information with respect to my participation in that committee?

Hon. J. M. MADDEN (Minister for Planning) — This is just childish stuff. If the member understands the process he will know that it is not for me to determine what is and is not information that should be accessible. That is determined by the officer. It is determined by the guidelines that, as we have already discussed, will be set down, and it will be policed or oversighted by the Ombudsman. For the member to ask me whether I would release hypothetical information is trying to misconstrue what we are trying to achieve here, which is a better process for people to access information. We are trying to give certainty and assurances to those who seek to access information so they know what their entitlements are and the best mechanism by which to access them.

The DEPUTY PRESIDENT — Order! Without wishing to enter the debate, Minister, I would suggest that trying to establish what type of documents might be excluded under the government's intentions is not a trivial question.

Mr BARBER (Northern Metropolitan) — Or childish, I would have thought. It was the minister who raised the counterbalancing question of privacy. I was simply asking him for his knowledge of how the Privacy Act would be counterbalanced in that not-so-hypothetical example.

Mr DALLA-RIVA (Eastern Metropolitan) — While we are debating clause 11, which I have moved to omit, there is one component I have previously raised which members of this chamber, the media and the broader community need to understand. The insertion of proposed section 35(1A) puts a new dynamic into the issue of documents allowed to be released. We heard the minister's statement just then about matters that are personal or related to an organisation. Proposed section 35(1A) extends substantially the reasons for which they can exclude documents being provided. For those who are in this chamber, for the media who are listening, it means the government can exclude information if the disclosure of the information would be contrary to the public interest. The question is who on earth do you go to to get somebody to say, 'That information should not be released because it is not in the public interest'? Is it a minister or is it somebody in the department who now determines that information should not be released in the public interest?

This is not an individual case; this is about a theoretical issue that the government has imposed in clause 11. The minister still has not explained it fully. I understood what he said about personal matters or private matters or matters that relate to organisations or businesses, but the insertion of proposed section 35(1A) places a whole new dynamic in the issue of disclosure of information. I do not think people quite understand how this is going to be used as another block under FOI. I am asking the minister how he will determine that something is going to be contrary to the public interest and who makes that determination of what is the public interest.

Hon. J. M. MADDEN (Minister for Planning) — I do not think Mr Dalla-Riva understands the process. Ministers do not have a say in what information is or is not released. It is determined by the FOI officer within the department. Of course there will be guidelines, as mentioned, and at the end of the day it will be oversighted by the Ombudsman. If the member has made those requests before, he will know that there are mechanisms of appeal in relation to those requests and they can be taken up.

There is never, I understand, the opportunity for a minister to stop the release of information. It happens and the minister might at a later date be notified that the information will be or has been released. There is no opportunity for a minister to say, 'Do not release that information'. For Mr Dalla-Riva and others in the chamber to imply today that ministers make a determination on the release of that information is incorrect. Basically what happens is it is determined by the FOI officer, as has been the case, and we are going over old ground here. For the member to make the case that it sits on a minister's desk and he says, 'Do not release this, do release that, do not release that — —

Mr Dalla-Riva — It does; we know it does.

Hon. J. M. MADDEN — It does not happen. A minister is notified, but the information is released regardless.

Mr DALLA-RIVA (Eastern Metropolitan) — I still have not got clarification. Who determines the release of information as being contrary to the public interest? The minister said the FOI officer. Is that the only person?

Hon. J. M. MADDEN (Minister for Planning) — My understanding is those decisions are made by the FOI officer. I am sure the way departments operate is that there is an officer with a significant degree of responsibility, and where there are question marks either way as to whether there are issues related to privacy or public interest, legal advice is obtained or that FOI officer has sufficient legal expertise to make an appropriate decision. If the member of the public who is seeking that information or the member of the public whose information is about to be released thinks those decisions are incorrect, there are long-established mechanisms for them to seek an appeal in relation to that information. The ministers do not enter into that arrangement in any form; it is dealt with by the FOI officer. That has been the case. This is just giving more certainty and clarity to the mechanisms to do that.

Mr BARBER (Northern Metropolitan) — I think Mr Dalla-Riva makes a very important point because the nexus that is created by this reference to new section 35(1A) is that the FOI officer is being given extra time for the purpose of conducting consultations, and yet what new section 35(1A) says is that the person they consult with could be a minister. An FOI officer will now be consulting with a minister as to whether a particular piece of information should be released.

With the committee's indulgence I would like to make another attempt to get an answer to my previous question. I am not intending to throw a series of hypotheticals at the minister. My question is quite simply that if a member of the public is participating in a government process through an advisory committee to a minister or a government strategy, is that person acting now in a private capacity or have they now crossed over to being part of a public process in which case they would not have the right to claim privacy in relation to the release of documents?

Hon. J. M. MADDEN (Minister for Planning) — I understand the point of the question. I know what Mr Barber is saying: 'When does a person from an organisation who might have volunteered or been paid to be part of that organisation move from being a private individual to being a public representative or a community representative?'. I would not expect that it would be too hard to establish guidelines that delineated and clarified that. If you were in an environmental group, Mr Barber, and you were endorsing a particular position, I would not think that would be necessarily personal. However, if it was in relation to some other matter that dealt with your family matters I am sure it would be information that you would hold very close and very dear and you would not necessarily want that of currency out there in the public — or it might be of particular interest to you. It is really about seeking clarification through guidelines, and it also gives the officer an opportunity to explore whether or not it is an issue that may warrant closer inspection or consideration.

If you do not care about release of the information, then the argument is probably over. But if you have concerns and it is a significant personal or private issue, not a public issue but a private issue, then I suspect there would need to be greater advice and certainty on the part of the officer in relation to releasing that information just in case you wanted to, at a later date, challenge the officer who might be considering releasing that information because it was your information. I suspect, Mr Barber, you would be the first to put your hand up and say that. We have had incidents of this kind before. If I remember rightly, there was a discussion along similar lines where Mr Barber took the other position where individual private citizens should be consulted in relation to the release of records or information, particularly around, I think, human services matters.

I do not want to spend a prolonged time on a hypothetical, but there may be a request in relation to, say, psychiatric treatment through the Department of Human Services. Individuals may not want that information released if it provides their name or reveals associated issues, but the quintessential information about the reporting, accounting or auditing of matters in the public interest might be of particular concern. However, there may be other significant private issues that individual may not want released. What I am saying is we are trying to do the right thing by a private individual and privacy. We are also trying to do the right thing by providing access to information. Essentially this is based on a report by the Ombudsman. We are taking up those recommendations. Again, the recommendation here is that:

> I recommend that section 21 be amended to extend the period for making a decision by up to 30 days where consultation is required under section 34.

It is more likely to provide a person with more information rather than less.

The DEPUTY PRESIDENT — Order! I am advised that procedurally it is better if the question is framed 'That clause 11 stand part of the bill', so the question is:

That clause 11 stand part of the bill.

Committee divided on clause:

Ayes, 20

Broad, Ms	Pakula, Mr
Darveniza, Ms (*Teller*)	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Smith, Mr
Jennings, Mr	Somyurek, Mr
Kavanagh, Mr	Tee, Mr
Leane, Mr	Theophanous, Mr
Lenders, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms (*Teller*)
Mikakos, Ms	Viney, Mr

Noes, 20

Atkinson, Mr	Hartland, Ms
Barber, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr (*Teller*)
Davis, Mr P.	Pennicuik, Ms
Drum, Mr (*Teller*)	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr

The DEPUTY PRESIDENT — Order! The result of the division is ayes 20, and noes 20. Because there is not a majority of votes cast in favour of the proposition, the question is therefore lost, and clause 11 will not stand as part of the bill.

Clause negatived.

Hon. J. M. Madden — On a point of order, Deputy President, we seem to have a circumstance which has not prevailed in this chamber before, I think. We are just seeking some procedural clarification on this, because you or I or any of us in this chamber may need to seek advice on this going forward. Because of the way the motion was put, which was to support the clause rather than to omit it, the clause has been omitted because there was no definitive majority in support of it. Hence we now have a clause omitted but it is very likely that we will not have a sufficient majority to ensure that we can insert a clause.

My understanding, Deputy President, is that what will result from this process is a bill which is not amended but which now has clauses omitted and is likely to be returned to the other house with significant omissions but no amendments.

Hon. T. C. Theophanous — Further on the point of order, Deputy President, I make this point, and this is an important procedural issue. The situation is that were the opposition, or anyone in the chamber, to move an amendment seeking to omit a particular clause from the bill, it would be determined, and if there were a 20-20 split on the amendment it would fail and the clause would stand part of the bill because the amendment that was moved would fail.

If the amendment was simply an amendment — in other words, if the opposition had got up and moved an amendment which said that clause 11 be omitted, that would have failed and therefore procedurally the clause would have continued as being a part of the — —

Mr Drum — There is an umpire; he has blown his whistle; he has his arm out; don't argue.

Hon. T. C. Theophanous — This is important because it will affect things. Mr Drum might not care about this but there are some people who do.

The DEPUTY PRESIDENT — Order! I am listening to the minister's point of order, and he should ignore other comments.

Hon. T. C. Theophanous — This is a very important decision that needs to be taken by the Chair in relation to this matter, because it will affect the way in which other bills are dealt with later on.

What it could lead to in the future is that where the opposition does not agree with a clause, rather than moving that the clause be omitted, which would be the normal process by way of an amendment, it would not do that but would seek to modify the clause even slightly, with a one-word change, and when that failed the Chair would then be forced to put the motion in the way that the Chair has done — namely, that that particular clause stand part of the bill. Consequently the clause goes down on the basis of a procedural set of motions, rather than on a substantive issue of a determinate vote in relation to the removal of that clause.

I would therefore urge the Deputy President to consider carefully whether procedurally it is appropriate to put the motion in the way that the Deputy President did, or whether it would be more appropriate for the Deputy President to put the motion as a motion to remove the clause from the bill.

The DEPUTY PRESIDENT — Order! I understand the point of order.

Mr D. Davis — Briefly on the point of order, Deputy President, the standing orders are clear and the opportunity is available to members to change standing orders if they believe the practice is not being done the right way, but my understanding is that the standing orders are quite clear.

Hon. J. M. Madden — Further on the point of order, Deputy President, I wish to add — it may or may not make understanding clearer — that I think the proposition the Deputy President put to the chamber was not what was written in the paper in the sense that the opposition was seeking to have clause 11 omitted, and that was not the proposition that was put to the chamber. I understand that, through the Deputy President, the proposition put to the chamber was the question of whether the clause was supported or not, which was different from what was sought through the amendment from the opposition.

My query to the Deputy President is that the proposition put by the Deputy President on advice from the clerks was not completely correct in relation to what the amendment said.

The DEPUTY PRESIDENT — Order! I thank the minister, but that does not really clarify anything because I understood the point earlier.

Mr P. Davis — On the point of order, Deputy President, taking up Mr Theophanous's comments, to put it as succinctly as I can, my understanding is that the procedure which is adopted here in the committee is that, as a result of the bill being put before the committee of the whole, we are working through the bill clause by clause, and adopting the clauses seriatim.

The question that is inevitably therefore put is: do we agree with a clause? In the event that there is not a majority in favour of adopting a clause and including that clause in the bill, the clause will fail. That is the case here. There is an equality of votes; therefore the motion is negatived; therefore that clause must be omitted from the bill, because it does not have a majority of support in the committee of the whole.

The DEPUTY PRESIDENT — Order! Can I indicate that some people in the committee, when I first put this question, would have heard that I started out to say that Mr Dalla-Riva's amendment would be tested. Essentially the practice of the chamber in terms of debate has been that where there are questions that involve the substance of a clause — and whether or not a clause would stand — the view of the chamber has been that the matter of an amendment to delete the clause is tested by the proposition that the clause stand part of the bill.

Now, I accept the proposition put by Mr Theophanous and the minister, on behalf of the government, that given we now have a situation where we can have a tied vote, it does presuppose an outcome to some extent. From my point of view it is possible that had the question been put by me in respect of the amendment — rather than the question being that the clause stand part of the bill — there would have been an outcome, in so much as even with a tied vote, the question would not have been agreed to, because it did not have a majority. The question would therefore then have gone to whether or not the clause stood part of the bill. I guess it comes down, in terms of the procedures of the chamber, to whether or not that second question would have encouraged a member of the house to change their vote. If it would not have caused a member to change their vote, then testing the clause achieved what we have historically done in the chamber as a matter of procedure.

Given the status of this bill at this time, and given the fact that we are in new waters in terms of the membership of the house, I am prepared to recommit the question in respect of the amendment first and then to proceed to the clause question. It is highly likely that unless there is a change in votes, we will arrive at exactly the same position, because it is likely that both propositions, given the vote that has preceded, will result in nobody achieving a 21-vote majority. It is likely that it will result in the same position, but I accept, in the interests of testing the proposition fairly and taking into account that somebody might be encouraged to change their vote, having seen the outcome of the first proposition, that it ought to be tested that way in the interests of proper procedure.

Hon. T. C. Theophanous — On the point of order, Deputy President— —

The DEPUTY PRESIDENT — Order! Mr Theophanous is testing my goodwill.

Hon. T. C. Theophanous — As I said at the outset, this will set a precedent for a long time to come, so I think it is important that the government's view is put. The government's view is that following the moving of an amendment, if the amendment fails, and if the clause is to be omitted, then a substantive motion should be put by the opposition to omit the clause. In other words, the question of the way in which the motion is put, and what you are attempting to do — —

The DEPUTY PRESIDENT — Order! With respect, Mr Theophanous is just agreeing with what I have said.

Mr Jennings — I think so.

Hon. T. C. Theophanous — No — —

The DEPUTY PRESIDENT — Order! Mr Theophanous is agreeing with what I have said. I understand Mr Theophanous's position. I am prepared to allow some leeway today. I would indicate to the house that I do not propose, in recommitting this clause on this occasion, to set a precedent at this time, because I intend to ask the clerks for further advice on this matter. In that respect I am quite happy to invite the parties to make submissions on this matter. I am quite happy to have this taken up further. With the leave of the committee, I will return to clause 11. Is leave granted?

Leave granted.

The DEPUTY PRESIDENT — Order! What I propose to do in this instance is put to the test Mr Dalla-Riva's amendment 6, which is to delete the clause.

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That progress be reported.

That will enable us to take a bit of a breather in relation to this. I understand your intention, Deputy President, and am quite comfortable with the notion that you are prepared to recommit this amendment in order to get the sequence of the questions before the committee correct. We are all making some assumptions about the way these votes will go, and those assumptions may be correct but they are not necessarily correct.

I suggest we take a breather to be very certain about the ground on which we are proceeding and the precedents that we may set for the way we do business. I think our conundrum at the minute arises because the wrong question was put and assumptions were made about voting intentions. That is what has led us to this situation. We should take a breather and report progress.

The DEPUTY PRESIDENT — Order! The question is:

That progress be reported.

Bells rung.

Hon. T. C. Theophanous — Stop trying to pressure the Deputy President.

Mr Guy — This is not a conversation with you. Go read your papers.

The DEPUTY PRESIDENT — Order! I advise that I will vote with the noes.

Hon. T. C. Theophanous — Yes, only after you got pressured. I saw it.

The DEPUTY PRESIDENT — Don't be silly.

Hon. T. C. Theophanous — It was inappropriate.

The DEPUTY PRESIDENT — Don't be silly.

Hon. T. C. Theophanous — It was inappropriate.

Mr Guy — It was inappropriate because it doesn't agree with him.

Hon. T. C. Theophanous (to Mr Guy) — You put pressure on him. You told him he had to vote that way.

The DEPUTY PRESIDENT — Order! That comment by Mr Theophanous is a reflection on the Chair. If he wants to stay in the chamber, he should desist.

Hon. T. C. Theophanous — It is a reflection on him.

The DEPUTY PRESIDENT — Order! Mr Theophanous will not argue with me; he has reflected on the Chair.

Committee divided on question:

Ayes, 20

Broad, Ms (*Teller*)	Pakula, Mr
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr (*Teller*)
Elasmar, Mr	Smith, Mr
Jennings, Mr	Somyurek, Mr
Kavanagh, Mr	Tee, Mr
Leane, Mr	Theophanous, Mr
Lenders, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Noes, 20

Atkinson, Mr	Hartland, Ms
Barber, Mr	Koch, Mr (*Teller*)
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pennicuik, Ms

Drum, Mr
Finn, Mr
Guy, Mr (*Teller*)
Hall, Mr
Petrovich, Mrs
Peulich, Mrs
Rich-Phillips, Mr
Vogels, Mr

The DEPUTY PRESIDENT — Order! I am advised that the result of the division is 20 votes for and 20 votes against the question. Therefore, the proposition does not pass.

Question negatived.

The DEPUTY PRESIDENT — Order! We return to the melees. I will indicate to the chamber what the position is. I understand the points of order that have been made. I recognise and understand Mr Theophanous's point of order in regard to fairness of process. What he is saying is that you can have a situation, as we have here, where the proposition to delete a clause is lost because it does not obtain a majority, but then if the vote is exactly the same on the next question which I must put, which is that the clause stand part of the bill, then, because neither achieves a majority, the clause will not stand part of the bill.

I am bound by standing orders; that is the position. I am not in a position to offer a casting vote or to offer some sort of reprieve to the government that its proposition has greater merit than the previous proposition. The standing orders say that it will fail. So from that point of view the proposition that was put was fair in terms of the way the chamber operates. However, as I indicated to the committee before we had the motion to report progress, I am prepared, from a procedural point of view, to return to clause 11 and to put the first question, which is an amendment to delete the clause, to the test. In the event that that fails, then I will put the question that the clause stand part of the bill.

Clause 11 recommitted.

The DEPUTY PRESIDENT — Order! The question is:

> That Mr Dalla-Riva's amendment 6 be agreed to.

Committee divided on amendment:

Ayes, 20

Atkinson, Mr
Barber, Mr
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Finn, Mr (*Teller*)
Guy, Mr
Hall, Mr
Hartland, Ms
Koch, Mr
Kronberg, Mrs
Lovell, Ms
O'Donohue, Mr
Pennicuik, Ms
Petrovich, Mrs
Peulich, Mrs (*Teller*)
Rich-Phillips, Mr
Vogels, Mr

Noes, 20

Broad, Ms
Darveniza, Ms (*Teller*)
Eideh, Mr
Elasmar, Mr (*Teller*)
Jennings, Mr
Kavanagh, Mr
Leane, Mr
Lenders, Mr
Madden, Mr
Mikakos, Ms
Pakula, Mr
Pulford, Ms
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr
Theophanous, Mr
Thornley, Mr
Tierney, Ms
Viney, Mr

The DEPUTY PRESIDENT — Order! I am advised that the result of the division on amendment 6 proposed by Mr Dalla-Riva is ayes 20 and noes 20. I therefore declare the amendment lost.

Amendment negatived.

The DEPUTY PRESIDENT — Order! I advise the chamber that we have contacted the Clerk and he has confirmed the procedure I have established today.

An honourable member — Retrospectively?

The DEPUTY PRESIDENT — No, not retrospectively. The problem is that every proposition needs a majority.

Hon. T. C. Theophanous — On a point of order, Deputy President, I note that you have been in touch with the Clerk in relation to this matter, but my understanding is that the house is actually run by the members and in particular by the President, who has not been consulted in relation to this matter.

Having said that, I want to draw your attention to standing order 7.06, which I think is in contradiction, in some respects, to the way you have just ruled. Standing order 7.06 says that the same question should not be proposed again. It states:

> No question will be proposed in the Council which is the same in substance as any question which has been resolved …

Deputy President, I would say to you that what is occurring here is that, in substance, the same question is being put. It is simply being inverted. The question that was before the chamber was a motion to omit the clause. That was lost. Now what is being proposed is exactly the same motion in the reverse. In substance it is an identical motion.

I also refer to standing order 7.09, which says that no amendment will be proposed if it is the same in substance as an amendment already determined on the same question. Standing orders 7.06 and 7.09 both apply to when the chamber makes a decision. In this

case it has decided not to support a motion to omit the clause. Now what is being proposed is that we put exactly the same proposition, but put it in the reverse — that is, that the clause stand part of the bill. This would simply mean that the same numbers would emerge, the same outcome occur, but there would be a different result because of the standing orders.

I put to you, Deputy President, that it would have been appropriate to have waited. I would suggest to you that it might have been a better outcome of the previous vote to report progress so that this issue could have been extensively examined by the Clerk, by other members and by going back to precedents. I am sure this situation has occurred before in other houses.

Otherwise you will have a circumstance where bills will be absolutely ridiculous, with some clauses in and other clauses out. They could be consequential clauses, even numbering clauses, and they would not be part of the bill. You would have a completely ridiculous bill going forward to the other place unless this matter were resolved. I felt this was an appropriate time to try to get some appropriate — —

The DEPUTY PRESIDENT — Order! I ask the minister to go to the point of order, not debate it.

Hon. T. C. Theophanous — Deputy President, I am simply saying to you that there are at least two other clauses about which the standing orders suggest that taking a vote to omit a clause deals with the matter and that the clause is therefore automatically inserted into the bill.

The DEPUTY PRESIDENT — Order! I thank the minister. I understand what he is saying; he is actually referring to a different part of the standing orders that deals with the conduct of the Council's proceedings, not the conduct of the committee's proceedings. I am bound as Chair of the committee to abide by the committee's proceedings. Standing order 14.12(3) as it relates to the committee's proceedings reads:

> After debate on a clause has concluded, the question must be put 'That the clause (or the clause as amended) stand part of the bill'.

I am not able to vary the standing orders. As Chair I must comply with the standing order that applies to the committee's procedures. I accept that there may be an inconsistency in the view of the chamber or members of the chamber that will need to be resolved by the Standing Orders Committee. It cannot be resolved by me today, and in fact the position I have put has been checked.

The reality is that as a matter of procedure in the interests of the chamber arriving at a fair conclusion to today's matter, I indicated the process that I would go with. I plan now to actually go with that, which is to have that clause stand part of the bill. As I said to the minister, I heard his point of order, but under the guidelines or standing orders for committees of the house, I am unable to find in his favour.

Mr Jennings — Further on the point of order, Deputy President, just to amplify the potential dynamic going on in this chamber at the moment, whilst members of the government are taking points of order and you are responding to them: the time that has been afforded to us, now that we have voted in the proper sequence in relation to the committee stage of this bill, provides my colleague with the opportunity to take soundings from the other side or in fact to engage — either on or off the public record — to negotiate a position and a successful conclusion of amendments to this clause that may actually satisfy the committee and deliver a result on the clause that has been negotiated in the running of the committee stage.

Getting the sequence right provides us with an opportunity to reach an agreement prior to your asking the question on whether the clause stands part of the bill. The two questions should be separated in time and space to enable that to occur. I actually think, probably from the body language in the chamber, that that will not be achieved during the time frame that is available to us, but the committee should be afforded that opportunity to get the sequence right so that we can deal with the votes in the right order.

Mr D. Davis — On the point of order, Deputy President, we should move on and put the question, as the standing orders require for committees. We should move on as the minister seeks to deal with this in the committee stage, step by step.

Hon. T. C. Theophanous — Further on the point of order, Deputy President, I refer you to standing order 14.13, which is part of the standing orders relating to the committee stage of a bill. Therefore I do not believe the same set of arguments that apply to 7.06 and 7.09 would apply here. I refer you to 14.13(5), which states:

> When an amendment has been proposed to the bill the question must be put 'That the amendment be agreed to'.

I put to you, Deputy President, that what is occurring here is that by moving the omission of clause 11 an amendment is being proposed to the bill. That is what will occur: the bill will be amended by the omission of the clause. No-one can argue that that is not about to

occur if the outcome of the vote is 20-20. I put it to you that as a result of that you are running contrary to specific standing order 14.13(5), which states that if a bill is to be amended, it must be by way of a positive motion to amend the bill. It cannot be done by stealth or by default, which is what is occurring. If members opposite want to omit this clause, they should have the numbers in the chamber to positively omit it. They do not have those numbers in the chamber. That means that the clause should be considered as part of the entire bill. That is what an average, normal, sensible, common-sense person would suggest is the intent.

I suggest to the clerks that they reconsider the advice they have given to you, because I want to know how it is possible for an amendment to be made to a bill when there is a specific standing order which states that when an amendment has been proposed the question must be put in the form that the amendment be agreed to. You are seeking to amend the bill by stealth through a different mechanism.

The DEPUTY PRESIDENT — Order! The minister has again skirted very close to a reflection on the Chair.

Hon. T. C. Theophanous — I was talking to them.

The DEPUTY PRESIDENT — Order! I do not believe the minister was.

Ms Lovell interjected.

The DEPUTY PRESIDENT — Order! I thank Ms Lovell, but I will handle it myself. The standing order that I have sighted is what I am expected to follow in considering clauses after amendments to clauses have been dealt with and disposed of. The reality is that standing order 14.13(5), which the minister mentioned, does refer to amendments and we have in effect dealt with those amendments to that clause.

I agree with the minister; everybody understands it is almost a double-negative position. I understand that, but the reality is that that is what the standing orders require. That is the standing convention, that is the precedent of the chamber, and I as the chairman of committees am bound to uphold the standing orders as they are. I say to the minister that under no circumstances am I trying to achieve or contrive an outcome by stealth or by any other manipulation. I am not; I am simply abiding by the standing orders adopted — —

Hon. T. C. Theophanous — You are free to make a ruling whichever way you like.

The DEPUTY PRESIDENT — Order! Indeed I am, Minister. I dismiss the minister's point of order.

Committee divided on recommitted clause:

Ayes, 20

Broad, Ms	Pakula, Mr
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Smith, Mr
Jennings, Mr	Somyurek, Mr
Kavanagh, Mr	Tee, Mr
Leane, Mr	Theophanous, Mr
Lenders, Mr (*Teller*)	Thornley, Mr (*Teller*)
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Noes, 20

Atkinson, Mr	Hartland, Ms
Barber, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pennicuik, Ms
Drum, Mr	Petrovich, Mrs (*Teller*)
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr (*Teller*)

The DEPUTY PRESIDENT — Order! I am advised that the result of the division is ayes 20, noes 20. I therefore declare that the proposition that the clause stand part of the bill is lost because it did not achieve a majority.

Recommitted clause negatived.

The DEPUTY PRESIDENT — Order! As I said earlier, we have had a wide-ranging commentary on this matter. I understand the points raised by Mr Theophanous on behalf of the government and the likely inconsistency that is raised by the standing orders which I have been bound by. I indicate, though, that where a proposition does not receive a majority vote and therefore is not passed by this house, clearly it goes back to the lower house, which has a chance to reconsider the matter in light of the fact that its proposition did not pass this house. It has got a chance to consider whether or not to make amendments to it or whether to recommit it, so that there is another opportunity.

That is part of the checks and balances of our system, which is an appropriate aspect of the proceedings we have had. Nevertheless the inconsistency will no doubt be considered, and I will have discussions with the President in the first instance with regard to the application of the standing orders in this matter.

Clauses 12 to 18 agreed to.

Clause 19

The DEPUTY PRESIDENT — Order! I advise the committee that because of the outcome of a previous amendment put by Mr Dalla-Riva, the amendments he proposed were consequential. I now propose, on the basis that those have been tested, to invite Mr Barber to move his amendments.

Mr BARBER (Northern Metropolitan) — I move:

5. Clause 19, page 21, line 5, omit "15" and insert "14".

6. Clause 19, page 21, line 9, omit "15" and insert "14".

Deputy President, you can possibly explain this better than I, but effectively as a result of clause 11 and what just happened, this is simply a re-numbering of the resulting provisions and does not in and of itself have any mechanical effect.

The DEPUTY PRESIDENT — That is correct.

Committee divided on amendments:

Ayes, 21

Atkinson, Mr	Kavanagh, Mr
Barber, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr (*Teller*)	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pennicuik, Ms (*Teller*)
Drum, Mr	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr
Hartland, Ms	

Noes, 19

Broad, Ms	Pulford, Ms
Darveniza, Ms	Scheffer, Mr
Eideh, Mr	Smith, Mr
Elasmar, Mr	Somyurek, Mr
Jennings, Mr	Tee, Mr
Leane, Mr (*Teller*)	Theophanous, Mr
Lenders, Mr	Thornley, Mr (*Teller*)
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr
Pakula, Mr	

Amendments agreed to; amended clause agreed to.

Clause 20

Mr DALLA-RIVA (Eastern Metropolitan) — I move, by leave:

11. Clause 20, lines 13 to 29, omit all words and expressions on these lines.

In doing so, I indicate to the chamber that the components of clause 11 deleted by my amendment essentially relate to the issue we have concerns about regarding vexatious applicants.

I do not want to labour the point, but we have previously raised some concerns about this legislation and how the government is proposing to deal with vexatious applicants.

Briefly, I will bring the attention of the chamber to the components that allow a person to be restricted. The facts are that within the principal act there are plenty of opportunities for a person to avoid being declared as vexatious. By proposing this amendment, we are making it clear that if you are considered to be vexatious, you are considered to be guilty before being considered innocent. Clause 20, which inserts proposed subsections 61A(3) and (4), if passed, will mean that someone would essentially be determined to be guilty until the determination period had been established by the tribunal.

Our view is that it is up to the government, the minister or the person who makes the application to prove their case. Essentially this is a straightforward amendment. It is an amendment which will give balance to the declaration of someone as a vexatious applicant. We have major concerns with other parts of the clause, but it is about being fair and rational in trying to provide a balance. This amendment would make sure that people who genuinely made an application would not be declared vexatious until they are determined as being so by the Victorian Civil and Administrative Tribunal. People in the media, MPs and those in the community who have an interest in an issue can feel as though they can make an FOI request without being hammered and having to prove their case under the determination period as set out in proposed 61A(4).

I urge the government to consider my amendment. My view is that this is a sensible amendment which may bring balance to part 4 of this bill, which is complex and evil.

Mr BARBER (Northern Metropolitan) — The Greens will vote for this amendment; it is not our desired amendment, but it is the least worst option so far that the committee has dealt with. I can foreshadow that we will then vote for the clause not to stand part of the bill as an alternative to our amendment, which we would have liked to have moved and which would have involved deleting the clause. We believe this will have the same effect.

Amendment agreed to.

Committee divided on amended clause:

Ayes, 37

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Darveniza, Ms
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Jennings, Mr
Kavanagh, Mr (*Teller*)
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms
Madden, Mr
Mikakos, Ms
O'Donohue, Mr
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr (*Teller*)
Theophanous, Mr
Thornley, Mr
Tierney, Ms
Viney, Mr
Vogels, Mr

Noes, 3

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

Amended clause agreed to.

Clauses 21 to 25 agreed to.

Postponed clause 1

The DEPUTY PRESIDENT — Order! We now return to postponed clause 1. Mr Dalla-Riva.

Mr DALLA-RIVA (Eastern Metropolitan) — That has been tested in respect of amendment 6, so I have nothing further to add.

The DEPUTY PRESIDENT — Order! Mr Dalla-Riva, I am advised that it would bring greater clarity to the bill when it returns to the other house if you were to actually move your amendment, notwithstanding the outcome on clause 11.

Mr DALLA-RIVA — I move:

1. Clause 1, page 2, lines 11 to 14, omit "and to provide for the time allowed to decide requests to be extended where consultation is carried out".

Committee divided on amendment:

Ayes, 20

Atkinson, Mr
Barber, Mr (*Teller*)
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Finn, Mr
Guy, Mr (*Teller*)
Hall, Mr
Hartland, Ms
Koch, Mr
Kronberg, Mrs
Lovell, Ms
O'Donohue, Mr
Pennicuik, Ms
Petrovich, Mrs
Peulich, Mrs
Rich-Phillips, Mr
Vogels, Mr

Noes, 19

Broad, Ms
Darveniza, Ms
Eideh, Mr
Elasmar, Mr
Jennings, Mr
Kavanagh, Mr
Leane, Mr
Lenders, Mr
Madden, Mr
Mikakos, Ms (*Teller*)
Pakula, Mr
Pulford, Ms
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr
Thornley, Mr
Tierney, Ms
Viney, Mr (*Teller*)

Amendment agreed to.

Amended clause agreed to.

Reported to house with amendments.

Report adopted.

Third reading

The PRESIDENT — Order! The question is:

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

House divided on question:

Ayes, 20

Broad, Ms
Darveniza, Ms
Eideh, Mr
Elasmar, Mr
Jennings, Mr
Kavanagh, Mr
Leane, Mr
Lenders, Mr
Madden, Mr
Mikakos, Ms
Pakula, Mr
Pulford, Ms
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr
Theophanous, Mr
Thornley, Mr (*Teller*)
Tierney, Ms (*Teller*)
Viney, Mr

Noes, 20

Atkinson, Mr
Barber, Mr (*Teller*)
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Hartland, Ms
Koch, Mr (*Teller*)
Kronberg, Mrs
Lovell, Ms
O'Donohue, Mr
Pennicuik, Ms
Petrovich, Mrs
Peulich, Mrs
Rich-Phillips, Mr
Vogels, Mr

Question negatived.

LEGISLATION COMMITTEE

Criminal Procedure Legislation Amendment Bill

Mr ATKINSON (Eastern Metropolitan) presented report, including minutes of committee's consideration and transcript of evidence.

Laid on table.

Ordered that report be printed.

Ordered to be considered on Tuesday, 11 March, on motion of Hon. J. M. MADDEN (Minister for Planning).

CONSUMER CREDIT (VICTORIA) AND OTHER ACTS AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Planning).

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Consumer Credit (Victoria) and Other Acts Amendment Bill 2007.

In my opinion, the Consumer Credit (Victoria) and Other Acts Amendment Bill 2007, 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.

Overview of bill

The bill will amend the Consumer Credit (Victoria) Act 1996, the Fair Trading Act 1999, the Sale of Land Act 1962 and other acts to implement the government's response to the consumer credit review. The bill will ensure that the regulation of credit in Victoria is effective, efficient and fair.

The bill will enhance the credit provider registration scheme; introduce mandatory requirements for credit providers to be members of an external dispute resolution scheme; bring rent-to-buy contracts within the protections of the Residential Tenancies Act; simplify and clarify the vendor terms provisions in the Sale of Land Act and enhance and strengthen the enforcement provisions and remedies available to both the director of Consumer Affairs Victoria and consumers under the consumer credit code.

Human rights issues

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

The relevant rights under the Charter of Human Rights and Responsibilities Act 2006 ('the charter') which the bill will engage are:

Section 13: privacy and reputation

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. Section 13(b) provides that a person has the right not to have his or her reputation unlawfully attacked.

Part 2 of the bill amends the Consumer Credit (Victoria) Act 1996 ('the act') to establish an enhanced registration scheme for credit providers in Victoria. Under the new proposals, credit providers will be required to disclose certain information on an application for registration (particularly whether the applicant or associates have prior convictions). The type of information which will form part of the public register will also be expanded.

The clauses of the bill which engage the right to privacy are:

clause 7 of the bill which expands the type of information that a person seeking registration as a credit provider must include on their application form;

clauses 9 and 15 which give the business licensing authority the power to conduct any inquiries and require a credit provider to provide any information it thinks fit in relation to an application for registration as a credit provider and the lodgement of an annual statement;

clause 11 which expands the types of information which will be available on the public register to include the names of each director of a corporate applicant and details of any tribunal orders and undertakings given by the credit provider to the director of Consumer Affairs.

Whilst the above provisions engage the section 13 right, they do not limit the right to privacy because the interferences with privacy are proportionate and not unlawful or arbitrary.

The interferences with privacy are not unlawful as they are provided for in this bill and occur in precise and circumscribed circumstances. The interferences with privacy are not arbitrary because of the safeguards provided in the amendments and other relevant legislation. In addition, the business licensing authority is subject to the provisions of the Information Privacy Act 2000 in relation to its collection and handling of personal information.

Furthermore, there are significant public policy reasons to justify the requirements. The requirement that an applicant provide information as to their eligibility to be registered as a credit provider (and which would require them to disclose any relevant convictions) ensures that insolvent or unethical traders do not enter the sector. The expansion of the information forming part of the public register ensures that consumers who deal with credit providers are able to access significant information which will help them to make better informed decisions.

Section 25: right to be presumed innocent

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

Clause 33 of the bill inserts a new division 4 of part I into the Sale of Land Act 1962. This new division re-enacts, in plainer English, the current sections 3 to 7 and section 14 of this act.

New sections 29J and 29T allow the defendant to raise a lawful excuse for not complying with the notice served by the other party to the contract of sale. These sections provide that it is an offence for a vendor or purchaser (as the case may be) to fail to comply with a notice 'without lawful excuse' providing that an excuse may be raised by the defendant. The relevant sections also provide that a lawful excuse includes where the vendor disputes in good faith the purchaser's entitlement to serve the notice in the case of the offence under section 29J or, in the case of an offence under section 29T where the purchaser disputes in good faith the terms of the mortgage.

By placing this onus on the defendant, the provisions limit the right to be presumed innocent in section 25(1) of the charter. However, the limitation is reasonable and justified pursuant to section 7(2) of the charter.

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

The nature of the right being limited

The right to be presumed innocent reflects a fundamental common law principle. However, the courts have recognised that the right may be subject to limits and have held that reverse onus provisions are more likely to be consistent with human rights if they require the accused to prove an exception, proviso or excuse rather than disprove an element of the offence; where the conduct regulated by the offence is generally unlawful; where the information required to exonerate the defendant is readily available to the defendant; and where the level of penalty is at the lower end of the scale.

The importance of the purpose of the limitation

The purpose of the limitation of the right is to provide the defendant with an opportunity to avoid liability for the offence in circumstances where the defendant has a lawful excuse for not complying with the notice served by the other party to the contract.

The nature and extent of the limitation

The onus of proving a lawful excuse creates an evidential rather than legal burden and only applies where a defendant seeks to rely upon the ability to raise a lawful excuse to the offence. Section 130 of the Magistrates' Court Act 1989 would apply on summary prosecution so that a defendant claiming he or she had a lawful excuse would have to adduce or point to evidence that suggests a reasonable possibility that the exception applies. That is, once the defendant presents or points to evidence of a lawful excuse, the onus returns to the prosecuting authority.

The relationship between the limitation and its purpose

The limitation is directly related to its purpose, namely to allow a defendant to avoid liability in circumstances where he or she has a lawful excuse.

Less restrictive means reasonably available to achieve the purpose

Whilst removing the ability for a defendant to raise an excuse altogether would not infringe the right to be presumed innocent, this would not achieve the purpose of enabling the defendant to avert liability in appropriate cases.

Other relevant factors

It is also relevant that these offences carry a relatively small penalty and do not involve issues of moral culpability. Further, the onus relates to matters that are within the knowledge of the defendant and not difficult for the defendant to establish.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions may limit human rights, those limitations are reasonable and proportionate.

JUSTIN MADDEN, MLC
Minister for Planning

Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning).

Second reading

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

That the bill be now read a second time.

Incorporated speech as follows:

The Brumby government recognises the crucial role that credit plays in the Victorian economy and in consumers' lives. We are therefore committed to making credit markets work more efficiently and fairly, committed to promoting efficient, effective and fair credit regulation and, finally, to ensuring that vulnerable and disadvantaged consumers have access to targeted assistance.

Credit is widely viewed as a convenient and readily available service, but it is also debt. According to recent Reserve Bank and Australian Bureau of Statistics data, levels of household indebtedness and over-indebtedness remain at record highs, and continue to rise. For example, credit card debt in Australia is currently in excess of $40 billion, compared with $31.5 billion as at 1995, with the average credit card balance now over $3000. There are currently more than 13 million credit cards in circulation, compared with 6.5 million as at June 1995.

The household debt-to-income ratio reveals that households owe a lot more than their annual earnings. Recent independent reports have suggested that as many as 400 000 Australian households are suffering mortgage stress. At the other end of the market, many consumers from disadvantaged households resort to small-amount short-term loans to soothe cash flow difficulties and cover expenses like medical bills, motor car repairs and utility payments. There is concern that some credit providers and finance brokers

exploit these and other vulnerable consumers rather than offering affordable credit on fair terms. A recent industry report suggests that at least 40 000 Australian households are victims of predatory lending. Many of these households are in Victoria.

The government's social action plan, *A Fairer Victoria*, which was released in 2005, contains key social principles, one of which is to improve access to services, including access to affordable credit so that low-income households are not forced into a debt spiral by taking out excessively costly credit. The consumer credit review was initiated to determine how well credit markets are working, the effectiveness, efficiency and fairness of credit regulation and to ensure that all Victorian consumers — no matter what their circumstances — can get credit on fair terms.

I would like to take this opportunity to acknowledge the great contribution made by the member for Monbulk in chairing the consumer credit review. The comprehensive review included two extensive rounds of consultation, together with a series of successful public forums held in suburban Melbourne and in regional Victoria.

Although the review had a Victorian focus, the nature of consumer credit regulation and the credit market means that the way forward is a mixture of Victorian and state and territory cooperative action. Whilst the bill before the house implements a series of significant recommendations from the review, a number of initiatives are also being progressed at both the state and national level. I am pleased to say that the no-interest loans scheme has been expanded across the state to reduce the impact of credit debt and financial hardship — the government has provided $4.7 million for infrastructure costs over four years from late 2006 and the National Australia Bank has committed to providing $3.3 million in loan capital over four years. The government's infrastructure funding will expand no-interest loan availability from 41 to 77 local government areas and provide up to 4000 additional loans across Victoria per annum, compared with approximately 850 in 2006.

Other significant non-regulatory action is under way in Victoria, including:

- research into credit advertising practices and standards and corresponding consumer behaviours;
- promoting and encouraging bank and non-bank lenders to provide more access to affordable, small amount short-term credit — a successful affordable credit summit was held in late August 2007 to serve as a platform for continuing work;
- work on developing industry guidelines to facilitate the application of the unfair contract terms provisions of the Fair Trading Act to consumer credit contracts.

The government is also actively involved through the Ministerial Council on Consumer Affairs in progressing those recommendations from the consumer credit review which involve national change. National legislation to amend the consumer credit code to address some of the practices associated with fringe lenders, including the misuse of business purpose declarations and the taking of security over household goods, has been released for public consultation. Draft template legislation for the nationally consistent regulation and licensing of finance and mortgage brokers is expected to be finalised during 2008. A major national policy consultation paper on responsible lending issues in the credit card market is also being developed.

Turning now to the bill before the house. This bill will implement a number of the recommendations from the review — namely, those which are Victoria-specific and require amendments to Victorian legislation.

The bill will introduce an enhanced registration scheme that will enable the director of consumer affairs to conduct targeted compliance monitoring and compliance advice programs and it will assist consumers to make more informed judgements about credit providers. The scheme will be funded by fees to be set at cost recovery level. The fees will be prescribed in regulations once the legislation has been implemented. The enhanced scheme will have the following features:

- no pre-approval process but credit providers will be required to affirm that they meet objective eligibility criteria;
- a risk-based approach to compliance and enforcement activity. This requires the director of consumer affairs to have access to basic information to identify the regulated community, and in a diverse industry such as consumer credit, the nature of the businesses and the products and services they provide.

The proposals will require all credit providers in Victoria to subscribe to an external dispute resolution scheme. Whilst this proposal recognises that many consumers already have access to such schemes, there is a gap amongst subprime lenders and fringe credit providers, many of whom are outside the 'mainstream' market. Registered credit providers in Victoria will be required to subscribe to one of the existing schemes approved by the Australian Securities and Investments Commission under the provisions of the Corporations Act regulating financial services licensees or any scheme which may be prescribed in regulations. This will ensure that all Victorian consumers will have access to affordable dispute resolution mechanisms in their dealings with credit providers.

The provisions in the Sale of Land Act 1962, which provide protections for consumers who enter into vendor terms contracts to buy their home, will be simplified and clarified. The government recognises that the potential of the vendor finance protections will remain unrealised unless the expression of the legislative provisions is improved. This amendment also highlights the government's commitment to modernising legislation when the opportunity arises.

Consumers who enter into rent-to-buy arrangements will be given greater protection by bringing rent-to-buy contracts under the Residential Tenancies Act 1997. By bringing these contracts under the legislation, consumers who enter these arrangements will have the same protections as other residential tenants in Victoria, such as protection against unconscionable rent increases, rights in relation to repairs, controls on owners entering onto the property and access to dispute resolution at the Victorian Civil and Administrative Tribunal.

The Credit Reporting Act 1978 will be repealed. This is consistent with the government's commitment to reducing the regulatory burden on business and in light of the fact that the commonwealth Privacy Act 1988 covers most aspects of

credit reporting. However, the consumer's right to take action in the Magistrates Court to compel a credit reporting agency to correct errors in a credit report will be preserved in the Fair Trading Act 1999 as this is not an avenue which is currently available to consumers under the Privacy Act.

The bill will introduce more flexible and targeted remedies available to the director of Consumer Affairs Victoria to enforce credit legislation. The director will be given the power to institute and defend actions on behalf of consumers in all proceedings under the consumer credit code. This is consistent with the director's current powers that already apply in respect of other consumer disputes as covered by the Fair Trading Act 1999. The director will also be given the power to choose to bring proceedings under the consumer credit code in either the courts or the Victorian Civil and Administrative Tribunal if it is in the public interest to do so, depending on the nature and circumstances of the case the director wishes to bring. This proposal will ensure that the most appropriate forum is used to hear consumer credit proceedings.

The bill will also take the opportunity to repeal the current exemption for pawnbrokers from the requirement to be registered as a credit provider under the Consumer Credit (Victoria) Act 1995. The existing exemption is confusing, out of date and unnecessary, as the consumer credit code already excludes any credit provided by a pawnbroker in the ordinary course of their pawnbroking business from the operation of the code.

The bill will also make minor and technical amendments to the Subdivision Act 1988, the Business Licensing Authority Act 1998 and the Transfer of Land Act 1958 as part of the implementation of the Owners Corporations Act 2006.

In summary, this bill is an important part of the government's commitment to implement the recommendations from the consumer credit review. The bill will ensure that Victoria's regulation of credit is as efficient and effective as possible, that consumers are more empowered and that vulnerable and disadvantaged consumers have better protection against predatory lending practices. Finally, it will make a contribution towards the alleviation of financial hardship and financial stress, a growing cause of concern to all Victorians.

I commend the bill to the house.

Debate adjourned on motion of Mr GUY (Northern Metropolitan).

Debate adjourned until Thursday, 6 March.

PROFESSIONAL BOXING AND COMBAT SPORTS AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Planning).

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Professional Boxing and Combat Sports Amendment Bill 2007.

In my opinion, the Professional Boxing and Combat Sports Amendment Bill 2007, 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.

Overview of bill

The purpose of this bill is to amend the Professional Boxing and Combat Sports Act 1985 ('the act') by means of a range of provisions designed to promote safety, control the industry and reduce the risk of malpractice in the professional boxing and combat sport industry. In addition this bill seeks to augment the role of the Professional Boxing and Combat Sports Board ('the board') by allocating to the board proposed powers and operational powers currently exercised under delegation from the minister, while strengthening the power of the minister to direct the board.

Human rights issues

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

Freedom from torture and cruel, inhuman or degrading treatment

The bill provides for regulations that will require contestants to undergo medical examinations and testing during the term of their registration. These provisions engage section 10(c) of the charter, which provides that 'a person must not be subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent'.

However, the right is not limited as contestants currently and will continue to provide full, free and informed consent to medical examinations and testing. Professional contestants will be aware of the formal requirements regarding certification of fitness and testing before they seek registration, and will agree to be bound by the legislative scheme when they complete their applications. A contestant may withdraw their consent to undertake a medical test and accept the consequences — suspension or cancellation of their registration. This is an acceptable consequence within the context of combat sports, on the basis of safety. In addition, nothing in this legislation proposes to intervene in the patient-doctor relationship and associated protocols and standards.

It should be noted that this bill promotes human rights by removing an inappropriately severe penalty for failure to undertake a compulsory pre or post-contest medical examination and replacing it with a practical and enforceable consequence — cancellation or suspension of registration. In addition this provision has been amended to require a contestant to 'present' himself or herself to a medical

practitioner for examination, rather than 'submit' himself or herself.

Privacy

Among measures proposed to protect the health and safety of contestants, the bill provides the power to make regulations with respect to medical tests and fitness assessments, to determine a contestant's fitness. This provision raises a prima facie issue under section 13 of the charter relating to privacy.

Section 13 of the charter states that:

> A person has the right —
>
> (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
>
> (b) not to have his or her reputation unlawfully attacked.

The collection of personal health related information and the proposed ability of the board to require a contestant to undertake medical tests both engage the right to privacy, in that contestants are required to provide personal medical information and undergo medical testing in order to participate in professional combat sports promotions.

However, the right to privacy is not limited by these provisions. The interference with privacy is not unlawful or arbitrary, as the medical examination of contestants and collection of information is directly and proportionately related to the objective of ensuring contestants' health and safety and ensuring the board is able to maintain its duty of care to contestants.

It is vital to conduct thorough medical checks to ensure that a contestant has no existing conditions which may significantly impair his or her ability to fight or greatly increase his or her risk of injury. In addition, it is essential to ascertain contestants' health status where contestants' skin is frequently broken, increasing the risk of cross infection of blood-borne diseases. Regular monitoring of each contestant's health ensures early identification of emerging medical problems that may be exacerbated by continued participation in contests.

The collection and retention of health information is regulated by the Health Records Act 2001 and no changes are proposed to the management of this information.

Recognition and equality before the law

The power to suspend or cancel a registration where a contestant does not have the required skills to compete may give rise to issues in relation to the right to recognition and equality before the law.

Section 8 of the charter states in part that:

> (2) Every person has the right to enjoy his or her human rights without discrimination.
>
> (3) Every person 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.

The proposed requirement for contestants to provide certificate of fitness annually under the regulations is an essential measure to protect the health and safety of contestants. It does not directly discriminate against individuals on the basis of attributes identified under the charter as characteristics by which it is unlawful to discriminate, specifically, impairment or physical features. The application of this requirement could, however, indirectly discriminate in this way, but is vital for safety reasons.

The 'required skills' provisions involve an assessment of whether contestants possess certain capabilities. While these provisions make no reference to matters of appearance, it is theoretically possible that the application of the skills criteria could also indirectly discriminate on the basis of impairment or physical features. The provisions are, nevertheless, essential to promote contestant's safety.

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

(a) the nature of the right being limited

Section 8 of the charter proscribes discrimination on the basis of particular attributes set out in the Equal Opportunity Act 1995. The right of an individual to be treated equally before the law means that legislation developed by government must not unjustifiably discriminate against possessors of these attributes, either directly or indirectly.

(b) the importance of the purpose of the limitation

Physical fitness and the capacity to use all physical faculties are essential to the ability of a contestant to participate in professional combat sports. Physically impaired contestants competing in a professional combat sports promotion are not only at greater risk of immediate injury than non-impaired contestants, but also of permanent incapacity.

(c) the nature and extent of the limitation

The limitation occurs only where the impairment of an applicant affects their ability to compete. For example, contestants with hearing disabilities have participated in promotions as their impairment does not affect their ability to fight or place them at unacceptable risk of incapacitation.

The extent of the limitation may be substantial as a person with impairment may be completely excluded from participating in professional combat sports promotions. However, it should be noted that persons with a physical impairment affecting their fighting capacity rarely seek registration as a professional contestant.

(d) the relationship between the limitation and its purpose

The limitation of this right is essential for ensuring the health and safety of individuals seeking to enter the professional combat sports industry.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means of protecting individuals with an impairment affecting their fighting capacity, than to exclude them from professional contests.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it only limits, restricts or interferes with a human right to a minor extent, being the right to freedom from discrimination under section 8 of the charter, and the limitations are reasonable and proportionate. This is in view of the important objective of the legislation, which is to introduce key additional provisions to protect the health and safety of professional contestants.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning)

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

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of the Professional Boxing and Combat Sports Act 1985 ('the act') is to control professional boxing and combat sports, reduce the risk of malpractice and promote safety.

These purposes perfectly express the challenges that arise in the professional boxing and combat sports industry. It is an industry that requires controlling. It is also an industry that requires a high level of alertness about safety issues and the risk of malpractice.

Unlike other professional sports there is no non-government organisation that controls all aspects of professional boxing and combat sports. That is why it is governments' responsibility to control the industry through legislation. In Victoria we are ably assisted to do that by the Professional Boxing and Combat Sports Board ('the board').

The act provides a framework under which professional boxing and combat sport contests are required to be approved. Only people who are registered or licensed under the act are permitted to participate in these contests. It is an efficient scheme.

The act needs to be amended to address a number of issues that have arisen from legal matters, the evolution of standards in medical and fitness testing for contestants and the availability of new tests, new technology and from other sources.

A case heard at VCAT revealed that the act may not provide clear authority to refuse, suspend or cancel the registration of a contestant because he or she lacks the required skills. This is a real safety issue. If fighters who lack the required skills are allowed to compete, the risks inherent in boxing, kickboxing and other combat sports are magnified. In addition, Victoria will continue to attract applications from fighters who have been refused registration in other jurisdictions, because as soon as they are registered here they can fight interstate under reciprocal arrangements.

The bill allows the board to cancel or suspend a contestant's registration if they consider that the person lacks the required skills. In making this decision, the board will have to consider a comprehensive range of factors as follows:

the contestant's defensive skills, including evasive skills and speed of reaction;

the contestant's mobility and ring generalship;

the contestant's strategic and tactical awareness;

the contestant's endurance and stamina; and

any other factors relevant to the contestant's ability to defend himself or herself.

This provision will complement the existing provision that requires suspension or cancellation if a contestant is considered to be unfit to compete.

Another important safety measure addressed by the bill is that of medical tests and fitness assessments. In a sport such as boxing and combat sports it is critical to test for infectious blood-borne diseases on a regular basis throughout a contestant's period of registration. The board currently seeks serology tests for HIV, hepatitis B and hepatitis C every six months, but this is not specifically provided for in the act. There is a need to formalise this excellent practice which protects the health of all concerned. There is also a need to provide for tests such as MRIs to be ordered on the basis of medical advice. The bill provides for regulations to be made regarding regular tests and assessments and for one-off testing where indicated.

The bill reduces the risk of malpractice in the industry in various ways, but particularly by enabling the board to exercise some control over timekeepers. The act and regulations are currently silent on timekeepers and there is no control over who promoters engage to perform this important role. This creates significant risks in relation to the integrity and standard of contests and the safety and wellbeing of contestants. An incompetent or corrupt timekeeper can time the rounds of a contest too short or too long, creating unfairness and/or increasing the danger of injury to either fighter. The bill allows the board to maintain a list of people who have the skills and knowledge to act as timekeepers, and it requires promoters to engage only persons on the list to perform this role. The board may remove a listed person if they no longer have the required skills or knowledge or if they are unfit having regard to their conduct.

The bill also adds significantly and strategically to the board's ability to control the industry under the act. It provides for a power to enable the board to attach conditions to contestant registrations. This is identical to the current provision for permits and licences which can be granted subject to conditions. The board already seeks contestants' cooperation with a number of practices, largely related to safety, and this amendment will formalise that process.

The bill makes use of suspension or cancellation of registration or licence as a consequence for breaches such as non-compliance with conditions. This is an appropriate and proportionate approach that is effective because it can be used by the board when required. This will give the board much greater leverage to maintain and improve safety standards and conduct.

Another important element of controlling the industry, reducing the risk of malpractice and promoting safety is the power to make regulations under the act. The current regulations expire on 30 June 2008. The bill consolidates the regulation-making provisions to ensure that the current regulations and proposed improvements will be supported by an appropriate head of power and can be put into place at that time.

The bill contains a number of other provisions that add to the act's purpose of controlling the industry, reducing the risk of malpractice and promoting safety.

The bill also includes a landmark change in the roles of the minister and the board under the act. It provides for a substantial overhaul of roles and responsibilities.

The roles and responsibilities outlined in the act all reside with the minister and many of them relate to operational matters such as registration of contestants and licensing of other industry participants such as trainers. Successive ministers have delegated these powers, duties and functions to the board on a long-term basis.

It is unusual for powers relating to day-to-day operational processes such as registering a contestant or issuing a licence to reside with a minister. Registration and licensing functions usually reside with boards, such as the Nurses Board of Victoria and other boards established under the Health Professions Registration Act 2005, that have the industry specific knowledge and expertise and dedicated resources to carry out these functions.

The bill provides for new arrangements that create clearer and more appropriate roles and responsibilities. The key elements of this are:

> the board to assume responsibility for powers, duties and functions of an operational nature;
>
> the minister to retain key higher level powers including the power to appoint and remove board members; and
>
> a power for the minister to give the board directions and a requirement for the board to comply.

In addition to those powers, duties and functions it already exercises under delegation, the board will also be responsible for making 'rules for the proper conduct of professional contests'. In addition, the board will have the same power as the minister in being able to commence legal proceedings for an offence against the act. The offences specified in the act all relate to operational matters regulated by the board.

The Professional Boxing and Combat Sports Board is chaired by Mr Bernard Balmer. I thank Mr Balmer for the board's advice on issues in the industry. That advice has contributed to the bill.

In addition to the chair, the act provides for the board to include a member of the Victorian police force and up to five persons who have a good knowledge of boxing or combat sports.

I would like to say a few more words about the board. It is a very hardworking board. In addition to monthly meetings, members attend weigh-ins and promotions held under the act, giving up a number of evenings each month. Their task of administering the requirements of the act and the regulations is often challenging, but they carry it out effectively. They bring commitment, experience, vigilance and great people skills to their roles.

I thank Bernie and the other members of the board for their contribution.

The allocation of operational powers to the board in its own right has highlighted provisions of the act that impact on how the board operates. As a result the bill also includes new and revised provisions to assist the board to carry out its roles and responsibilities. These include:

> more flexible meeting arrangements;
>
> delegation powers;
>
> the ability to engage persons with special experience without the minister's approval; and
>
> the ability to regulate its own procedure without the minister's approval.

In summary, the bill tightens the provisions of the act in relation to control of the industry and key safety and probity issues. It also makes a significant improvement to the operation of the act in terms of roles and responsibilities.

I commend the bill to the house.

Debate adjourned on motion of Mr DALLA-RIVA (Eastern Metropolitan).

Debate adjourned until Thursday, 6 March.

ADJOURNMENT

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

That the house do now adjourn.

Murray Valley Highway–Cullens Road, Yarrawonga: turning lane

Ms LOVELL (Northern Victoria) — My adjournment matter is for the Minister for Roads and Ports in the other place and regards the installation of a turning lane on the Murray Valley Highway at the intersection of Cullens Road. Advertising campaigns seek to focus on the need for drivers to slow down on our roads, but what if the roads themselves are not up to scratch? The intersection of the Murray Valley Highway and Cullens Road at Yarrawonga is in desperate need of a turning lane to provide residents and tourists with safe access to Cullens Road.

The action that I seek from the minister is for him to consider the large number of vehicles, including those towing boats, caravans and trailers, that use this intersection. I ask him to provide funding for the

installation of a turning lane before there is a fatality or serious accident there.

Yarrawonga residents have expressed concern and anxiety about the intersection, so much so that a number of them have petitioned their local council supporting the need for improvements. The intersection is not well signed and with an increasing amount of traffic using it to access the Murray River at the end of Cullens Road, there have been many near misses reported by people turning right at the intersection to travel down Cullens Road.

Cullens Road is an access point to a popular Murray River camping area and boat ramp, and can be particularly busy during the holiday periods when a number of people flock to Yarrawonga to enjoy our wonderful weather and the boating activity that takes place there. VicRoads has responded to the Moira Shire Council's request for funding appallingly. Last night the minister now in the house accused me of being political in saying that this government waits for deaths but this letter from VicRoads actually confirms that, by saying:

> VicRoads has investigated the crash record in the past five years at the intersection and found no casualty accidents occurred during this period. Therefore the provision of a right-turn lane at the Murray Valley Highway/Cullens Road intersection does not meet eligibility criteria for inclusion in a road safety program at this time.

We see VicRoads, the government authority, rejecting upgrades to an intersection that the community has identified as being very dangerous because it does not meet the eligibility criteria of having had casualties or deaths at that intersection. I call on the minister to provide funding for the installation of a turning lane at the intersection of the Murray Valley Highway and Cullens Road in the interests of safety and in the interests of preventing accidents at that intersection.

Health: Western Victoria Region

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Health in the other place. I ask the minister to take action to ensure that residents in Western Victoria Region continue to have access to high-quality medical services and facilities. This government has invested $4.1 billion across Victoria into the largest capital works program in the state's history. This is all part of the government's continuing commitment to health, which has seen funding to Victoria's hospitals and health services increase by 96 per cent since 1999.

On 20 February the Acting Premier and Minister for Health announced a further $36.4 million funding boost for hospitals and health services to purchase medical and patient care equipment. Of this, over $9 million will be allocated to rural and regional hospitals to replace ageing equipment. The funding boost is part of a $225 million announcement by the Victorian government in the last budget for hospital and community health equipment, engineering and other infrastructure works. This funding will ensure that our health services are supported to have the best equipment facilities to provide patient treatment and diagnosis.

I ask the minister to take action to ensure that health services in Western Victoria Region are supported by this most recent funding announcement and to provide me with a breakdown of the location of the health services and the moneys allocated to those services for medical and patient care equipment.

Teachers: enterprise bargaining agreement

Ms PENNICUIK (Southern Metropolitan) — My matter is addressed to the Minister for Education in the other place. Continuing poor pay and conditions are forcing Victorian teachers and principals to continue industrial action after over 10 months of negotiation have failed to produce an agreement. Experienced teachers in Victoria are paid 15 per cent less than their counterparts in New South Wales, which equates to nearly $10 000 a year, and beginning teachers are paid 9.5 per cent less than those in New South Wales. Victorian teachers attend for work on the same number of days as teachers in New South Wales, and teachers in Victoria, both primary and secondary, have more face-to-face teaching hours than those in New South Wales.

In my statement of 21 November last year regarding teachers' wages and conditions I made the point that Victorian teachers are the lowest paid in Australia. I would have thought that, given this inherent inequity, the government would have rectified this situation with fair and equitable wages and working conditions for our teachers as a matter of priority. I understand the negotiations have reached a standstill, partly due to the public sector wages policy which, although it sets no limit on the quantum of wage increases, caps funding to schools at 3.25 per cent. Therefore any increase in excess of that would have to be directly funded dollar for dollar by productivity cost offsets. However, state schools directly receive 96 per cent of the education budget, and 92 per cent of this is committed to staff salaries. Within these constraints it is impossible to achieve an equitable wage increase without a reduction in staffing numbers, resulting in further increases in class sizes, which is untenable. I understand that the

minister's negotiators have said that Victoria cannot afford the full claim and that it would amount to $8 billion over the next four financial years. I do not know about the veracity of these figures, but they seem to be an exaggeration. I would simply ask the question: if other states can find the money to pay higher teachers salaries, why can't Victoria?

Victorian police and nurses have both concluded wage negotiations with outcomes providing pay increases of more than 3.25 per cent per annum, yet the government refuses to consider this for its teachers. If the government is serious that education is its no. 1 priority and if we want a first-class education system, then we should support and reward teachers appropriately. Underpaying them and not valuing them properly is forcing many of them to move interstate or overseas, or to leave the profession altogether. This will certainly exacerbate severe staffing shortages now and in the future. Today I am hoping for an outcome based on the principle not often heard these days of comparative wage justice. That is what Victorian teachers are seeking — to be paid the same as comparable teachers in other states.

My request of the minister is to quickly resolve this protracted dispute and to secure funding in the state budget to enable a fair and equitable outcome without compromising working conditions in schools or educational standards.

Weeds: control

Mr P. DAVIS (Eastern Victoria) — I direct a matter for the attention of the Minister for Environment and Climate Change, who I note is missing from the chamber. It relates to the role of Parks Victoria and to the issue of public land management. In the broad I think the state of Victoria's public land management is appalling, and I have been getting a lot of commentary to that effect in my office and indeed complaints about weeds in particular, which is what I will focus on this evening — not weeds on V/Line land from Pakenham to Traralgon, but weeds in national parks.

Last Friday I went on a bit of a research project. I travelled through Briagolong to the north of Sale, up the Freestone Creek Road to the Dargo Road intersection at Cobbannah, then through Castleburn and up through Waterford. Then I turned off at the Crooked River Track and went along the Wonnangatta Road up to the old homestead of Eaglevale, which is now pretty much just a camp site. In other words, I drove well into the alpine park. What I would like to report to the house is that I was surprised and impressed by the work that the Wellington shire and the Department of Sustainability and Environment, from a forest management point of view, have done in the state forests in controlling the weeds and in particular spraying blackberries.

When I got into the national park I could actually see the boundary of the alpine park, because that is where the most prolific, almost tropical, growth of blackberries exists, all the way in along the Wonnangatta River right through to Eaglevale, which is essentially where you have to ford a river at the present time because of the rainfall and that requires an amphibious vehicle, and so I could not get any further in. I was just stunned and amazed at the appalling state of weeds in the Alpine National Park.

I refer to a document I have in my hand, which is entitled *Victoria's National Parks*. It is a very impressive, glossy book produced by the See Australia Guides, with the imprimatur of Parks Victoria. This is the second edition, revised in 2004, and I quote from the foreword by Mark Stone, the chief executive of Parks Victoria:

> Our role at Parks Victoria is to protect and conserve the natural values of these precious areas for present and future generations.

I ask the Minister for Environment and Climate Change to ensure that Mark Stone and Parks Victoria meet their charter of maintaining our precious environment and the precious national parks and do something about the weeds, in particular blackberries.

Water: fluoridation

Ms PULFORD (Western Victoria) — My adjournment matter this evening is for the Minister for Health in another place, Daniel Andrews. Today is a happy day for Hamilton, Tarrington and Dunkeld. Following community consultation last year, today the chief health officer, Dr John Carnie, announced that Wannon Water customers in these towns will have their water fluoridated. The Secretary of the Department of Human Services no doubt made this decision based on the enormous amount of scientific evidence that supports the health benefits of fluoridation. Seventy-seven per cent of the Victorian population enjoys the benefits of fluoridation. I imagine another consideration was the importance of equity in preventive health measures between metropolitan and country Victoria. Fluoridation benefits all and certainly also reduces the socioeconomic inequalities that exist in the caries experience. At this point I think I should declare my interest.

Mr Vogels interjected.

Ms PULFORD — Mr Vogels, I think children do actually drink water. I will go on to declare my interest. I have a six-year-old at home. Six-year-olds in areas without fluoridation have 36 per cent more tooth decay than those in areas with fluoridated water. This decision has significant local support from organisations including the Otway Division of General Practice, the Southern Grampians and Glenelg Primary Care Partnership, the Southern Grampians Shire Council, the Western District Health Service, the Australian Dental Association South West Group and the Greater Green Triangle University Department of Rural Health, as well as many health professionals, including dentists, dental therapists and maternal and child health nurses. I congratulate all those organisations on their leadership on this issue.

The Brumby Labor government is committed to bringing the benefits of fluoridation to Victorians irrespective of where they live. It is notable that two of the largest population centres in the Western Victoria Region, Ballarat and Geelong, still do not enjoy the benefits of fluoridation and this important health initiative.

My request this evening of the minister is that he take action on fluoride throughout western Victoria so that even more communities can benefit.

Casey: councillors

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter for the Minister for Local Government in the other place in relation to some most concerning behaviour displayed by a group of Labor councillors in the City of Casey, in particular a ringleader, who is a Mayfield ward councillor, Cr Kevin Bradford, who does work for a Labor MP in the area, the member for Narre Warren North in the other place.

Mrs Coote — Name him!

Mrs PEULICH — Mr Luke Donnellan.

At recent functions I have attended there appears to have been an absence of Labor councillors. In fact the word is that they are actually boycotting all council functions because the mayor who was elected was not a mayor of whom they approved. More importantly, there has been an ongoing campaign of destabilisation in the City of Casey that has included the chief executive officer, Mike Tyler, as well as senior executives and, as I said, the ongoing destabilisation and bullying of the mayor, Janet Halsall, who is, I understand, a member of the Labor Party. Whether this is an attempt to secure the Cranbourne ALP preselection by Cr Bradford, who has been politically ambitious, time will tell. But he certainly is not doing any favours to himself or his Mayfield ward community. Whether he might need some informal counselling or professional development, I do not know.

The most recent incident arose when the City of Casey's children's services team led by the director of community services, Jennie Lee, was named as one of the top three local government teams in Australia for services to children. Instead of praising the department, Cr Bradford launched an attack on both Mr Tyler and Ms Lee that went on for months. The attack, directly aimed at Ms Lee, was over maternal and child health nurses. Casey did not have enough trained nurses available, which is a state government failure. Media reports yesterday state that Cr Bradford is named in the WorkCover claim that could cost Casey ratepayers $500 000. Ms Lee is now on indefinite leave for chronic depression for alleged harassment. It is reported that Ms Lee's claims include being the victim of a political set-up and being subjected to a campaign of denigration in the media and unjustly accused of job performance issues.

I would like the minister to, if not investigate, certainly rein in the conduct of these councillors, who no doubt have some genuine interest in the community but are certainly not proving to be making a constructive contribution to the business of the City of Casey, which in itself has many challenges, being the second fastest growing municipality in Australia. I believe it has done its best to meet many of those challenges and has in the past worked very constructively with the state government. I believe the ringleader in this instance, Cr Bradford, needs some guidance, some reining in or some hosing down, because he has been most unhelpful and there is a track record of that behaviour.

Rail: level crossing safety

Mr EIDEH (Western Metropolitan) — I raise a matter with the Minister for Public Transport in the other place with respect to rail crossing safety. The action I seek is for the minister to take action to improve road-user behaviour around level crossings. I note that under the Brumby Labor government 46 crossings will be upgraded this year with boom gates or flashing lights and bells. Further rumble strips will be installed at 200 regional locations, with 48 of those already completed. This builds on 57 upgrades completed last year and 96 completed in 2005–06, more than were completed in the seven years when the Liberal-Nationals coalition was last in government.

I am aware that, contrary to the contribution from Ms Lovell last night, work on the Australian level crossing assessment model has been completed on all level crossings in the state. All crossings have been inspected, and if those crossings are on local roads, that assessment has been sent to the relevant councils for their comments. The Brumby Labor government is working hard on improving safety at level crossings, including the grade separation at Taylors Road. But driver behaviour is also vital. We must all play a role in promoting the message that any level crossing is dangerous if the road rules are not followed. I am aware of the Don't risk it! campaign, and I request the minister to take action to improve road-user behaviour around level crossings.

Port of Melbourne: Webb Dock

Mr KOCH (Western Victoria) — My matter is for the Minister for Roads and Ports in the other place and concerns easing congestion at Webb Dock by relocating roll-on, roll-off cargo to the Geelong port. Webb Dock is used for roll-on, roll-off freight movements between Melbourne and Tasmania and for the import and export of new motor vehicles. Currently motor vehicles are shipped through Webb Dock on specialised vessels called ro/ros that are like floating multistorey car parks. These vessels also move trucks, mining equipment and agricultural machinery. The back of the ship opens so that the vehicles can be driven straight on and off the dock.

The port of Melbourne handles an average of 920 vehicles per day. In its draft port development plan the Port of Melbourne Corporation envisages that Webb Dock will be further developed over the next 20 years to handle 50 per cent of the port's total international container trade and to be the major terminal for Bass Strait and our coastal freight. Expanding the capacity for container traffic will significantly add to the existing pressure on the roads network, and the limited space at Webb Dock will require a substantial investment in infrastructure to accommodate this growth. The port of Melbourne already generates about 1.2 million truck visits a year, adding to congestion on the roads and fuelling community anger, particularly on port truck routes. Total container trade through the port is expected to quadruple from 1.9 million containers per year to 8 million by 2035, so exacerbating congestion problems.

However, there is a solution that will help ease the current situation. Transferring roll-on/roll-off cargo to the port of Geelong would significantly reduce heavy vehicle congestion in and out of Webb Dock and on Melbourne's major thoroughfares. If the Brumby government adopted this strategy, it would also allow for Webb Dock to be extended and would eliminate the need to dredge the toxic sludge at the Yarra mouth. Relocating all new vehicle import and export movements to an expanded Geelong facility would cater for more efficient movement of container cargo at the extended Webb Dock.

By further developing the port of Geelong, especially in relation to the automotive manufacturing and associated industries, more than 300 new jobs would be created for Geelong, again easing congestion on Melbourne's already over-stressed heavy-vehicle corridors. Expanding and utilising existing port facilities in Geelong would also create many flow-on opportunities for future development of the Geelong region and its economy.

My request is for the minister to move without further procrastination on a strategy that relocates roll-on/roll-off vehicle movements to the port of Geelong so as to ease congestion at Webb Dock.

Consumer affairs: lottery scams

Mr ELASMAR (Northern Metropolitan) — I raise a matter for the attention of the Minister for Consumer Affairs in the other place relating to the issue of postal lottery scams. It was recently brought to my attention that a lottery scam targeting people by postal mail is causing serious distress and financial hardship to the very people who cannot afford it. People are being tricked into believing they have won a large lottery prize and all they have to do to claim it is send money to release the funds. This is a cruel and heartless hoax.

Generally many people — and I am one of them — who use emails and internet accounts are accustomed to getting bogus emails telling us that all we need to do to claim a large sum of money is send our banking details so that the so-called fortune can be deposited into our accounts. We are very much aware of these scams, and we just delete the messages. However, vulnerable people, especially some pensioners, want to believe that fortune has smiled on them, but we all know this is not the truth.

I understand that regulating such matters is difficult because many of these con artists operate offshore. I would like to impress on the Minister for Consumer Affairs the necessity for an education program directed at those consumers who are the most vulnerable in the community. I therefore request that the minister institute further public education regarding these scams to prevent people falling victim to them.

Planning: St Helena development

Mrs KRONBERG (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Planning. The sad and sorry saga of the proposed overdevelopment of a site accessed from Evelyn Way, St Helena, continues to stress the neighbourhood. Recent local press about the development declares that the developer, Massi, has received the green light from the EPA (Environment Protection Authority) to start work on the non-contaminated 2 hectare component of the 2.5 hectare site.

When my office contacted the EPA for the audit report and statement on the contaminated site, we were told it was unavailable and that people were still working on it. This situation only serves to heighten our concerns about this audit and its impact on the St Helena community. The relevant officer at Banyule council has not had access to this report either, so someone is putting spin on this story, and we are all very concerned and highly suspicious.

The contaminated site still remains. Much has been said about the odour. The odour was very bad in May last year, and the potential for toxins to leach from the contamination into the neighbourhood and nearby streams remains. The developer hopes to proceed on the 2 hectares of the site supposedly uncontaminated. When construction is under way to squeeze the 51 two-storey or three-storey tilt-slab townhouses onto 2 hectares, some of the works, machinery and equipment will most likely end up on the contaminated part of the site or will spill down Evelyn Way into Tamboon Drive and probably back up into Crea Court and Chantelle Rise.

I now call on the minister to supply my office with a copy of the environment audit statement with reference to the uncontaminated portion of the land, whilst pledging to supply the audit report for the remaining 0.5 hectare component of the land at the site deemed to be contaminated as soon as it is completed.

Biofuel: federal excise

Mr THORNLEY (Southern Metropolitan) — My matter is for the Minister for Environment and Climate Change. My request is that Mr Jennings writes to the appropriate federal government counterparts seeking them to reconsider the nature of their biodiesel and biofuel excise, and in particular that they consider including waste plastic or biodiesel produced from waste within that definition.

Deputy President, this is a matter that you are probably familiar with as a colleague of mine on the Economic Development and Infrastructure Committee of this Parliament. In our biofuels investigations we came across companies that were making diesel out of waste plastic which would otherwise end up as landfill, which in itself is wasteful, costly and potentially toxic. They have developed technology that very successfully converts it into a biofuel that is of some value, but it cannot compete with other biofuels because it does not have access to the same taxation regime.

I am asking our government through our minister to contact our federal counterparts who make determinations on this matter to see if we can have that situation remedied. These companies — —

The DEPUTY PRESIDENT — Order! I ask the Clerk to stop the clock. It has been quite clearly established that if the action that is sought in the adjournment debate is simply to write a letter, it is not a sufficient action. The member has to be seeking action on something that is within the competence of the minister from whom the member is seeking the action. I agree that the minister would be quite competent to write a letter, but as has been established in the adjournment debate, asking for a letter to be written to somebody is not seeking an appropriate action. I have asked for the clock to be stopped at this point to give Mr Thornley a chance to consider an alternative action as part of his adjournment matter.

Mr THORNLEY — I wonder if I might extend my request of the minister and ask him to raise this matter at the next ministerial council which considers such issues to ensure that the Victorian government puts a position that is in favour of a level playing field for all manufacturers of biofuels, regardless of feedstock. That will create an opportunity for one of the companies that presented to our committee, Ozmotech, which has something like $300 million worth of orders for this equipment from outside this country but is unable to find markets inside this country because of the current regime. It would be of great benefit to the Victorian economy to have a level playing field and to allow this important technology to compete on its own merits against other similar but different technologies that currently have a tax advantage.

The DEPUTY PRESIDENT — Order! The amended action Mr Thornley has sought is appropriate.

Police: Port Phillip

Mrs COOTE (Southern Metropolitan) — My adjournment matter this evening is for the Minister for

Police and Emergency Services in another place. First of all, I would like to say that I believe the Safe Streets task force that has been initiated is a move in the right direction. It is looking at curbing 24-hour violence and antisocial behaviour in the city. There is no doubt that there is a lot more to be done. My concern this evening is about the crackdown on crime in the central business district and about the ramifications of the overflow on parts of my electorate, particularly the city of Port Phillip.

My concern is that as the crackdown from the Safe Streets task force occurs, people will be forced into all of the adjoining areas, but most particularly into the city of Port Phillip around Acland Street and Fitzroy Street. Police in those areas do a fantastic job. With the resources they have, they do an excellent job, but my concern is that they are not resourced well enough. We need to have police visibly on the beat, and we need to be quite certain that they are there to help cater for this influx of people who will come. With the crackdown in the central business district, it is important that we make certain this problem is not transferred into residential or adjoining areas.

I remind the chamber that the most recent crime statistics compiled before the central business district crackdown indicated an alarming upward trend in crime. Assaults have risen from 582 in 2003–04 to 744 in 2006–07; the number of rapes has risen from 31 in 2003–04 to 43 in 2006–07; and property damage offences have risen from 852 in 2003–04 to 1228 in 2006–07. The people of Port Phillip deserve to live in safety and to be quite confident that they have police very visibly on the beat to make quite certain they can live their lives in safety.

The action I am seeking is for the minister, as a matter of priority, to ensure that additional funding is provided so that more police can be allocated to streets in the city of Port Phillip.

Bannockburn: community hub

Mr VOGELS (Western Victoria) — I raise an issue for the Minister for Regional and Rural Development in the other place concerning an application from Golden Plains Shire Council to Regional Development Victoria.

The Golden Plains shire has identified the Bannockburn Community and Cultural Hub project as being of critical importance to the health and wellbeing of the people in Bannockburn, in the south-east region of the Golden Plains shire. As the fastest growing township in rural Victoria, Bannockburn and its surrounds have an increasingly diverse and changing population whose community infrastructure needs are presently poorly catered for.

This application emphasises the need for a community hub in Bannockburn to strengthen communities in and around the township. It will consist of a 200-seat multipurpose hall, including capacity for performing arts; a neighbourhood house and community learning centre; the development of a library and information service centre; a multipurpose space for use by clubs and community organisations; and an expanded car park and landscaping.

The federal government has allocated $405 300 to the project, according to Darren Cheesman, who made this promise at the last federal election. Let's see if he delivers! The Golden Plains shire is contributing $458 000 in cash, not to mention an in-kind contribution of over $300 000 based on the value of the land.

The following grant applications have been presented to the state government. Firstly, a Small Towns Development Fund grant application for $250 000; secondly, a Community Support Fund grant application for $300 000. The action I seek from the minister is to listen carefully to the positive feedback in support of this project, especially from the local members of Parliament — David Koch, me and Terry Mulder, the member for Polwarth in the other place. I also know that Jaala Pulford, Gayle Tierney, Peter Kavanagh and Joe Helper, the member for Ripon and the Minister for Agriculture in the other place, are also very supportive of the project and all want to give it a big tick.

Northern Highway, Kilmore: traffic control

Mrs PETROVICH (Northern Victoria) — My adjournment matter is for the attention of Tim Pallas, the Minister for Roads and Ports in the other place, and is in relation to the ongoing saga of the heavy traffic travelling through the town of Kilmore. I have spoken before here about the desperate need for a bypass as huge trucks squeeze past each other, rattling the windows of my office approximately every 30 seconds.

The house may recall that in August last year I raised the issue of the ludicrous proposal to paint a white line all the way down the main street of Kilmore. VicRoads believed this would have a calming effect on the traffic. I am pleased to report this idea has now been shelved. Unfortunately, though, it has been replaced by something equally impractical and potentially far more dangerous: VicRoads now wants to put an unsupervised crossing point halfway along the main street. People

using the crossing will be lulled into a false sense of security, believing that vehicles will stop for them. However, there is no legal requirement for them to stop at these designated crossing points.

The locals are up in arms over this idea, saying that the crossings will be perceived by pedestrians as being a safe haven, when in actual fact they will be a death trap. The irony of the situation is that if there is a fatality, the road will be eligible for black spot funding, and that will provide a proper solution rather than these patched up, bandaid solutions. Once again VicRoads is treating the people of Kilmore with contempt. Its piecemeal solutions are all about stalling and ignoring the main game.

Kilmore is central to one of the fastest growing regional areas, and therefore needs to have a proper long-term solution that will cater for the needs of the community, visitors, and those whose businesses are reliant on transport from one part of the state to another. The action I seek from the minister is to review the process around the series of temporary solutions and assist this community to move forward with confidence towards a proper traffic management solution.

Dandenong Hospital: emergency department

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I wish to raise a matter for the attention for the Minister for Health in the other place. It relates to the Dandenong Hospital emergency room, which, as the government would appreciate, is under great pressure in what is a substantial regional centre within Victoria.

The latest statistics for Dandenong Hospital emergency department reveal that in the last six months 1415 patients waited on trolleys in the emergency department for more than 8 hours, 2119 patients waited on trolleys for more than 4 hours before being treated and discharged, and 1737 patients actually walked out of the emergency department in the last year without being seen. So there is a substantial demand for increased capacity in the emergency department at the Dandenong Hospital. The new Casey Hospital has only very limited capacity to treat emergency patients and it does not have a 24-hour facility, so the main emergency department for the greater Dandenong area, and indeed down to Gippsland, is the Dandenong Hospital.

Leading into the 2006 election the government made a commitment of $25 million for an upgrade of the emergency department at Dandenong Hospital. However, we have not seen any budget funding for that upgrade — so while it was announced in the lead-up to the election in November 2006, no funding was provided in the 2007-08 budget and there has been no indication from the government or the minister that funding will be provided this year. It is very clear from the latest health statistics that the demand exists for that upgrade to be undertaken now. The upgrade is going to take time, so what I call on the Minister for Health to do is ensure that that $25 million commitment is funded in the 2008-09 budget so that that project can be delivered in the life of this government, before 2010.

The DEPUTY PRESIDENT — Order! I advise Mrs Kronberg that members are not to have conversations with people in the public gallery. If there is a need for conversation, members are to leave the chamber.

Responses

Hon. J. M. MADDEN (Minister for Planning) — Ms Lovell raised a matter for the Minister for Roads and Ports in the other place about funding for a turning lane in Yarrawonga along the Murray Valley Highway, and I am sure the minister will attend to that.

Ms Tierney raised a matter of health services — the money allocated to patient treatment and care and medical equipment in Western Victoria, and I am sure that the Minister for Health in the other place will attend to that matter.

Ms Pennicuik raised the matter of wage negotiation in the education sector, and of course that is to the forefront in the mind of the Minister for Education in the other place, and no doubt the minister will continue to attend to those matters.

Philip Davis raised a matter of weed management and control in alpine parks for the Minister for Environment and Climate Change, and I know the environment minister is very conscious of these matters and will no doubt attend to them.

Ms Pulford raised a matter of fluoridation, particularly across her region, and many of those points were certainly quite pertinent, and no doubt will be taken up by the Minister for Health in the other place.

Ms Peulich raised a matter of issues around the Casey council for the attention of the Minister for Local Government in the other place. No doubt the Minister for Local Government is now informed of those issues, if he had not been previously.

Mr Eideh raised a matter of level crossings for the Minister for Public Transport in the other place, and I

know that the minister is very conscious of those matters and will attend to them.

Mrs Kronberg raised the matter of the site at St Helena for my attention, and I will make a point of clarification to Mrs Kronberg. I have not made a decision specifically in relation to that matter so I am not the specific authority for that project. That decision has come from other authorities and I would think that any environmental report in relation to that site would be provided to the relevant decision-making authority. If that has been provided — to the Environment Protection Authority, I suspect it would be — then the EPA would be in possession of that report. If that is the case, given the EPA is under the control of the Minister for the Environment and Climate Change, that is probably a request that should be made directly to the Minister for the Environment and Climate Change.

Mr Thornley raised the matter of innovation in the biofuel industry and issues in relation to the Environment and Climate Change calling upon the federal minister. I am sure that the minister will attend to that.

Mrs Coote raised the matter of policing and the Safe Streets task force. She referred to the prospect of potentially relocating incidents that occur on the streets of the city to the inner suburbs. I am sure that the task force, the Chief Commissioner of Police and the Minister for Police and Emergency Services in the other place will be very conscious of those matters in any future operational matters in relation to street violence.

Mr Vogels raised for the Minister for Regional and Rural Development in the other place the matter of regional development in Golden Plains shire. I know Golden Plains shire is experiencing substantial growth and that the council is doing a commendable job in relation to providing for its community. I suspect that that will receive a favourable hearing from the Minister for Regional and Rural Development.

Mrs Petrovich raised the matter of pedestrian crossings in the main street of Kilmore. No doubt that will be brought to the attention of the relevant minister.

Mr Rich-Phillips raised the matter of the Dandenong Hospital. No doubt that will be a matter of interest for the Minister for Health in the other place.

The DEPUTY PRESIDENT — Order! The house now stands adjourned.

House adjourned 6.53 p.m. until Tuesday, 11 March.