PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 22 November 2007

(Extract from book 16)

Internet: www.parliament.vic.gov.au/downloadhansard

By authority of the Victorian Government Printer

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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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Drum, Mr Damian Kevin	Northern Victoria	Nats	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Eideh, Khalil M.	Western Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
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, 22 NOVEMBER 2007

Thursday, 22 November 2007

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.35 a.m. and read the prayer.

PETITIONS

Following petitions presented to house:

Mordialloc Creek Bridge: reconstruction

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the problems with the work being undertaken on the Mordialloc Bridge, Nepean Highway, Mordialloc, and the daily traffic transport delays that residents of Mordialloc, Carrum and Bayside suburbs encounter.

The petitioners therefore respectfully request that the Legislative Council of Victoria demands that the Minister for Roads and Ports, Tim Pallas, and VicRoads:

(1) Immediately review the work and schedules of the Mordialloc Bridge construction, including the 16 month construction time frame given for the project;

(2) Conduct a public information session regarding the Mordialloc Bridge construction to allow residents of Mordialloc, Carrum and Bayside suburbs to consult with the minister and VicRoads for a timely resolution to the daily traffic transport delays.

By Mrs PEULICH (South Eastern Metropolitan) (11 signatures)

Laid on table.

Ordered to be considered next day on motion of Mrs PEULICH (South Eastern Metropolitan).

Rail: Lynbrook station

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the urgent need for the construction of the Lynbrook railway station.

The petitioners therefore respectfully request that the Legislative Council of Victoria demands that the Bracks Labor government and Minister for Public Transport, Lynne Kosky, construct the Lynbrook railway station on the Cranbourne train line before 2010 to better serve the new and existing housing estates including Lynbrook, Lynbrook Heights and Hampton Park.

This will help to alleviate car parking congestion at neighbouring train station car parks.

By Mrs PEULICH (South Eastern Metropolitan) (247 signatures)

Laid on table.

Ordered to be considered next day on motion of Mrs PEULICH (South Eastern Metropolitan).

PAPERS

Laid on table by Clerk:

Alexandra District Ambulance Service —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07.

Calvary Health Care Bethlehem Limited—

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07 (three papers).

Gambling Regulation Act 2003 —

Category 1 Public Lottery Licence.

Category 1 Public Lottery Ancillary Agreement.

Category 2 Public Lottery Licence.

Category 2 Public Lottery Ancillary Agreement.

Category 2 Public Lottery Transition Agreement.

Goulburn Valley Health —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07 (two papers).

Health Purchasing Victoria —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07.

Kooweerup Regional Health Service —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07 (two papers).

Lilydale Cemeteries Trust —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07.

Mallee Track Health and Community Service —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07 (two papers).

Manangatang and District Hospital —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07 (two papers).

Metropolitan Waste Management Group — Report, 2006–07.

Ombudsman — Investigation into the use of excessive force at the Melbourne Custody Centre, November 2007.

Portland District Health —

Minister's report of failure to submit report for 2006–07 to the Minister within the prescribed period and the reasons therefor.

Report, 2006–07 (three papers).

Robinvale District Health Services —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07.

Victorian Health Promotion Foundation —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07 (two papers).

Victorian Industry Participation Policy — Report, 2006–07.

West Wimmera Health Service —

Minister's report of failure to submit report for 2006–07 to the minister within the prescribed period and the reasons therefor.

Report, 2006–07 (three papers).

MEMBERS STATEMENTS

Liberal Party: federal election

Mr P. DAVIS (Eastern Victoria) — Recently I was in a Lygon Street restaurant. The restaurateur came up to me and engaged me in conversation. He said to me that John Howard would win the next federal election. I asked him why he was so convinced that he would. Rather than have the discussion then, he went away and wrote on a piece of paper the reasons why the Liberal Party will win the election. I quote:

> The Liberal Party will win the election because of the following factors: $34 billion tax cuts over the next three years. Their record of running a great economy and the fact that Australia is right out of debt, low unemployment, reasonable interest rates. Why switch to a party of inexperience at such a time and put the country in danger of relapsing into high interest rates, big debt, big trouble.
>
> Concerning the Iraq war— well, what was John Howard supposed to do? Back our biggest ally and friend, or turn your back on a superpower that Australia needs to be on really good terms with.

I was fascinated by this unsolicited advice. I was delighted to be able to pay my bill and receive political advice from a well-informed restaurateur in Lygon Street. If any members of the government would like to know, I will tell them privately where they should go and dine, because they would be much better informed about the state of the nation and economy and indeed the reasons why Australians think that John Howard should be re-elected as Prime Minister on Saturday.

Planning: St Kilda triangle development

Ms PENNICUIK (Southern Metropolitan) — Last Tuesday night I attended a public meeting at the Palais in St Kilda regarding the St Kilda triangle development. There were presentations by the developer there. The meeting was attended by approximately 300 people all dismayed by the size and scale of the development proposed for the St Kilda triangle site. The meeting was meant to go to 9.00 p.m. but went on well past 10.00 p.m., given the concerns raised by the people in the community and the questions they had for the developer.

As I have said about this issue many times in the Parliament this year, it is an abuse of public land. It sets a bad precedent for the use of public land to take over 97 per cent of Crown land for a commercial development focusing on retail when it should be for the public benefit of the people of St Kilda and elsewhere around Melbourne. I have said many times that it is the state government's fault because it has not put money into updating the heritage of the Palais Theatre, which celebrated its 80th birthday last week. I say to the state government again that it should put the money into upgrading that building and perhaps look at other fundraising opportunities to avoid this overdevelopment of the St Kilda triangle site.

Minister for Water: comments

Mr DRUM (Northern Victoria) — It was disappointing yesterday to sit in the gallery of the Legislative Assembly during a debate on the north–south pipeline and listen to the Minister for Water quote from *Hansard* speeches made by me about a completely different project. The comments I had made in this chamber in fact related to the Colbinabbin pipeline where they were taking water out of the Goulburn system and bringing it across to Bendigo. The government had to invest very quickly in this project because it had refused point-blank to fix up Bendigo's inefficient water system, which is one of the most inefficient systems in Australia. The government had refused to invest in a stormwater harvesting process. It had also refused to invest in any groundwater aquifer systems whereby Bendigo's water could have been secured. Because it had refused to take action in all these other areas, and at that stage it was still yet to bring on-stream any of its recycling projects, Bendigo was faced with a situation where it simply had to get water from somewhere else or it was going to run dry.

My comment was, therefore, that if you were going to do this and put Bendigo in such a position, the only way you should do it is with infrastructure improvements. For the minister to take that comment and apply it to the north–south pipeline is deceitful.

Floods: Gippsland

Mr HALL (Eastern Victoria) — In response to the flood events that occurred in Gippsland in June of this year, I think I was one of the first to respond and congratulate the government for what was a prompt and substantial effort to the tune of about $60 million to assist Gippsland to recover from those floods. I said at the time I was not sure if it was enough, but it was a good start.

In the last few weeks I have been speaking with my constituents Bob and Laurie Shearer of Erica. They have a property on the Tyers River, which is a tributary of the Latrobe River. They suffered significant damage around the river at that point where it runs through their property. They had it assessed by the West Gippsland Catchment Management Authority, but the authority is unable to fund repairs of that river at that particular point on their property. The reason is that it has been deemed by government that flood recovery money will be made available only to river systems that have a 1-in-20-year flood event. The Latrobe River system has a 1-in-10-year flood event assessment, and consequently funding for flood recovery was not available for this particular flood.

The West Gippsland Catchment Management Authority has assessed that the flood damage to that area is to the tune of $16 million; the government has allocated only $5.5 million. Consequently important river systems, like the Tyers River on the Shearer's property, will not be funded. I call on the government to make available the necessary funding to reconstitute all flood damage.

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

Regional and rural Victoria: investment

Ms BROAD (Northern Victoria) — Last week, as well as visiting the north-east with the Brumby cabinet, I visited north-west Victoria. I am pleased to inform the house that during my visit I was able to attend an announcement in Mildura by the Minister for Regional and Rural Development in the other place, Jacinta Allan, of a grant from the Brumby government of $125 000 to help the Murray Group of Councils to work out ways of attracting new investment to create jobs and opportunity for non-farm businesses affected by the drought. I wish to congratulate the Mildura, Swan Hill, Gannawarra, Loddon, Campaspe and Moira councils and the Sunraysia Mallee Economic Development Board on this initiative.

Minister Allan also announced a grant of $50 000 from the Brumby government to help provide training for 15 new jobs created by the investment of $1.5 million by the Mildura theatre brewery to expand its operations. In addition, Minister Allan announced that as part of the Brumby government's ongoing assistance to regions hit by the drought, the Sunraysia Institute of TAFE will be funded to establish a Skills Store in January 2008 to assist workers to gain recognition of existing skills and to acquire new skills.

I welcome all of these grants by the Brumby government, because they will help to stimulate jobs and growth in northern Victoria, despite the drought, and are in line with the Brumby government's commitment to country and regional Victoria.

Roads: metropolitan system

Mrs PEULICH (South Eastern Metropolitan) — Yesterday's very welcome rain demonstrated yet again the inadequacy of our roads, when traffic virtually ground to a halt around metropolitan Melbourne.

An honourable member — It always does.

Mrs PEULICH — It certainly does; yesterday it took me in excess of 2 hours — 2 hours and 10 minutes, actually — to travel the 26 kilometres from my residence in Dingley to Parliament. I think that is appalling not just for me but for the community, because it means a loss of productivity for businesses, it means a loss of funds for families, with money being gobbled up on petrol, and it also means the degradation of our environment. It was caused in large part by the government's failure to build and complete major connecting roads, such as the Dingley arterial and the Mornington Peninsula Freeway; its failure to upgrade inadequate roads, especially in the growth corridor, due to its mismanagement of road projects; and its failure to invest in public transport.

While the inadequacy of our roads certainly caused a delay for me, in many instances it can be a matter of life and death. This particularly applies to places like Clayton Road, Clayton, where the railway crossing is frequently used by ambulances carrying patients to hospital. Recently I saw an ambulance weaving its way through the traffic and trying to cross the level crossing boom gates because of the enormous delays. When a person is being taken in an ambulance, minutes may influence the outcome for that patient. I call on the government, if it cannot resolve the problems, to hold a traffic congestion summit to assist it in getting to the bottom of this matter.

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

Aichi Prefecture: parliamentary visit

Mr ELASMAR (Northern Metropolitan) — I rise today with great pleasure to report on the recent parliamentary delegation I attended with you, President, and three colleagues from this house — Andrea Coote, Adem Somyurek and Wendy Lovell — to Japan. This was my first official overseas trip representing the Victorian Parliament and it was an experience I will never forget, for many reasons. I was very impressed by the cities we saw, especially in regard to the port of Nagoya. There is one matter, however, that needs to be highlighted. Currently there is no direct flight from Melbourne to Nagoya international airport. In the interests of tourism, this should be rectified by our international carrier.

More importantly, I had the opportunity to spend quality time with my colleagues from the opposition benches, and this was invaluable. I want to pay tribute to the leader of our delegation, the President of this house. I thank him for giving us the opportunity to meet the governor of Nagoya and many interesting and important dignitaries too numerous to name. I also congratulate Geoff Barnett for his unfailing good humour and his excellent organisational skills. I wish him all the very best in his new position.

Freedom of information: EastLink

Mr DALLA-RIVA (Eastern Metropolitan) — I rise this morning to express an element of surprise at a government announcement made yesterday at the Royal Children's Hospital event. A question was asked of the Premier, Mr Brumby, about whether he would be releasing the public sector comparator under the Partnerships Victoria model. His reply was yes. This is the same person who, when Treasurer of this state, spent four years and about half a million dollars of taxpayers money fighting the state opposition through three court cases and taking us to the highest court in Victoria to defend — guess what — the public sector comparator for EastLink. On one hand we had the Premier yesterday saying the government is going to be open and transparent and release the public sector comparator for the hospital plans, but when it comes to EastLink it spends half a million bucks fighting us tooth and nail through three court cases with top-level Queen's Counsel.

The question I have for the Premier is: why is he hiding the public sector comparator on EastLink? My view is that a corrupt, shabby deal has gone on in relation to that project. There was not a true comparator between the public sector and the private sector. What we find is that this government is anything but open. It is secretive — —

The ACTING PRESIDENT (Mr Elasmar) — Order! Mr Dalla-Riva's time is over.

Australian Defence Force: peacekeeping

Ms MIKAKOS (Northern Metropolitan) — Recently Australians commemorated Remembrance Day. As part of that commemoration the Darebin Ethnic Communities Council, in conjunction with the Darebin RSL, organised a unique forum to acknowledge the important humanitarian contribution that Australia's defence forces have made in conflict zones around the world. Australia has a long and proud history of helping to keep peace in many of the world's trouble spots. This year marks the 60th anniversary of the first Australian Defence Force contribution to peacekeeping, which began when we sent ADF personnel to help the United Nations mission in Indonesia in 1947. Since then over 75 000 Australian

peacekeepers have served in 65 countries. The ADF peacekeeping deployments have focused on military observation, monitoring ceasefires, clearing landmines, humanitarian aid, and the repatriation of refugees. More recently ADF personnel assisted Pakistan after an earthquake in 2005 and assisted Indonesia following the 2004 Boxing Day tsunami.

I encourage investigation of an appropriate commemorative place in Victoria to honour Australian defence personnel's humanitarian service overseas. We all know that their contribution and their professionalism has earned the respect and admiration of governments and individuals around the world. I think it would be appropriate if we could honour them here in Victoria.

Liberal Party: religious tolerance

Mr THORNLEY (Southern Metropolitan) — When this government first introduced the Racial and Religious Tolerance Act it was opposed by the Liberal Party, but I might say it was strongly supported by Melbourne's Jewish community. Then we had Pastor Danny Nalliah from the Catch the Fire Ministries being caught up in this legislation because of his attack on Muslims. What do we see now? We see him hanging out with the cranks and anti-Semites of the Citizens Electoral Council. Recently when a group of Jewish boys were bashed in Carlisle Street it was found that the offenders had previously bashed some people of Indian descent whom they mistakenly took as being Muslims. They yelled racist epithets at them for being Muslims and then went and attacked the Jewish lads for being Jewish. Now we see in the federal seat of Lindsay — —

Mrs Peulich — On a point of order, Acting President, I would hope that the member is not inadvertently misleading the house. I believe he has actually misrepresented the position of the Liberal Party on that particular piece of legislation.

The ACTING PRESIDENT (Mr Elasmar) — Order! There is no point of order.

Mr THORNLEY — I thank the member for the point of order. The Liberals had 17 different positions on that piece of legislation, because they could not square how they were going to keep the Danny Nalliahs of this world happy and keep faith with the Jewish community, which they let down on this issue. Now we see in the federal seat of Lindsay what this morning was called by the outgoing member, Jackie Kelly, a prank. We had a horrendously outrageous attack on Muslims used as a racist slur to try to influence the course of the federal election.

Are we seriously to believe that two days out from a federal poll in a critical marginal seat, people, including the former member's husband, had spare time on their hands to conduct pranks, or do we think yet again they were playing the race card as they did in Greenway successfully in the 2004 election? It is a disgrace.

Aichi Prefecture: parliamentary visit

Mr SOMYUREK (South Eastern Metropolitan) — Today I will do something unusual; I will try to fit two statements into the one members statement. Firstly, I would like to put on record our recent official visit to Japan as part of the Aichi-Victoria sister-city relationship. This relationship was established in 2 May 1980 by the late Sir Rupert Hamer, a former Premier of Victoria, and His Excellency Yoshiaki Nakaya — I am sure Wendy Lovell will give a better pronunciation — the Governor of Aichi.

The sister-state relationship is very effective in promoting trade, cultural exchange and investment between Victoria and Aichi. Toyota is probably the most famous example of this. I would like also to take the opportunity to thank Geoff Barnett for meticulously organising the visit. We had long days with lots of walking. However, the knowledge we returned with made the long walks worth it.

Australian Labor Party: federal candidates

Mr SOMYUREK — On another note, the other topic I wish to speak to is the federal election that is happening this weekend. I wish all candidates luck, irrespective of party, but in particular Labor Party candidates.

The ACTING PRESIDENT (Mr Elasmar) — Order! The member's time has expired.

STATE TAXATION AND ACCIDENT COMPENSATION ACTS AMENDMENT BILL

Statement of compatibility

For Mr LENDERS (Treasurer), Hon. J. M. Madden 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 State Taxation and Accident Compensation Acts Amendment Bill 2007.

In my opinion, the State Taxation and Accident Compensation 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 purpose of the State Taxation and Accident Compensation Acts Amendment Bill 2007 is to amend the Congestion Levy Act 2005, including by the introduction of an exemption for consulates and associated parties as per the government's international obligations and by changes to clarify the original intent of the pass through and aspects of the liability provisions. The amendments to the Land Tax Act 2005 centre mainly on the trusts provisions. These may also be described as ensuring the original intent of these provisions is more certain. They have arisen during the administration of these provisions since first introduced in 2005. The amendments to the Accident Compensation Act 1985 are designed to improve the scope for the Victorian WorkCover Authority to provide appropriate benefits to catastrophically injured workers.

Human rights issues

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

The bill does not raise any human rights issues.

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

As the bill does not raise any human rights issues, it 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 the Charter of Human Rights and Responsibilities because it does not raise a human rights issue.

JOHN LENDERS, MP
Treasurer.

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:

This bill makes amendments to the Congestion Levy Act 2005, the Land Tax Act 2005 and the Accident Compensation Act 1985.

The changes to the Congestion Levy Act 2005 include introducing an exemption from the levy for parking spaces owned by consulates, consular officials, consular employees and members of their families forming part of their households. This exemption fulfils the government's obligations under the Vienna Convention on Consular Relations 1963.

There is an important amendment to ensure that car park owners can recover the full amount of the levy plus any GST payable from a tenant. In some circumstances, there are parking spaces that are subject to long-term leases which prohibit, or limit, fee increases during the life of the agreement. Accordingly, specific provisions were included in the Congestion Levy Act 2005 to require a tenant to pay to the owner the amount of levy payable for any parking spaces used by the tenant.

The wording of these 'pass through provisions' in section 34 of the Congestion Levy Act 2005 was meant to ensure that an owner was able to recover no more than the cost of the levy paid. However, under the GST legislation, this payment is consideration for a taxable supply in the hands of the owner and is subject to GST, which the owner must pay on the amount received from the tenant.

These amendments allow the owner to recover the GST component from the tenant, thereby ensuring that the levy in its entirety can be collected from the right party.

Earlier this year the Department of Treasury and Finance and the State Revenue Office conducted a review of the administration of the levy. Most findings from that review have flowed through into administrative changes, however, one aspect highlighted in the review was in regards to the joint and several liability provisions of the Congestion Levy Act 2005. This has led to amendments in this bill that are designed to ensure that an owner or operator of a public car park who pays the levy to the State Revenue Office, but who does not have the right to increase parking fees to recoup the cost of the levy, can be indemnified by the party who does have the right to increase parking fees.

The remaining measures in the bill amend the Land Tax Act 2005.

These include a proposal to counter comment on the use of valuations in a recent Supreme Court decision. These amendments will:

clarify that the State Revenue Office was entitled to, and remains entitled to, use the site value valuations of occupancies made by councils (in accordance with the Valuation of Land Act 1960) for land tax assessment purposes;

deem such valuations to be valuations of land for the purposes of the Land Tax Act 2005; and

confirm that, when making land tax assessments, the State Revenue Office was always, and is, entitled to include council descriptions of such occupancies.

This will not impact on taxpayers as it merely confirms the established and practical way in which valuations of occupancies are used for the purposes of assessing land tax.

One of the most important exemptions in the Land Tax Act 2005 is that allowed for a principal place of residence (PPR). Those who enjoy a 'life estate' in a property used as their home are generally entitled to the PPR exemption. There is a small category of people who are granted a 'right to reside' in property on a similar basis as a person holding a 'life estate'. This bill extends the PPR exemption to those who enjoy a

'right to reside', subject to certain restrictions. This is consistent with other jurisdictions, and will provide (at minimal cost to revenue) equity to family (and some non-relative) members residing in the family home.

In late 2005 this government introduced new provisions to deal with the imposition of land tax on lands held by trusts. This was done after consultation with industry and was designed to overcome particular difficulties in dealing with land tax on land held by trusts as opposed to other forms of ownership. While the provisions are working well, there have been some anomalies with the intention and original policy identified. Some of these have been identified by industry. This bill will address these anomalies where it has been determined that legislative clarification is justified.

The proposed amendments include measures to:

(a) replace the definition of an excluded trust (in relation to 'trust established by a will') with a definition of 'administration trust' to ensure that deceased estates, whilst being administered by a personal representative, are not subject to the land tax surcharge for a specified period;

(b) extend the period of the PPR exemption beyond the first anniversary of the death of the deceased, on the basis that the administration of the estate of the deceased may take longer than one year;

(c) require a PPR beneficiary to use and occupy trust property;

(d) ensure that a nomination of a beneficiary by a trustee takes effect in the tax year the nomination is lodged so that the trust land is not subject to the surcharge rates; and

(e) enable the commissioner to approve a change of nominated PPR beneficiary.

Most of these changes will be welcomed by taxpayers; all of them are necessary to ensure the proper intent of the provisions will be met.

I turn now to an area of the Accident Compensation Act that is enhanced in this bill for the benefit of the state's most severely injured workers, and in particular those who suffer catastrophic injuries.

The Accident Compensation Act currently allows the Victorian WorkCover Authority to pay for the cost of those modifications to the home and motor vehicle of an injured worker required as a result of that worker's injury.

However, unlike the Transport Accident Commission, the authority is not currently able to pay for a replacement motor vehicle that can be suitably modified, where either the injured worker did not possess a car or possessed a car unsuitable for modification.

Similarly, where an injured worker's existing home is not suitable for modification, the authority is, unlike the Transport Accident Commission, unable to pay a reasonable amount for either the cost of a portable semidetachable home or the costs of relocating the worker to another suitable home.

The proposed amendment expressly allows the authority to meet reasonable costs connected with these benefits, and mirrors the benefits currently available to transport accident victims.

This amendment is well within the financial scope of the WorkCover scheme and will ensure that some of this state's most severely injured workers are able to be provided with the benefits required to assist them in actively integrating back into the community.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mrs Coote.

Debate adjourned until Thursday, 29 November.

GRAFFITI PREVENTION BILL

Committee

Resumed from 21 November; further discussion of clause 7.

The DEPUTY PRESIDENT — Order! The committee will resume consideration on clause 7 of the Graffiti Prevention Bill 2007. I call on Mr Dalla-Riva to move his amendment 3, which I understand is also a test for his amendment 1 on the postponed clause 3. However, I think we only voted on amendment 2 last night.

Mr DALLA-RIVA (Eastern Metropolitan) — Yes, Deputy President, we did, and it was just a machinery change. Given that the amendment has been defeated, I have nothing further to add on that particular matter.

The DEPUTY PRESIDENT — Order! Is the member therefore inviting the committee to vote against this now?

Mr DALLA-RIVA (Eastern Metropolitan) — I am inviting the committee to move it forward — there is no division or anything on this.

The DEPUTY PRESIDENT — Order! Does the member want to pursue it?

Mr DALLA-RIVA (Eastern Metropolitan) — No.

The DEPUTY PRESIDENT — Order! In those circumstances the committee will not proceed with a consideration of Mr Dalla-Riva's amendment 3. I invite Ms Pennicuik to speak to her amendment 8, in which she asks the committee to vote against clause 7 in its entirety.

Ms PENNICUIK (Southern Metropolitan) — As I have mentioned during the debate on this bill over the last two days, our issue with clause 7 is that it creates an

offence for a person to possess a prescribed graffiti implement. It gives a narrow lawful excuse as to why a person could possess a prescribed graffiti implement, which could be a spray can or anything that the regulations may come up with that are as yet unknown. It also provides a reverse onus of proof — that is, a person who has a prescribed graffiti implement has to prove themselves innocent, rather than the law has to prove them otherwise. It is a very serious thing to change the reverse onus of proof of any offence under the law, but this offence, which I have mentioned before, will apply mostly to young people under the age of 18. I ask the minister: what rationale does the government have for applying the reverse onus of proof in this case?

Hon. J. M. MADDEN (Minister for Planning) — The bill is about a focused approach to graffiti prevention in and around those locations where there is an abundance of graffiti, which has significant economic and social impacts particularly on transport centres. Hence the answer to questions asked previously by Mr Dalla-Riva and to questions asked by Ms Pennicuik in this instance, is that this is seen as an appropriate mechanism — a targeted response — to eradicate and certainly to prevent and overcome graffiti in and around those specific locations as nominated within the bill. We believe that it warrants this approach in those circumstances.

Ms PENNICUIK (Southern Metropolitan) — Can the minister tell me what other offences a reverse onus of proof applies to under the law?

Hon. J. M. MADDEN (Minister for Planning) — I do not seek to list a whole lot of those today. I would have to go and get a whole lot of legal information in relation to that, and I do not have an abundance of that before me today. What I can say is that where there is a reverse onus of proof it is in instances where it has been determined that a strong approach is obviously needed. It is in instances where not only is a strong approach needed but there is an abundance of circumstances that provide an understanding to ensure that where all the indicators would be that there is sufficient intent or cause for a person or persons to have broken the law or to have sought to break the law, that in those instances an individual or persons should seek to prove that it was not their intent to break the law in those circumstances**.**

The DEPUTY PRESIDENT — Order! Can I just intervene briefly and advise the minister that sometimes it is helpful just to say that you do not know. I do not know if he is able to do so, but if he is I am inviting him to perhaps seek further information on these matters that could be supplied to Ms Pennicuik at a subsequent stage. Is the minister prepared to give that sort of an undertaking?

Hon. J. M. MADDEN (Minister for Planning) — I am always happy to seek to provide information through the designated minister responsible for the legislation in the other chamber. I am happy to seek that undertaking to provide information in relation to Ms Pennicuik's query.

The DEPUTY PRESIDENT — Order! I thank the minister. To assist the committee, I advise that Mr Viney has also explored that question with ministerial advisers and the information is not immediately at hand in the chamber today.

Ms PENNICUIK (Southern Metropolitan) — The minister commented that if somebody is found with a prescribed graffiti implement it is up to them to establish that they had no criminal intent. I put to the minister that that is not usually how the law works. Usually a person may or may not be taken into custody or arrested, and then it is up to the justice system to establish their intent, rather than the person having to account for themselves at the time. Also, under this clause the only reasonable excuse a person can have — and remember we are talking about young people here, mostly minors — for carrying what are undefined prescribed graffiti implements for the most part is that they are carrying them for art or educational purposes, but they are not lawful excuses under this clause.

Hon. J. M. MADDEN (Minister for Planning) — I appreciate the matters that Ms Pennicuik has raised and the circumstances involved. I think at the end of the day the point we are disputing is not so much about Ms Pennicuik's seeking amendments to clauses in the bill. I appreciate that she has a philosophical position on civil liberties in relation to this matter, but I also appreciate that in order to eradicate graffiti a strong approach must be taken. This bill reflects that strong approach.

Whilst we could go through the nuances of what is fair and reasonable in substantial detail over a prolonged period, clause by clause, in relation to the definitions, the implements or the reverse onus of proof, at the end of the day we have to disagree on our respective approaches to this matter. Our approach is a strong one. We seek to eradicate graffiti and the social and economic impacts that occur because of it. We see those as an overarching priority, particularly given the social implications and people's concerns about public safety. Those issues have been raised in the debate; they continue to stand, and any answers that I give you today

will only relate back to the initial debate around this matter and our philosophical position.

Mr DALLA-RIVA (Eastern Metropolitan) — Members of the Liberal Party support the government in this stance. We are quite surprised by the Greens approach to the issue of graffiti, in particular their stance on this aspect of it. Our understanding of what the Greens are saying by seeking the omission of this clause is that if a person is walking into any public transport system with a bagful of aerosol spray cans with the intent to spray-paint our public transport system it is okay to do that. They are saying that it is okay for the public transport system to be marked with graffiti because they accept that graffiti is an art form and that people should have the right to expression. It might be put in the context that the Greens also seek the omission of clause 6, which is again about a person marking graffiti. They are saying that they do not believe the provisions of clause 6 are appropriate.

Members of the Liberal Party are very strongly in support of this bill. The omission of clause 7 would allow persons to walk around our public transport system marking whatever they feel like and without any consequences. We believe that is wrong. On that basis, we do not support the amendment before the chamber.

Mr DRUM (Northern Victoria) — I am as much against graffiti as anybody in this chamber, but Ms Pennicuik has a point. Is it true that, if a minor is caught with a spray can which is to be used to paint his bike or for a school project, that will no longer be a lawful excuse for having a spray can? It says in clause 7(2) that the only lawful excuses for having a graffiti implement relate to 'employment, occupation, business, trade or profession'.

Hon. J. M. MADDEN (Minister for Planning) — At the end of the day these definitions will be determined by the courts. What this is really saying as a major statement is that if you are a young person using public transport you should not carry graffiti implements in and around stations or on public transport. That is basically what this is saying. I recognise and appreciate Mr Drum's and Ms Pennicuik's concerns about young people. Members of the government share those concerns about young people and their respective liberties but, as has been said, this is a targeted approach to graffiti in and around transport locations and hubs. Young people would be well advised to not carry those sorts of prescribed implements on trains or in and around public transport locations.

Mr DRUM (Northern Victoria) — Is the minister saying that even if a teacher were to give a student a letter of authority that it will be necessary to purchase spray cans to complete a school project, that will not be a lawful excuse? I agree with the intent of what the government is trying to get to but I think that the bill is very shoddily worded.

Hon. J. M. MADDEN (Minister for Planning) — Of course all those matters will be taken into account. I will give Mr Drum just a little bit of detail. The expression 'lawful excuse' is often used in Victorian and Australian legislation. It would up to the court to determine what, in the particular circumstances of the facts before it, would amount to a lawful excuse in this context. There are a number of lawful excuses that a person may have for carrying paint — for instance, a demonstrable need for employment as a painter or decorator, the need as an art student or the need for an arts and crafts exhibition. Clause 7(2) contains an example of a lawful excuse — that is, for carrying a spray can:

> … in the course of engaging in, or carrying out any functions in relation to, his or her employment, occupation, business, trade or profession.

This is not exhaustive. It is reasonable that a person provide the lawful excuse rather than the prosecution seek to dissolve all possible ones, because that information will be in the mind of the person and will be unknown to the prosecution. The provision has been designed so that the lawful excuse can be given to the apprehending police officer there and then, so that once it is established the person is free to go on their way and will not be required to demonstrate that excuse later in court.

Reversing the onus in this matter has human rights implications. Although the presumption of innocence is a right granted in the charter, the right is not absolute and can be subject to reasonable limitations. The analysis of this restriction of the right shows how the right is limited, though justifiably so.

The DEPUTY PRESIDENT — Order! Thank you, Minister. Good answer.

Ms PENNICUIK (Southern Metropolitan) — Further on that issue, if it were the case that there could be other lawful excuses, why were these not listed in the bill, because I would have thought that the courts would have to refer to the act in deciding?

The DEPUTY PRESIDENT — Order! I actually think the minister covered that in his last answer. That is why I said it was a good answer. I think it was pretty

clear. I think Ms Pennicuik is dealing with a bit of a nuance there rather than some new substantive matter. Did the minister want to answer that?

Hon. J. M. MADDEN (Minister for Planning) — No.

Ms PENNICUIK (Southern Metropolitan) — In answer to one of my previous questions the minister appeared to be saying that it was the government's view that in the case of graffiti it is reasonable that the civil liberties accorded to citizens in this state be suspended under clause 7.

Hon. J. M. MADDEN (Minister for Planning) — No, I think Ms Pennicuik is attributing a lot more to my words than I actually said. I am happy to go into more detail in relation to the reverse onus.

The major reason in favour of applying the reverse burden of proof when a person possesses a prescribed graffiti implement generally is that there is a key weakness in the current enforcement regime available in relation to graffiti offences. The weakness is the difficulty of proving the requisite intent of a suspected graffiti offender found in possession of graffiti implements but not actually caught in the act of marking graffiti. The nature of graffiti perpetration makes the apprehension of offenders in the act of marking graffiti particularly problematic. Offending behaviour often occurs late at night in low-traffic areas and involves the use of ordinary, otherwise lawful and easily concealed implements — although technological advances such as Tripwire and CCT (closed circuit television) technologies show promise in increasing the capacity to catch graffiti perpetrators in the act. These are still currently resource-intensive initiatives requiring active monitoring and instantaneous response.

These technologies also provide some forensic value in the identification of offenders after the event, but many offenders are careful to take steps to avoid identification. Victoria Police has indicated that the investigation of graffiti offences is time consuming and resource intensive, and it is difficult to justify directing resources to graffiti offences when positive enforcement outcomes are so problematic.

So again I go back to the point that in those instances we have sought to focus on and strengthen the capacity to prevent graffiti but also to find the perpetrators and seek to have them prosecuted. There will always be a debate over whether the balance is right, in terms of whose liberty reigns over somebody else's, and in this instance we believe that we are doing justice to the broader community in relation to this matter.

The DEPUTY PRESIDENT — Order! If there are no further comments, I propose to put clause 7 to the test. I advise the committee that Ms Pennicuik's line of debate in this committee in respect of her amendment 8 has been undertaken with the intent of inviting the committee to vote against the clause. So the position put by Ms Pennicuik is that the committee should vote against the clause.

Clause agreed to.

Clauses 8 to 12 agreed to.

Clause 13

The DEPUTY PRESIDENT — Ms Pennicuik, by way of her amendment 15, which is also a test for her amendments 16 to 23, is inviting the committee to vote against clause 13.

Ms PENNICUIK (Southern Metropolitan) — I am wondering why the government has chosen to introduce a clause for searching without a warrant for this offence, given that again this offence will mainly involve minors.

Hon. J. M. MADDEN (Minister for Planning) — Again, this warrants a targeted approach. I will have to go into a bit more detail in relation to this. I do not want to prolong the committee stage, but I am happy to speak to this in a little bit more detail thereby hoping to not have to speak in greater detail later. Clause 13 allows a police officer in certain circumstances to search a person without a warrant and seize a prescribed graffiti implement or evidence of the commission of an offence under this legislation. I am advised that a police officer may search the person if the officer suspects, on reasonable grounds, that the person has in his or her possession a prescribed graffiti implement on property or in a place referred to in clause 7(1) — that is, when the person is on or around public transport infrastructure, or when trespassing — and relevant evidence is likely to be lost or destroyed in a search if the search is delayed until a search warrant is obtained. That is a very important point.

I am also advised that the place in which a person must be in order to trigger the legal ability of police officers to search him or her is limited. It must be on public transport or in a place in which the person is trespassing or in an adjacent public place. An adjacent public place is a place that is near to and visible from public transport infrastructure, even if the place does not adjoin the public transport infrastructure. A place, for these purposes, is any public highway, road, street, bridge, footpath, foot way, court, alley, passage or thoroughfare, any park, garden reserve, any place of

public recreation or resort, any railway station, platform or carriage, any wharf, pier, jetty or any market.

As a result of the interaction between the clause and the definitions that support it, a person could not be searched, for instance, in the pub that lies opposite the train station, even though the station is near to and visible from the pub. A person aged under 14 years cannot be searched under this provision, and a person aged between 14 and 17 must be subject to particular search conditions, as outlined in clause 14. Hopefully that gives a little bit more technical detail, and I hope I am doing justice to the member's question.

Ms PENNICUIK (Southern Metropolitan) — I ask the minister: is it not the case that the term 'reasonable suspicion' provides a lower threshold for an enforcement officer than the term 'reasonable belief', which is the term used under the Firearms Act? If an enforcement officer feels a person has a firearm, they can only search them if they have a reasonable belief, but if they believe they have a graffiti implement, they can search them under reasonable suspicion. So it is easier to search someone with a graffiti implement than it is if they have a firearm.

Hon. J. M. MADDEN (Minister for Planning) — I am not able to give an accurate answer to that at this point in time, but I am happy to seek to provide that answer through the appropriate minister.

Clause agreed to.

Clauses 14 to 27 agreed to.

Clause 28 agreed to.

Postponed clause 2

The DEPUTY PRESIDENT — Order! As Ms Pennicuik's amendment 1 has been tested previously during the course of the committee I will now put the question:

That the clause be agreed to.

Clause agreed to.

Postponed clause 3

The DEPUTY PRESIDENT — Order! Clause 3 was also postponed because of consequential amendments that have now been covered by the debate in committee. Those matters, subject to amendment, have now been resolved.

Clause agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

I thank honourable members for their contributions.

Motion agreed to.

Read third time.

TRANSPORT LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 11 October; motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

Mr KOCH (Western Victoria) — It is a pleasure to rise on behalf of the Liberal Party to speak on the Transport Legislation Amendment Bill 2007. This is an omnibus bill which further attempts to reform the state's transport system.

The Liberal Party has consulted widely on the bill with state and national transport bodies and having done so will not oppose the bill, although at a later stage I will move an amendment which I will refer to in this debate.

The bill has eight main provisions. It introduces a new ticketing solution with the myki smartcard, which has certainly given some grief in being put in place. It also assists in the renegotiation of the metropolitan bus services contract. We appreciate that if this is not handled properly it may mean some difficulties for those holding the licences in a couple of ways.

The bill provides for financial assistance to traumatised train drivers who have been unfortunate enough to witness loss of life in their duties. I will speak further on that later. We also note that more enforcement is being put in place in relation to touting controls on passenger vehicle operators and hire car operators. This is well overdue, and the Liberal Party has concerns about the touting activities that take place. The amendment I referred to earlier relates to touting. It is in the hands of the Clerk and has been distributed to other parties in the house. I am quite happy for the

amendment to be distributed to others in the house, and I will refer to that later.

The bill introduces railway safety interface agreements. It reinforces government policy on full fee-paying international students. It enables immediate timber clearing on railway reserves by rail operators. We see that as a common-sense approach in many ways, but we believe that from a safety point of view it is overdue. Last, but not least, the bill offers authorised officers greater discretion in the parking areas of public reserves. Of course that particularly relates to railway stations, where we note there is limited capacity to meet the increased use of public transport services and this has caused some frustration in relation to car parking for those wishing to use rail services.

In relation to the smartcard ticketing system, which is otherwise referred to as the myki ticketing system, we note it has been under a cloud for quite some time. We accept that it will provide obvious opportunities for the travelling public, but it has been a long time coming, it has been expensive and it has not been without its worries. Principally it has been put in place to assist the travelling public. It is an opportunity to speed up people's access to public transport. Fares will be deducted via a swipe process from funds already lodged on the cards. It will certainly speed up passenger access and at the same time make it difficult for those who want to defraud the system, and quite obviously we think that is also very important.

The smartcard system is not new; it is not rocket science. It has been in place for quite some time in places like Hong Kong, London and Singapore. However, it has caused some concern in mainland Australia, not only to the Victorian government and our ticketing authority but to authorities in Queensland and New South Wales, which have also had quite a bit of difficulty in putting it into the marketplace.

We are of the strong belief that the Transporting Ticketing Authority, which is a government agency, has botched the introduction of the total process, especially in the area of probity. That is of great concern to us, and I am sure it is a cause of frustration to the government. We are aware that this was recently reflected in the Auditor-General's report, and quite obviously that did not cover the Transporting Ticketing Authority in any glory.

As I mentioned earlier, we note that the system has been quite expensive to incorporate. I believe something in the order of $450 million to $500 million has been expended in bedding down the system. We certainly hope it is successful once its introduction has been completed. It offers a lot of opportunities, but we are very concerned about probity and what took place in relation to the introduction of the system, particularly from the point of view of those who wanted to tender for the process initially. Tenderers were hassled to a degree in relation to putting their tender documents forward, which has been brought to our attention through our consultations. It is of concern to us, and it is certainly of concern to those who attempted to put forward tenders. The other thing of concern to those involved with this process is that non-current figures were requested to be used. Tenderers were asked to put in figures from an earlier stage — 2005 costings. That has left some of those people wondering why the Transporting Ticketing Authority went down that track and did not want current numbers.

We are happy to see this system introduced. We want it to be perfect; we do not want any further hassles with it. We have been very concerned about the way it has been handled, particularly the probity issues. Tenders were taken out of the building — the Auditor-General's report gives us no indication of how they got out of the building — and to this day it causes us great concern that documents of that size, which were put in by very large and competitive companies, were treated in that manner and exposed to others in a similar position. That process exposed everyone and broke confidentiality. One of the main things this government always says is that it will maintain commercial confidentiality, but again that has been blown to bits. Some of the competing tenderers for this ticketing system have been left very unhappy with the approach that was taken and with where they have found themselves in the total process.

In relation to the renegotiation of metropolitan bus contracts, we are very supportive of the process being opened up and others being given the opportunity to compete to offer those services. Obviously we support the introduction of the proposed SmartBus service from for those who wish to use that medium of public transport. Many people in the metropolitan area rely on bus services, and we are looking to their continuing to do so. This renegotiation needs to be handled extremely carefully from the government's point of view. There may well be some difficulty in putting this system in place. We know there is some history with some bus operators who have had agreements for a long time and that in the final outcome there may need to be a transfer of property and personnel to winning bidders. Hopefully such matters will not find their way into a court. If they do, we hope the process is handled in the right manner and that there is a seamless transfer if new bus companies or operators are put in the position of carrying out this role.

We are also very aware that this bill needs to get through the house at this time. These contracts and agreements come to an end in December, and it is important for the Parliament to make sure this legislation gets through to allow those contracts to be put in place. We need to ensure there is a seamless transition from the existing contracts to the new contracts, whether the contractors be the same or otherwise.

The bill also covers financial assistance for traumatised train drivers. I think the reintroduction of this opportunity for train drivers is terribly important. It is referred to in clause 9. The bill reinstates what was the situation prior to 2003, when the provision was removed. The amount available to train drivers who find themselves in these circumstances will be $1300. The funds will come from the Public Transport Fund, as they did in the past.

The PRESIDENT — Order! I interrupt the debate to welcome children to the gallery. I remind them to sit back from the rails; they are not allowed to stay near the rails for their own safety. I ask them to be as quiet as they can and to enjoy the contributions of their representatives.

Mr KOCH — I have not been confronted by the type of traumatic event that is sometimes experienced by train drivers. I can only wonder how people who are confronted with it handle it. It would be very difficult, and of course the Liberal Party supports drivers being looked after in this manner. Beyond any compensation from the Public Transport Fund, we believe drivers should also have an opportunity to claim some form of support or compensation from their employer, and that is where we would see the main core of this support coming from. In saying that, I also say that we see this financial support from the Public Transport Fund as going some small way towards assisting people who are confronted by these situations.

We have to acknowledge that we lose more people in fatalities associated with the rail network than we would like; I believe it is something in the order of 40 people on an annual basis. That is something that is not going to go away. In recent times those numbers have not been reduced, although many other safety measures are being put in place. We regrettably see too many people losing their lives through these events. Support of the train drivers in this instance has its own merit and we think the financial assistance being offered is very worthy.

I want to raise the issue of touting controls. We are picking up this issue in our amendments which I request be circulated at this stage.

Opposition amendments circulated by Mr KOCH (Western Victoria) pursuant to standing orders.

Mr KOCH — This problem is not new; it has been around for a long time. It is covered under clause 10 of the bill. We appreciate its greatest instance appears to be from Melbourne Airport at Tullamarine where people still participate in this activity after many measures over many years have been put in place to avoid such things taking place. There is no doubt that touting offers unscrupulous operators an opportunity that others have to be registered and licensed to undertake in the operation of the hire car industry. There are many occasions when we are critical of the Victorian Taxi Directorate and its membership, but under the legislation we need to make its opportunity as viable as we can. Touting erodes that opportunity for these people who put out their hard-earned money to be registered and licensed in a regulated industry. We are certainly not supportive of people in the marketplace eroding any of those opportunities.

The Liberal Party policy position in relation to touting is very clear. We have a strong belief that anyone who wants to participate in touting, whether they are in the hire car industry or not, if they firstly are caught, and secondly are convicted, the opportunity for them ever to hold a hire car or taxi licence again should be taken away from them. That is the way we see it and we will continue to see it along those lines. I think the government mantra should also be going down this track, particularly if we are going to rid the industry of this concern which keeps rearing its ugly head.

The bill picks up the ongoing position of the government on the matter of international full fee-paying students arrangements for public transport. We recognise it would be hugely expensive to make this arrangement available across the board for international students. We are talking about a sum something in the order of $20 million to implement this opportunity for full fee-paying international students. We accept that in making application under private sponsorship, fee-paying students declare they have a capacity to meet any transport and accommodation outgoings, and for that matter any other outgoings associated with their education. We support the government from the point of view that if $20 million were to be deemed to go to our students, we would consider a far better use of that would be in relation to offering further infrastructure gains and developments of our public transport network here in Victoria.

Two developments that immediately come to mind are our concerns for the communities in Rowville and South Morang. For quite some time now it has been indicated that opportunities will be afforded to them for public transport. We believe that international students have made a genuine endeavour to be educated here and they have found sponsorship; their funding is in place. Before selectively offering the underwriting of fees for international students, we believe strongly that consideration should be given to improving our own public transport system in Victoria for all users.

I want to draw the house's attention to level crossing safety, an issue which in recent times has given this Parliament and the Victorian community, especially in regional Victoria, quite some concern in relation to the loss of life. We applaud the government for the many initiatives it has introduced. We know there is an endeavour here to amend the bill in relation to the Rail Safety Act and require further safety interface agreements being put in place, particularly where railways and roads intersect. We recognise some of the initiatives that have been put in place such as the installation of automated advance warning signs; the installation of rumble strips, which are being rolled out now, and we will see more of them as time goes on; the trialling of red light cameras, especially at Springvale Road, Nunawading, and on the Midland Highway at Bagshot; and the proposed introduction of a rigorous level crossing offences regime — for example, speeding through a level crossing before oncoming trains, which regrettably continues to happen.

We certainly support the government in seeing that that is outlawed. There are further works to remove Australian level crossing assessment model visibility problems, and further research is going into new technology applications, which will increase safety, especially with the use of global positioning system. I do not have any trouble at all in supporting these initiatives. As a member of the parliamentary Road Safety Committee, I also mention that this is one of our references, which we will report back on in 2008. The opportunity for submissions has now closed, and we are currently going through those. We are looking at starting our public hearing process early in 2008. We will explore all issues possible, and when we report back to the Parliament in the first half of 2008 we will be making recommendations about safety on railway crossings. This is terribly important, and I look forward to those recommendations being brought back to the house at a later date. The initiatives the government has so far put in place certainly have our support from that point of view.

Lastly I want to touch on the clearance of vegetation. The Liberal Party is concerned that in some cases vegetation has provided sight barriers which have not offered safety opportunities for not only the train drivers but more particularly for the travelling public. I can cite many cases involving small plants, native vegetation — and I do not speak of native grasses, I talk of timber, and that is what this refers to. On a regular basis we see that suckers, after being trimmed, continue to grow, because they are not grubbed out.

I can cite an instance some two years ago where there was a loss of life in western Victoria adjacent to the Western Highway. It is a crossing I use. I do not use it regularly but on a three-monthly basis while travelling around my electorate. I was surprised to find, after a bad accident there where a fatality occurred, that foliage that had been there the previous day was gone the next day. Regrettably it took an accident — in this case a fatal accident — for somebody to move in relation to getting that debris and those trees out of the road. The trees were only small; they were suckers and would not have been more than about 4 metres in height. The opportunity for rail operators to remove such debris without a permit is something we should be supportive of if we are to look at further safety in our rail corridors. As I say, this provision looks after not only fare-paying passengers using public transport but also members of the general travelling public. I am one of them, and like most people in this room I also use public transport on the odd occasion. All road users and rail passengers will benefit from this provision, and rail operators certainly need to offer that opportunity to the travelling public.

In closing I say that the Liberal Party is supportive of most of the clauses in the bill. Importantly, I would like to read into *Hansard* our amendment which relates to touting and refers to clause 10 on page 16 of the bill. Our amendment is that after line 32 we propose to insert:

> (5) A person who is convicted of an offence under this section is not eligible to be granted or continue to hold —
>
> (a) a taxi-cab licence; or
>
> (b) a hire car licence.

If the amendment succeeds, two other clauses would just be moved down. That amendment will be debated at a later hour this morning. With those words I complete my contribution and again say that the Liberal Party will not be opposing the legislation before the house.

Mr DRUM (Northern Victoria) — This is an opportunity for The Nationals to contribute to debate on the Transport Legislation Amendment Bill. I would like to put on the record that The Nationals will not be opposing this bill.

The overall purpose of the bill is to deal with the introduction of smartcards in this state. A whole range of cards are available, and I will go through that in a minute. It will also put in place some legislative framework around the new metropolitan bus contracts that will be introduced by the end of the year. It will confirm the existing policy in relation to full fee-paying university students, or students in general, and their access to concessions within the public transport sector. It will also provide for financial assistance to traumatised train drivers following non-criminal fatalities. It will introduce more effective controls over touting of commercial passengers by operators, and will also put in place some measures for breaches in the parking regime around train stations, which is quite complex. There will also be some alignment of state and federal rail safety legislation.

Firstly I want to thank the member for Mildura in the other place, Peter Crisp, who has been able to do some pretty significant investigation into the technology surrounding the smartcards that will be introduced into Victoria. These smartcards were introduced in Europe in 1982, when they were used in phone technology, so they have been around for a while. They have been used in South America for over 10 years, and in some South American countries they have been used with enormous amounts of information stored within them, such as drivers licence and those personal details that we sometimes find on the back of our plastic licence. Under the South American model far greater quantities of information are able to be gathered and stored on the smartcards.

As was mentioned by the previous speaker, smartcards have been introduced in Shanghai and Guangzhou in China. They have been able to link up the taxis, the ferries and also the metro system to give the public transport sector and its users a universal card which is in effect able to think for itself. There are many, many systems currently operating around the globe. This would suggest that Victoria should be able to move into the type of technology we are introducing without any of the teething problems Sydney experienced in the late 1990s.

Mr Crisp is a technological whiz. He has informed me that of the types of cards that are available, we could have a memory card, a microprocessor card, a cryptographic card, optical memory cards, radio frequency identity cards, dual interface cards and dual or multipurpose cards. All those cards have different functions and the respective ones can be called on for whichever function they are needed. They operate in different ways and they have different capabilities.

I understand that the card the Victorian system has chosen will need to be swiped some 7 to 10 centimetres from the reader. It will be interesting to see how these cards work. I recently went to Oaks Day, and anybody who went to the races by public transport would have been part of the crush to get onto a train to get to the races and then to get home as well. It will be interesting to see how we handle the demand if we have to get close to a reader. At some of our major sporting events, whether it be the football finals, the Boxing Day test, the football or the tennis, there are enormous numbers of people trying to access peak-hour services at the one time.

Another model, which has been used in other parts of the world, works in a similar way to our CityLink beep system, where simply by driving under the gantry the system connects to the receiver in the car. There is a model that would work like that. Maybe having a radio frequency system where you are debited your fare as you walk on to a tram, train or bus could alleviate the potential problems with some of the really crowded services.

Another important aspect to do with the introduction of these smartcards is that we will still be able to cater for the occasional public transport users. Many people in regional Victoria may only use public transport two or three times a year. It will not be worth their while to pick up an elaborate smartcard. We will still need to make sure it is easy for them to simply pay cash for a couple of simple trips on our public transport system each year.

A very serious aspect of the bill relates to providing financial assistance to train drivers who suffer from trauma following fatalities. At the moment any fatality that does not involve a criminal act leaves these people devoid of any assistance whatsoever. In 2003 the Victims of Crime Assistance Tribunal ruled out compensation for train drivers involved in fatal accidents where there was no criminality. This bill will make it possible for those affected drivers to garner some assistance. We think that is a positive step in the right direction.

This legislation also deals with the complex matter of introducing new contracts for the metropolitan bus operators and facilitating the extension of those contracts. We know that over time various court rulings

have gone in favour of the bus operators, which has led to those operators treating those services as their personal assets. They consider that those services have become their property. Over the same period of time the government has become a huge financier of the metropolitan bus service and the public transport sector. We have a very complex situation where the government is a financier, and the private sector operators in effect consider the services to be somehow their property. The legislation will put in place a framework to enable those contracts to be worked through with the government. It will enable the government to put in place a framework which will see those contracts extended from the end of 2007 through to the next few years.

While the government has some real challenges ahead in relation to those services, it also has some real challenges ahead in relation to some of our rail infrastructure. This government has made many promises about fixing up some of our ageing rail infrastructure, and it has had a range of responses to its promises. Most notably in 1999–2000 the government promised to standardise the rail line in north-western Victoria through to Mildura. That promise has been frozen and walked away from. Now 25 per cent of that promise will be carried out. We will see some works taking place. The federal government will enable money which was initially laid down specifically for standardisation to be spent on an upgrade of some sort. This will see the speed limit on the rail infrastructure in north-western Victoria increased from the 15, 20 or 30 kilometres an hour that some of our freight trains currently move at, up to around an 80-kilometre-an-hour limit. It is still very poor. There is still an enormous amount of work to be done.

We are not even talking about the horrendous situation we currently face with the safety surrounding rail crossings; in this instance we are simply talking about the state of our freight network. As Mr Koch mentioned earlier, we really do have some serious issues. The government is now jumping into action in relation to the rumble strips, the additional signage and the lights which will flash well in advance of trains crossing some of our more dangerous level crossings, especially those crossing some of our busier highways. It is good to see that. I noticed last week on my way through St Arnaud, where the train line crosses the highway on two occasions, that some significant upgrades have been made in the last three or four months, or since they were stung into action by the Kerang fatalities.

This bill will also mean that full fee-paying international students will not be entitled to any concessions while travelling on the public transport system in Melbourne. Currently New South Wales and Victoria are the only states that have gone down this path. Queensland, Western Australia, the Northern Territory, Tasmania and the Australian Capital Territory all offer some degree of concession to full fee-paying international students. The Nationals believe the government needs to watch this. We need to make sure that we appreciate the economic impact of having international students in our state. If they are going to be lured to Queensland, South Australia or Western Australia, we need to be very mindful that the overall package we offer to international students needs to remain attractive. The number of international students who come here gives the state an enormous economic advantage.

The bill also deals with road rules and parking breaches around our railway station parking areas. Parking infringements at Sunbury railway station in the southern part of my electorate cause enormous chaos when people park illegally around the station. When you talk to the people of Sunbury you find it is one of their biggest concerns. Many people in Sunbury use the train to get to work, and their inability to get a park anywhere near the station is of real concern.

The Nationals will not be opposing this bill, but in relation to taxis we will not be supporting the provisions in relation to touting. We think that even the government's measure of a $5000 fine for touting to be heavy handed, so we consider the Liberals amendment to provide that a taxidriver would lose his licence or that someone who was not a registered taxidriver would be prohibited from ever having a taxi licence to be doubly heavy handed. The practicalities of this issue need to be talked through. There have been many times in both Sydney and Melbourne when I have had to join the queue for a taxi and have needed only $7 or $8 for the fare. Taxidrivers who have waited 45 minutes or more to get such a fare are suitably unimpressed when you tell them you only want to go from the airport to Mickleham Road because they are going to lose money on the trip.

A number of taxidrivers over the years have told me that if I want to go 4 kilometres from the airport, I should go upstairs to the arrivals area and jump in a taxi that has just dropped somebody off. If I do that and travel the 4 or 5 kilometres, it saves me having to line up and it gives a small fare to the driver who has just dropped off another passenger. It saves the taxidrivers who have been waiting for up to 50 minutes for a decent fare from having to accept a $7.50 fare. We need to work through this issue using common sense and come up with a system that will be a win-win for everybody. We do not necessarily need to crack down

so hard on this issue. If we open Pandora's box, will we come up with a system that will not be abused?

I think we need to be continually working through this issue. I understand the major driver for the $5000 fine is coming from the airport sector; it is not necessarily coming from the taxidrivers. As I say, they are the ones with whom we need to liaise to ensure that the decisions we make around this area are fair. I imagine that if you are a taxidriver, you may not have been in Australia for all that long. If you drop somebody off at the airport and all of a sudden, before you can blink, somebody jumps in and says, 'I am only 5 minutes around the corner', you might not realise that you are running the risk of copping a $5000 fine or, if we were to accept the Liberals amendment, losing your taxi licence forever. We will not be supporting that. As I say, this debate has given us a bit of food for thought, and we need to continue to monitor how this anti-touting legislation works. For the benefit of everybody there may be able to be some other arrangements made for very small fares to places on the fringes of Sydney and Tullamarine airports.

As I have said, I want to thank the member for Mildura in the other place, whose knowledge of the smartcard technology is unsurpassed in this place. I want to again state that The Nationals will not be opposing this legislation.

Ms HARTLAND (Western Metropolitan) — As the two previous speakers have gone over many of the technical aspects of this bill, I do not intend to repeat them. I will just be speaking of the concerns the Greens have with this bill.

Our first concern is what we would consider to be the discrimination against full-fee-paying students. The purpose of clause 23 is to treat one sort of full-fee-paying student differently from another full-fee-paying student on the basis of their nationality. We consider that to be discrimination, and the Greens will oppose it. Last year international students brought $3 billion into the economy. The source of my information is Australian Education International, which is part of the federal Department of Education, Science and Training. As Mr Theophanous pointed out on 21 December 2006, Box Hill Institute has been recognised for its work in providing vocational training to approximately 1200 international students a year. That shows that the education industry is helping to drive our economy and our export success.

Extending public transport concessions to international students would cost $22 million. I would like to remind the house that they bring in $3 billion in income. The statement of compatibility claims that it is fair to exclude international students from taxpayer-funded entitlements as they do not pay tax. As someone who uses many taxis now, I notice that nearly every taxidriver appears to be an Indian student who is working 20 hours a week and studying full time. Those students most certainly are paying tax. Where would the taxi industry be now without overseas students? Exchange students who come here for one semester get concessions. Australians students who do not work and do not pay tax are nevertheless entitled to concessions. There is no reason for this discrimination. To the Greens it is plain that it is simply discrimination.

The Scrutiny of Acts and Regulations Committee report questions whether clause 23 alters the definition of discrimination for the purposes of the Charter of Human Rights and Responsibilities. If this is so, why has the charter not been complied with? These are serious questions, and obviously during the committee stage I will be asking further questions.

I think we should look at what it is like to be an international student. They have to study full time; they are entitled to work 20 hours a week, and they pay tax. They also have other limited opportunities to support themselves. Often there is an image that all overseas students come from rich families. The ones that I have encountered often do not. It has been a great sacrifice on the part of their parents to be able to send them to Australia to be educated.

I have also encountered terrible stories from overseas students. Before leaving India earlier this year a group of students studying at the Central Queensland University were shown photos of the university, but it was actually the campus in Queensland; it was not the shopfront of the campus in Lonsdale Street. These students already encounter a great many problems, and to further discriminate against them on the basis of where they come from in relation to concessions is completely unfair.

Earlier this year, in a debate on amendments to the Equal Opportunity Act, my colleague Sue Pennicuik argued that small businesses and religious schools should not be able to discriminate on the basis of race, gender, sexuality or where a person was born. She also argued that we should not be able to discriminate against people who ask questions in relation to their employment. We would equate the discrimination in this bill with the discrimination outlined in that earlier speech.

International students who come here may have disabilities. The DDLS (Disability Discrimination

Legal Service) sent a letter to our office that we think had a very well-argued response to the legislation. It pointed out that some international students experience other disadvantages, such as a disability, so why is it that they are excluded? There is currently a discrimination complaint being pursued in the (VEOHRC) Victorian Equal Opportunity and Human Rights Commission on this issue, and it is quite pleasing to see that the government has an amendment to this bill withdrawing the name of that complainant. That complainant should never have been named; the name of the organisation that was putting in the complaint on her behalf should have been used.

The complainant in this case is the ECCV (Ethnic Communities Council of Victoria) in a representative action lodged under the new provisions in the Equal Opportunity Act, where enacted, to prevent exactly this sort of exposure of people in vulnerable situations. This is the first complaint lodged under the new provisions, and the way the government handled it is very disturbing. It was only rectified on Tuesday. This sets a terrible precedent for people considering having their complaints handled by representative bodies such as the ECCV. How will they be sure in the future that they will not be named?

This provision is now in breach of the government's new Equal Opportunity Act complaint provisions introduced last year. I quote from the second-reading speech on the Justice Legislation (Further Amendment) Bill made by the Minister for Police and Emergency Services in the other place, Mr Cameron, on 24 August 2006:

> The bill also introduces a representative complaints mechanism to the equal opportunity jurisdiction. Bodies with sufficient interest in a complaint will be able to lodge a complaint on behalf of a named complainant or complainants. It will ease the concerns that some individuals have in lodging a complaint in their own capacity. The mechanism matches that in the Racial and Religious Tolerance Act 2001

Putting aside the substantive issue of discrimination around transport concessions, I do not understand why it took the government so long to correct this situation, nor do other organisations such as the ECCV and the PILCH (Public Interest Law Clearing House), which is a legal centre that finds lawyers prepared to do pro bono work for community groups. I quote from the PILCH newsletter, which states:

> In February 2007, the Ethnic Communities Council of Victoria (ECCV) approached PILCH for pro bono assistance to bring a representative action on behalf of international students in the Victorian Equal Opportunity and Human Rights Commission. This action was to explore whether the denial of concession rates to international students by the Department of Infrastructure constituted racial discrimination in the provision of goods and services under the Equal Opportunity Act 1995. During the course of this action, the Transport Legislation Amendment Bill —

which we are speaking to today —

> was entered into the Parliament of Victoria. If passed, this bill could effectively eliminate any future applications to the commission or to the Victorian Civil and Administrative Tribunal (VCAT) and quash the legal debate regarding discrimination against overseas students with respect to transport concessions.

I find that quite appalling.

With all the advice the government has received I am not sure why it has decided to continue in this vein. We have started to use the expression, 'If you can't beat them, legislate against them'. Unfortunately that is what I think is happening here again.

A similar case went to the New South Wales Antidiscrimination Board. The board ruled against the New South Wales government and gave it three months to clean up its act. As Mr Drum said, only New South Wales and Victoria do not give concessions to overseas students. Full-fee-paying Australian overseas students in France, Canada and Ireland get concessions. What is the difference between our students being overseas and receiving concessions and overseas students living in Australia receiving them? Would the Victorian government suggest that concessions be removed from those students to make sure things are equal?

It is a fact that corporations discriminate less than the government does. Entertainment venues such as Hoyts and the Melbourne Zoo give students concessions, but on public transport the Victorian government has chosen to continue to discriminate against overseas students. The Greens believe that clause 23 of the bill is a backward step.

I would like to thank the Ethnic Communities Council of Victoria, the Disability Discrimination Legal Service and PILCH for their assistance, and I support the work they do against discrimination.

I want to touch also on what is a good beginning in the process of providing compensation for train drivers. I do not consider it goes far enough. I have two concerns about this, and the Greens will be moving a number of amendments in relation to the proposal. One is that, as the bill currently stands, the train driver involved in the Kerang accident would not be entitled to compensation. The people killed in the Kerang accident were not killed by the vehicle or train but were in a carriage, and therefore the driver would have no entitlement to compensation. There were also two conductors in the carriage where the mass deaths and casualties occurred.

Under the current bill those conductors, who had to deal with a hideous and traumatic situation, would not be entitled to compensation. That is not fair.

I have known of a number of incidents where people at train stations have had to deal with suicides before the ambulance or police have arrived and have had to assist the train driver — in the Kerang case it was the conductors and the driver. I do not consider it fair that compensation is not to be extended to all transport workers who are directly involved in a fatal or serious accident. Members are aware that suicides at train stations are often not discussed. I understand the rationale for that — we do not want people to be taking on copycat behaviour. For some people it might be a quite invisible trauma, but it happens regularly and it is incredibly traumatic for train drivers and station staff. The Greens will attempt to amend the bill in that respect.

The issues the Greens have raised today on these two matters and the further matter that Mr Barber will raise are quite serious. The government should look at the way it presents legislation to this house. When there are matters to consider such as those addressed by the bill, the government should not be including them in one bill. Obviously the issues around the bus contracts are incredibly important, as are the issues around rail safety and rail crossings. Gathering them all into the one bill when there are time limits is not a good way to handle legislation. During the committee stage I will speak to the rest of our amendments.

Mr SCHEFFER (Eastern Victoria) — I rise to support the Transport Legislation Amendment Bill, which has a number of components and is a further step in the government's transport policy Meeting Our Transport Challenges. The bill amends three main acts and seven others. The three main acts are the Transport Act 1983, the Public Transport Competition Act and the Road Safety Act. The bill deals with seven main areas, the first being the use of the smartcards, which are an important element in the Meeting Our Transport Challenges policy direction of the government. The bill provides for the introduction of new bus contracts. It also deals with providing financial assistance to train drivers who are traumatised, as has been said by previous speakers, as a result of their being involved in tragic incidents, in many cases involving suicide. The bill also deals with controlling illegal touting by commercial passenger vehicle operators and other vehicle drivers.

The bill also deals with rail safety, primarily by introducing requirements for safety interface agreements at rail and road crossings. I consider that to be a particularly good aspect of the bill because it involves a process that encourages stakeholders at the local level to develop plans that will go to reducing risks at level crossings. That of course is not before time, given the tragic events that have occurred, most notably at Kerang. Finally, the bill confirms the policy that private full-fee-paying overseas students are not entitled to concession travel on public transport.

The minister's second-reading speech is longer than usual. It is very comprehensive and covers in considerable detail each of the matters that the bill deals with. The statement of compatibility presented in accordance with the Charter of Human Rights and Responsibilities is similarly very comprehensive. This is important because it goes to the seventh of the items that the bill addresses, which is the policy that private full-fee-paying overseas students are not entitled to concession travel on public transport. As the statement of compatibility says, the objective of the amendment to the act is:

> … to confirm the power of the director of public transport to determine and publish a condition that provides that overseas students or specified classes of overseas students are not eligible for student concession entitlement to use a public transport service.

Members have heard a very serious and well-prepared contribution by Ms Hartland, and it is important to take that into consideration. However, in looking at the statement of compatibility, the background is important. Members will be aware that the Sydney University Postgraduate Representative Association ran an equal opportunity case that resulted in the New South Wales Administrative Decisions Tribunal determining that it was discriminatory for the then Minister for Transport Services in New South Wales to exclude full-fee-paying overseas students from the state's concession scheme because the scheme is a service and should be made available to everyone. A similar case is currently before the Victorian Equal Opportunity and Human Rights Commission. It challenges the validity of the current policy because that policy discriminates on the basis of race.

The Victorian government has looked carefully at the situation, as is evidenced in the statement of compatibility. Through the amendments made by this bill, the government aims to confirm the current policy — namely, that student travel concessions should continue to be available to full-time students who are Australian citizens, permanent residents, refugees, exchange students and those overseas students who hold scholarships, but not to those who hold temporary student visas. The particular clause that Ms Hartland referred to appears on page 25 of the bill.

Clause 23 inserts section 220DA(5)(a), which preserves the right of the particular complainant, Elva Zhang, who is named, to pursue her case even though the bill as a whole provides that further cases cannot be brought. So retrospective provisions do not apply to the specific complainant.

The argument that this policy and the amendments to the Transport Act made by clause 23 are discriminatory is also dealt with in the statement of compatibility. There are four main points that members need to take into account in considering this matter. Firstly, targeted welfare benefits are by definition not universal and involve governments and policy-makers making distinctions between people who will receive a benefit and those who will not. Secondly, in the case of entitlement to public transport concessions, it is not discriminatory to make distinctions on the basis of citizenship, residency or visa status. Thirdly, it is the government's view that it is not unreasonable to invest in those students who have a long-term connection with this community and who are current and future taxpayers. Fourthly, it is reasonable to entitle non-citizens, such as permanent residents and refugees, to transport concessions where they are likely to have an ongoing connection to the country. That is the starting base.

The statement of compatibility, incidentally, also relies on a view of the House of Lords, which found that it is not discriminatory to limit aged pensions, for example, to people who live in the United Kingdom and pay tax. So there are precedents for this in British law.

The policy does not discriminate on the basis of race. It discriminates amongst overseas students on the basis of the type of visa they have. The bill confirms the government's current policy of not providing public transport concessions to private full fee-paying overseas students, and I think that this is a good example of the way in which the statement of compatibility process, which is now of course a requirement under the Charter of Human Rights and Responsibilities Act, can work through issues of this kind of complexity. The government acknowledges the importance of ensuring that no legislation diminishes human rights and that the issues are taken into account in the drafting of the bill.

Returning to clause 23, I understand that Mr Theophanous during the committee of the whole will be raising an amendment that might deal with some of those issues that have been discussed with the Greens, so I will not discuss that clause any further here.

Clauses 3 to 5 of the bill insert a number of provisions into the Transport Act to deal with the introduction of the new ticketing system. These amendments support the introduction of that system and the operations of the new myki card. In particular this relates to keeping fare evasion under control. The myki card will provide easier use of public transport, and it will hold information that relates to the validity of a ticket on a microchip that is embedded in the card. There will be a hand-held device, or scanner, that will be operated by an inspector so that the data on that card can be read.

Amendments to the Transport Act contained in this bill define the kind of mechanism or machine that can be legally used as a hand-held reader. Clauses 3, 4 and 5 — and 5 is extensive — also permit the government to make regulations to cover the use of the myki card and the storage and uploading of information onto it. These are technical and difficult issues, and we need to ensure that as the facilities are introduced as part of the new ticketing system, the information is able to be confirmed and corroborated so that people who may be challenged in relation to fare evasion have access to clear information that is able to establish the facts. The information on the myki card will be used where it is necessary to establish the facts in the case of fare evasion.

Clause 9, which inserts proposed section 12 into the Transport Act, deals with financial assistance to train drivers following fatal incidents, which I think all members who have spoken before me have dealt with. This is a serious matter. The proposed section provides for a scheme for granting financial assistance to train drivers following fatal accidents. Each year, as members would know, a number of people tragically commit suicide by throwing themselves in front of trains. This sort of event has affected people in my life, and it is appalling and traumatic when it happens. Amid the grief that overwhelms the family and friends of a person who has died in this terrible way, there is always a sense of the unknown figure who is the driver of the train, who you have no knowledge of, but you know is there. There is a person, there is a family and there is a workplace that is supporting this particular individual. The trauma to that person of course can last for years; it is severe, and the mental stress probably lasts for the rest of that person's life.

I understand that under the current arrangements train drivers involved in these sorts of events can claim for lost earnings and for medical costs, but compensation for pain and suffering is only provided where there is permanent impairment so significant that the driver cannot be expected to drive a train again — so it is a fairly high bar. Because suicide is not a crime, train

drivers who are involved in those events cannot claim for pain and suffering under the Victims of Crime Assistance Act. The amendments in this bill will require the director of public transport to pay financial assistance to train drivers who drive trains that strike people in this way. In effect what that does is restore to drivers a right to make a claim that was previously available under other legislation.

The final matter that I want to deal with just quickly is the issue of level crossings. This is also an important matter that has had tragic consequences. Clause 61 amends the Rail Safety Act. These amendments require rail infrastructure managers and road authorities and private landlords in a particular area to identify and undertake a risk assessment at level crossings so that a comprehensive safety plan is developed that will work towards ensuring as far as possible that level crossing accidents are prevented.

The Rail Safety Act is part of an approach to developing a national model of rail safety so there can be a national framework and consistency between the states. The Victorian government has delivered considerable reforms in the state well ahead of the Australian Transport Council's target for national implementation, and that is a good thing. The provisions in this bill, then, aim to establish safety interface agreements at designated locations which will contribute to the achievements of those national reforms under that framework.

In considering this bill I think it is important to acknowledge the terrible incidence of crossing accidents — for instance, the accident that occurred earlier this year at Kerang, which resulted in 11 people dying. That accident showed again that more work has to be done to improve rail safety, and the establishment of safety interface agreements under this bill is aimed at that, which I think is something we would all support.

Finally, it is important to recognise when referring to our Meeting Our Transport Challenges policy the background that the government has already introduced a number of initiatives that will help level crossing safety, including the state road and pedestrian level crossing upgrade program, driver education, the installation of automated advance warnings and rumble strips, and works to remove visibility problems. Some research is also being conducted into new technological applications that may increase safety, such as global positioning systems.

The bill contains a large number of amendments that support a wide range of initiatives that are contained in the government's broad transport policy and objectives. As members know, Meeting Our Transport Challenges is a 10-year plan. It is now well under way, and evidence of it can be seen right across the state. It can certainly be seen in East Gippsland in the major developments of the rail system there. With those comments I commend the bill to the house.

Mr GUY (Northern Metropolitan) — It is a pleasure to speak on the Transport Legislation Amendment Bill. I pass on my thanks to Mr Scheffer and Mr Koch for their very detailed explanations of the bill, which I do not intend to repeat for the benefit of the house since that has been pretty comprehensively done. We note that this is an omnibus bill of transport issues. However, in talking about the issues contained in this bill, such as myki, the Metlink smartcard, metropolitan bus contracts, assistance for traumatised train drivers and rail safety interface agreements, it is worthwhile noting that there are some broader issues around public transport in Victoria at this time that have relevance to this bill.

Having listened to Mr Scheffer speak about upgrades to rail lines in East Gippsland, I would like to remind him and the house of some promises the government made in relation to rail in the lead-up to the 1999 election. The government was to reinstate passenger services to Leongatha and Mildura, and it is an indictment of the government that after eight years it seems to have forgotten those promises — they seem to have been conveniently popped on the backburner. If the people of Leongatha want to get a train to Melbourne they might have to get the tourist train, which I think goes to Bena or somewhere halfway up where the old railway line used to be. It certainly does not go to Melbourne. If you go up the Leongatha line a little towards the city, you will come to Cranbourne. According to another promise by the government the railway line was meant to be extended from Cranbourne to Cranbourne East on the metropolitan system, but that seems to have fallen by the wayside.

If you go to the northern suburbs, where I am from, you will come across the Epping to South Morang section of railway line, which the government promised would be electrified. It is on a reservation of the old Whittlesea line. The reservation is there. It is not as if the government needs to compulsorily acquire land or build major infrastructure, apart from laying the line and erecting the station which is proposed for South Morang. It is really inconceivable that we are still talking about the extension to South Morang not having been completed after eight years of Labor government. But we certainly should not be surprised. It seems to be a theme that runs through the promises the government makes on transport issues that it fails to deliver them. I

mention these issues while speaking on a bill relating to transport because they are very important.

As has been said, the rail safety interface agreements, or in general terms the security agreements in relation to level crossings, are very important and are agreements that the Liberal Party does not oppose but supports. Level crossings are obviously a major hazard. At any stage where you have heavy rail crossing a road you have a potential for risk. Level crossings in Melbourne number some 370. I notice that Mr Finn has just come into the chamber, and many of those level crossings are in Mr Finn's electorate.

Mr Finn — St Albans.

Mr GUY — Mr Finn is quite right. Some of the most dangerous and some of the most congested level crossings in the suburban area exist on the Sydenham line. Mr Finn would certainly be well aware of those, and indeed people in this chamber who know the outer western and north-western suburbs, as many of us do, would be well aware of those. It is worth taking into consideration when talking about level crossings and level crossing safety that Melbourne has some 370 level crossings on the suburban network. There are less than 10 level crossings on the Sydney urban network. That is an incredible contrast. When I catch the train home from Parliament station and get off at Preston I will have gone through more level crossings on that 7 or 8-kilometre trip than exist in the entire Sydney metropolitan network. That is quite an amazing fact to keep in mind.

After eight years in power the government has eliminated only two level crossings on the network — one in Narre Warren and one at Middleborough Road — and it appears there has been no follow-up on the elimination of the level crossing at Springvale Road, Nunawading, which the Liberal Party has made a number of commitments in relation to. We think that bottleneck certainly should be eliminated. It is worthwhile considering the problems with level crossings on the Melbourne metropolitan network at the moment.

We support the myki ticketing system initiative despite the fact that the implementation of it appears to be in disarray and is six months behind. As Mr Koch outlined in his speech, tenders appear to have left the building in relation to the contracts for this system. I find it amazing that the government can come in and talk about probity and confidentiality of processes when anyone who has read the Auditor-General's report on this process so far would just be flabbergasted at how it has been handled. That is a concern the Liberal Party has with myki.

I note that Ms Hartland has foreshadowed amendments in relation to financial assistance for traumatised rail drivers. We believe that financial assistance for train drivers who have suffered trauma as a result of suicides is certainly warranted. It is an unfortunate reality with any rail system that people choose to use it for that purpose. I feel personally very sorry for train drivers who are the victims of that kind of action, which they can do nothing about. They cannot pull up a train which is carrying enormous weight in any short distance in a short period of time. There really is nothing a train driver can do in those circumstances. When they are doing their best to do their job properly and something like that occurs it can be very traumatic for them. We certainly support any kind of assistance that will help alleviate the trauma that arises out of those incidents.

We support that part of the bill that deals with metropolitan bus contracts. The Liberal Party supports competition in the bus network. Why would we not? Unfortunately the government seems to have defaulted to buses as the natural form of public transport because of a congested rail system throughout the metropolitan area. Again, it is now coming up to the eighth year since the South Morang rail extension was promised in my area, but it has not been realised. The government has introduced a bus system from Epping station to South Morang, which was announced with much fanfare in a typical Labor stunt. The members for Yan Yean and Mill Park in the other place, who seem to be missing in action when it comes to talking about the Epping to South Morang extension, were happy to talk up the opening of this new bus system — but it is not a bus that will do the job of heavy rail. We understand that orbital routes for buses are very important, but they should not be seen as a natural default for heavy rail systems that need to be upgraded and certainly have been promised. We should be looking at heavy rail extensions, as the Liberal Party has repeatedly said in this chamber and publicly, particularly in areas like South Morang.

The other point I will briefly touch on before concluding is the control on touting by commercial passenger vehicle operators. Mr Koch has moved amendments which we believe are important to this issue. It is amazing that we have another me-too by the Australian Labor Party. It has done a very good job at that at the federal level because it takes anything that the coalition government promises and puts its own name to it, and here we are at the state level where the Labor Party does not have an original thought in its mind these days.

Mr Vogels interjected.

Mr GUY — Indeed, Mr Vogels, the state government is very tired. The me-too approach that the Labor Party has taken in adopting the Liberal Party's 2006 state election promise in relation to touting is something that we support. Touting is the soliciting or stealing of customers, often by taxi or hire car operators, where passengers are directed to waiting cars instead of to the first available operator. It is something we believe should be restricted or cut back, and heavy penalties should apply. The amendment moved by Mr Koch says that someone found guilty of touting will have their licence revoked and will be ineligible to claim that licence again. It is a hard line on touting and is one that I support. It will enhance the provisions of the bill to combat touting, and with that I can say that the Liberal Party will not oppose the bill and conclude my remarks.

Mr BARBER (Northern Metropolitan) — I rise to speak in relation to one particular clause of the bill, clause 70. The effect of this clause is to give rail operators a blanket exemption from all aspects of the Planning and Environment Act with respect to tree clearing. At the moment under the Planning and Environment Act there are different types of controls and overlays that require a person to obtain a planning permit before lopping or clearing native vegetation. However, there is already an exemption under those overlays. I take one example. A permit is required to remove, destroy or lop any vegetation. This does not apply if the vegetation presents an immediate risk of personal injury or damage to property. It is my view that the planning scheme already gives rail operators these exemptions, and what is happening here is that they are seeking a broadbrush and complete exemption from the planning scheme so that all sorts of activities will become legal. I think that is wrong.

There are a number of reasons, not just the obvious ones but other issues, that this brings to bear. The most important issue is that in many parts of Victoria, particularly in the western parts of Victoria, the little remaining native vegetation is on rail reservations, and in a few cases on road reservations. In some cases the only native vegetation that has survived in a given area is on rail reservations. It is appropriate that native vegetation be protected at the same time as allowing necessary safety works to be undertaken in a timely fashion.

Accordingly I foreshadow some amendments that will delete this clause from the bill. The government did not have to go down that path. If it felt the current provisions of the planning scheme were inadequate it could have made changes at the planning scheme level. The minister could have gazetted quite quickly at any time further amendments to the planning scheme that would have given the rail operators even more ability to clear vegetation when it was necessary for safety purposes, if it is the view of the government that this is currently inadequate.

There is another problem. While the planning scheme refers to native vegetation, this section of the act concerns itself with trees, and also uses the word 'wood'. It nevertheless exempts the rail operators from the Planning and Environment Act and leaves in limbo native vegetation that may or may not be considered to be a tree or wood or shrubbery or grasses or who knows what. I have to say that we have no problem with the regime being put in place where rail operators can carry out essential safety works. Another way the state government could have implemented this provision is to create the sorts of provisions that are in the planning scheme around tree clearing for powerlines. In fact the provisions of the planning scheme refer specifically to tree clearing for the protection of powerlines not requiring a permit where it is conducted under a code of practice.

In this case the bill creates safety plans for rail crossings. The planning scheme provisions could easily have been amended to say a permit is not required when it is being done in accordance with a rail safety plan that the government has created. If there is native vegetation that is causing a risk I argue that the government already has the powers to clear or lop that vegetation and should already have done so. If safety plans are now being created urgently to do works that have not previously been done at crossings and at other places I support them being done urgently and I would quite happily support an amendment that linked native vegetation clearing to those safety plans.

Victoria is the most ecologically damaged state in Australia. If the Minister for Environment and Climate Change sought further advice from his department he would probably find that the number of threatened species in Victoria is escalating dramatically, particularly because of the effects of climate change and landscape-scale fires in relation to climate change.

If this exemption is given to rail authorities, VicRoads will have its hand out next. Then local municipalities with their local roads will have their hands out. Farmers and all the other groups that have been affected by the native vegetation controls will overwhelm the government to be let out as well. This is an extremely dangerous path for the state government to go down. I wonder what the Minister for Environment and Climate

Change was doing when this came up for discussion? Clearly the Minister for Public Transport in the other place prevailed. I do not know what the Minister for Planning had to say about it. I asked the Minister for Public Transport how many planning permits rail authorities had been required to obtain in the last year, but she could not give me a figure. It is quite possible that this has been brought in to fix a problem which does not exist or which at the very least is not prevalent and could easily be fixed with an instrument under the planning scheme amendment.

Victoria is the most ecologically damaged state in Australia. In some regions and endangered communities the only native vegetation left is on rail reservations, so the state government could have done a better job here. The Minister for Environment and Climate Change generally gives a pretty good account of himself at question time. He is in here hip-hopping, popping and locking at anything we might throw at him. I just hope he takes the same kind of front-foot stance in cabinet meetings when it comes to the protection of the natural environment.

A further failing of this approach is that tree clearing currently requires the provision of offsets and net gain under the planning scheme, whereby if a farmer wants to knock over a tree he may be required to plant a bunch of trees in another area as an offset. By removing the rail authorities from the planning scheme and just simply putting them into their own act, there is nothing left to force them to do what all other land-holders have to do, which is to examine the idea of offsets. For that reason we will be moving an amendment to delete this clause and its related clause, being clause 69. I hope we can obtain some support for our amendment, but I will have some further questions for the minister in the committee stage.

Mr ELASMAR (Northern Metropolitan) — I rise to speak on and support the Transport Legislation Amendment Bill 2007. It gives me great pleasure to support this bill because of my past experience in transport and public transport. I want to speak about a few issues. I will not take long because Mr Scheffer, in his contribution to the debate, has covered all areas.

We have all heard and read in the daily newspapers about public transport travellers allegedly being manhandled by ticket inspectors, usually because they have failed to produce a valid travel ticket. We have heard it plenty of times — in fact too many times. That is why the myki card system has been designed, to put a stop to or at least minimise such occurrences. It is an easy system to manage and operate and has been proven to work well overseas. The card is a simple swipe card that records a journey and deducts the cost automatically, in a very similar way to prepaid phone cards. I look forward to its introduction.

Amongst other improvements to our transport system is the planned new timetable and the extended bus services, together with the introduction of new trains. In addition, Watsonia train station is to have staffed waiting areas, extra lighting and additional security. These measures are for the safety of the travelling public.

Rail crossings have already been mentioned. On 25 June the former Premier, the Honourable Steve Bracks, announced that every rail crossing on a highway in regional Victoria would have flashing early-warning signs as part of a comprehensive $33.2 million package to improve safety at level crossings across the state.

One of the most important changes to this legislation is the proposed compensation for train drivers. It is an unfortunate fact of life that one of the most frequently used forms of suicide in the world is for people to throw themselves into the path of an oncoming train. The dreadful trauma that is endured by train drivers is appalling. They have no ability to swerve or take evasive action. The only thing a train driver can do is to brake, but that is totally ineffective.

Many train drivers are unable to drive a train again after a suicide incident. Sometimes the person is not killed outright by the train, and often the train driver is the first person to see the victim's mangled or crushed limbs. These images are scorched into the memories of these drivers. It is totally unfair and unacceptable that, as the law stands today, these people are not entitled to compensation for their pain and suffering. This amendment will remedy this injustice by requiring the director of public transport to pay money to the train drivers who are themselves victims. This is long overdue.

I also want to talk about students coming from overseas, because it has been said that they should not pay public transport fares. They pay to come here. I agree that some students do not come from rich families, but when these students come to Australia they know what their responsibilities are, and they know they should pay their fares. A recent study has found that the provision precludes the entitlement both prospectively and respectively, and confirms that the action is not discrimination under the Equal Opportunity Act 1995. That is why this bill is important to the house and to the Victorian people. I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

The DEPUTY PRESIDENT — Order! There are quite a number of amendments to be circulated in regard to this committee process. The first amendment we will deal with is Mr Barber's amendment 1, which will be a test for his remaining amendments 2 to 15 which relate to other clauses. The amendments concern the clearance of trees by relevant rail operators, the most substantive of which is amendment 10, which relates to the proposed omission of clause 70 of the bill. I say to Mr Barber that in formally moving amendment 1, which I would invite him to do, and making remarks on it he is obviously able to reflect also on those consequential amendments.

Clause 1

Mr BARBER (Northern Metropolitan) — I move:

1. Clause 1, page 2, line 11, omit subparagraph (ii).

To assist members it is really amendments 9 and 10 that propose to remove clauses. The subsequent amendments are just renumbering. As I said just a few moments ago, the purpose of the clause put forward by government is to exempt rail operators from all aspects of the Planning and Environment Act with respect to tree clearing. I do not think I will say any more given that I spoke on it just a moment ago, but I have a number of questions for the minister.

Mr GUY (Northern Metropolitan) — I just want to put on record that the Liberal Party will not be supporting this amendment. We believe that safety should be paramount when it comes to level crossings across the state. As I mentioned in my previous contribution to debate, there are hundreds of level crossings in the metropolitan area. We believe they should be adequately visible from the road and the rail operator should certainly have the ability to trim any native or any vegetation that impedes the line of sight to that level crossing so that people can see if a train is coming. At this stage we will not support the amendment.

Mr BARBER (Northern Metropolitan) — I have some questions for the minister, when he is ready.

The DEPUTY PRESIDENT — Order! On clause 1?

Mr BARBER — In fact in relation to all of my amendments for which this is a test, yes, but specifically clauses 69 and 70 of the bill, which are picked up by my series of amendments.

The DEPUTY PRESIDENT — Order! Is Mr Barber suggesting to me that by putting those questions now he will expedite the committee process?

Mr BARBER — Yes.

The DEPUTY PRESIDENT — Order! Is the minister happy to answer questions that relate to later clauses but are pertinent to the initial amendment?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Yes.

Mr BARBER (Northern Metropolitan) — My first question for the minister is: how many planning permits have rail operators had to apply for in recent years? It appears to be the government's argument that the onerous nature of applying for all these planning permits is the reason for exempting the operators from the Planning and Environment Act.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Perhaps it might be useful if I outline some of the issues, as the government sees them, in response to the question from Mr Barber, which might help us in the debate. The first thing I would say to Mr Barber is that his question is probably based on a misconception. The effect of the amendments in the bill is actually very modest. They do not change existing policy; instead they merely make a procedural change. Currently rail operators are able to remove trees in either of two ways where concerns exist about the impact of the trees on rail safety. First, if there is an immediate risk to safety, operators can use the exemption provision available in Victorian planning schemes 52.7–6 to avoid the normal planning rules which prevent the removal of native vegetation. This power can be used where the safety risk of personal injury or property damage is immediate and pressing. For example, a tree or branch might be causing line-of-sight problems for train drivers in relation to a level crossing or signal. In such a case the immediate risk to safety is obvious. Second, there might be a safety risk which is not immediate but which is nonetheless still foreseeable. In that situation rail corporations can use the powers contained in section 60 of the Rail Corporations Act 1996.

The power is not new and has existed in that act for some time. These powers enable rail operators to remove trees for safety purposes, but in cases where the safety purpose might be less pressing than in the first

example. For example, during routine corridor maintenance a rail operator such as V/Line might identify that a tree branch is likely to grow into the line of sight of a level crossing or signal, say, within a month or so. In that case it makes obvious sense for the operator to be able to remove or prune the branch immediately as a safety risk which is foreseeable. Bear in mind that rail operators have strict safety duties with large penalties imposed on them under the Rail Safety Act 2006. Infrastructure managers are required to manage infrastructure so that the infrastructure is safe — and I underline the word 'safe' — so far as is reasonably practicable. Obviously making something safe might also include doing something pre-emptively, as in that second example. To discharge these duties where trees are concerned the operator must be able to exercise a tree removal or pruning power. In practice, after inquiries it appears that not all operators keep records of their use of either the planning scheme exemption or Rail Corporations Act power regime. That is in response to the question Mr Barber just asked.

V/Line, for example, has indicated that as far as possible it works with the Department of Sustainability and Environment and through DSE local councils wherever possible before undertaking any major or sensitive tree removal or lopping work. However, if immediate and pressing risk to safety exists, V/Line will take quick action to make the rail environment safe.

As I said at the outset, the effect of the amendments in clauses 69 and 70 of the bill is very modest. The current tree-clearing power in section 60 of the Rail Corporations Act facilitates the clearing of trees for safety purposes. It works by enabling rail operators to serve notices on owners or occupiers of land. While this regime works well in relation to adjacent land-holders, it does not work well in relation to trees on the land of operators themselves. In effect, it would require the operators to serve a notice on themselves to trigger the power, and that is the technical issue that we are trying to overcome with these amendments. The amendments, therefore, rectify this procedural anomaly by allowing access to the power by rail — —

The DEPUTY PRESIDENT — Order! There is a camera in the gallery. People are not allowed to take photos. Could that camera please be put away. I also indicate to students not to lean forward because it is unsafe to be leaning over the rails. Please stay seated.

Hon. T. C. THEOPHANOUS — As I was saying, the amendments rectify this procedural anomaly by allowing access to the power by rail operators but without a notice of procedure. I guess with that outline I would seek to reassure Mr Barber that this is not something that will adversely impact on the environment, which I think is his concern or issue. This is simply streamlining a set of safety procedures.

Mr BARBER (Northern Metropolitan) — I did not ask the minister how often rail operators do not have to apply for a planning permit, and I would not expect them to have records of how often they do not do that; I was asking how often they do do that. I take it that the advisers do not have that information. That relates of course to the second part of new section 60A provided for in the government's bill, which states:

> (2) A relevant rail operator may fell and remove the tree or wood without the need to obtain a permit under any relevant planning scheme under the Planning and Environment Act 1987, despite anything to the contrary in or under that Act.

My subsequent question, then, is that because this provision talks about trees and wood, what happens in a situation where a rail operator needs to remove something that would certainly be described as native vegetation under the planning scheme but is here described as trees or wood? What happens, for example, with shrubs and grass — both of which could at various times present safety hazards? Do they now represent native vegetation, separate from trees and wood? And will rail operators still be required to obtain a planning permit to remove or make alterations to them?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I say to Mr Barber that I am advised that the main reason for this is to remove, for safety purposes, line-of-sight issues relating to the safe operation of the rail system. In the example that he was trying to bring forward about native vegetation, I guess the answer to his question, as far as I can gather, is to say that if there is a safety issue, the safety issue obviously takes precedence. I do not know how native vegetation makes its way onto a rail track, but I presume that if it was on a rail track and was causing a safety issue, then the provisions in the act would allow for safety to be the pre-eminent issue.

Mr BARBER (Northern Metropolitan) — Unfortunately that has not satisfied my concern. I have already pointed out that safety is already a relevant exemption under the planning scheme. The minister's guess on how native vegetation and its protection in instances where safety is not the immediate and pressing concern would be treated is not clear to me. The reason is that new section 60A(2) says they will not need to obtain a permit under any relevant planning

scheme. It is that bit that appears to provide the blanket let-out for trees, wood and bushes — native vegetation — that the Greens believe is unnecessary.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I think the Local Government Act deals with trees. It does not deal with native vegetation; that is a separate piece of legislation. But in any case I think the way the member put the example is unfair. This will not apply in the case where there is not a safety issue. The member is suggesting that somehow this will be applied even if there is not a safety issue, and that is not the case.

Committee divided on amendment:

Ayes, 3

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

Noes, 36

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

Amendment negatived.

Clause agreed to; clauses 2 to 8 agreed to.

Clause 9

Ms HARTLAND (Western Metropolitan) — I move:

1. Clause 9, lines 10 and 11, omit "**train drivers following fatal incidents**" and insert "**transport employees who witness or assist at serious or fatal incidents**".

I outlined it during my speech, but I think this is a really important matter. Obviously train drivers are horrendously traumatised when they are involved in a fatality. But it is also my understanding that when they are involved in a serious incident that can be just as bad. Often it is the station staff who have to deal with the suicide attempts or a suicide. In the Kerang situation the two conductors who were in the carriage had to deal with mass casualties and deaths, but for whatever reason the government has not included them. We believe it is not only the train drivers who are traumatised by these kinds of accidents but it is also conductors, station staff and other transport employees.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I would like to respond to the issues raised by the member and to perhaps put it in these terms. Whenever there is a fatal accident a whole lot of people are affected by it. It is certainly not just one person, it is always a group of people who are affected, which includes relatives. Even members of the public are sometimes traumatised by events that might have occurred.

However, it is the case that the Accident Compensation Act 1985 covers all persons who attend a fatal accident in the course of their employment and who suffer adverse effects. This includes emergency service workers, ambulance drivers, police, other Connex staff and so on, as well as the train drivers themselves. Workers compensation provides for compensation for lost weekly earnings and for the medical costs of those workers who suffer injury as a result of these incidents.

Further compensation is also provided for workers suffering significant permanent impairment. The proposed financial assistance for drivers involved in such accidents merely reinstates an additional modest form of compensation which was previously available to them. This additional amount is an acknowledgement of the specifically traumatic circumstances in which drivers are often placed in these situations. Research has shown that train drivers involved in such fatalities can suffer significant mental distress, pain and suffering. Train drivers in these situations often feel a sense of helplessness, as no matter what a driver does it is generally impossible to stop the train in time to prevent death occurring.

Although compensation is available under the general Accident Compensation Act 1985 for train drivers and a whole lot of other people who are affected in such circumstances, what the government is seeking to do by the amendments in this bill is to specifically recognise one group that we think is subject to a type of trauma which may not apply in the case of an ambulance driver who attends the scene of the accident and who has had an opportunity to prepare themselves for what they might see. It is specifically the feeling of helplessness of the train driver.

I ask members to imagine themselves in the situation of seeing something coming towards you but having no control. You cannot stop the train and you can see that

this train that you are in control of is capable of causing death to somebody else. That is a highly traumatic experience. This legislation is meant to recognise the specific circumstances of train drivers as opposed to everyone else who may also suffer as a consequence of such events and has recourse to compensation under the Accident Compensation Act.

The government has recognised drivers specifically. In doing so we are also saying that we would find it difficult to know where you would draw the line if you extended it beyond train drivers who were in this kind of traumatic situation to those who did not experience this sense of helplessness and so forth. For all those reasons, I am afraid that the government cannot accept the amendments Ms Hartland has proposed.

Mr GUY (Northern Metropolitan) — I would just like to say that the Liberal Party supports the comments made by the minister. We also will not be supporting Ms Hartland's amendment.

The DEPUTY PRESIDENT — Order! I propose to put Ms Hartland's suggested amendment 1. I just clarify for the committee that it is a suggested amendment rather than an amendment because it carries financial implications. Under the constitution the house is able only to recommend to the Legislative Assembly that it adopt this amendment in the event that it is successful because of the financial implications. That is why it is described as a suggested amendment.

Committee divided on suggested amendment:

Ayes, 4

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

Noes, 35

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

Suggested amendment negatived.

Clause agreed to.

Clause 10

The DEPUTY PRESIDENT — Order! Mr Guy to move an amendment standing in Mr Koch's name, which is a test of his consequential amendments 2 and 3.

Mr GUY (Northern Metropolitan) —I move:

1. Clause 10, page 16, after line 32 insert—

"(5) A person who is convicted of an offence under this section is not eligible to be granted or to continue to hold—

(a) a taxi-cab licence; or

(b) a hire car licence.".

This amendment relates to the issue of touting. Liberal Party members view touting with a degree of seriousness, to the extent that we believe if someone has been charged and convicted of this offence their licence should be revoked. We believe it is important that we strengthen these laws to discourage the practice so it will not occur and will not have to be a problem in the future.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I understand why the Liberal Party feels strongly about touting. Obviously touting is something which the government is seeking to stamp out by this legislation in any case, but the amendment being proposed by the Liberal Party is a bit over the top. The amendments in the bill are designed to impose tougher penalties on people convicted of touting offences under the bill, making them not eligible to be granted or to continue to hold a taxicab or hire car licence.

In considering this amendment, we cannot accept it. The penalty for touting proposed under the bill is 50 penalty points. For members of the public who might not understand what a penalty point is, that equates to $5000. It is possible for somebody who is caught touting to be fined $5000 for such touting. We believe this is a pretty significant form of deterrent. Bearing in mind that a taxicab licence is worth in the vicinity of $500 000, it is just a bit over the top in terms of a penalty to take away the livelihood of somebody in perpetuity. It would equally apply to a hire car licence as well. Given the size of the penalty at $5000, I am not sure how seriously the opposition is in putting it up. We cannot accept it.

Ms HARTLAND (Western Metropolitan) — The Greens will not be supporting this amendment for the same reasons — that we consider it to be far too harsh.

Committee divided on amendment:

Ayes, 15

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

Noes, 23

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

Pair

Koch, Mr	Leane, Mr

Amendment negatived.

Clause agreed to; clauses 11 to 22 agreed to.

Clause 23

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I move:

> Clause 23, page 25, lines 22 and 23, omit "Elva Zhang" and insert "the individual named in the complaint, as at 23 March 2007, as the person on whose behalf the complaint was lodged".

I think this amendment is widely supported. It simply seeks to remove the name of an individual and insert instead the words 'the individual named in the complaint, as at 23 March 2007'.

Ms HARTLAND (Western Metropolitan) — The Greens will be supporting this amendment, but we are surprised it took the government so long to withdraw this woman's name, as it had received advice that her name should never have been in the legislation.

Amendment agreed to; amended clause agreed to; clauses 24 to 85 agreed to.

The DEPUTY PRESIDENT — Order! With the committee's indulgence we will return to clause 23 to consider a further amendment proposed by Ms Hartland. It is again a suggested amendment because it has financial implications. The question is:

> That the committee reconsider clause 23.

Question agreed to.

Further discussion of clause 23

Ms HARTLAND (Western Metropolitan) — I invite members to vote against this clause. We believe that not allowing overseas students to have concessions is discriminatory, and that is why we have proposed amendment 12 to omit clause 23, which would allow the insertion of a new clause.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — For a whole range of reasons, which were stated in the second-reading debate, the government cannot accept the amendment as proposed.

The DEPUTY PRESIDENT — Order! The question is:

> That the clause, as amended, stand part of the bill.

Committee divided on question:

Ayes, 35

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

Noes, 4

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

Question agreed to.

Amended clause agreed to.

Reported to house with amendment.

Report adopted.

Third reading

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I move:

That the bill be now read a third time.

I thank all members for their contributions to the debate.

Motion agreed to.

Read third time.

Sitting suspended 1.02 p.m. until 2.07 p.m.

QUESTIONS WITHOUT NOTICE

Public sector: subprime loans

Mr P. DAVIS (Eastern Victoria) — My question without notice is to the Treasurer. Has the Treasurer sought or received any advice regarding the exposure of the Victorian economy and/or any government investments and agencies to the USA subprime market?

Mr LENDERS (Treasurer) — I thank Mr Davis for his question. As Mr Davis well knows, as we saw even from the business pages of the *Age* today, the subprime issue is one that is affecting some businesses in Australia — for instance, RAMS, which was mentioned in the *Age* article. It is certainly something that has been very much on the agenda in this state for a while, and I am actually surprised that, with the assistant shadow Treasurer and the shadow minister for finance here in the chamber, it has taken this long to get a question on subprimes, given the obsession in the Assembly with the issue.

On the matter of exposure to subprimes, subprimes are very hard to define. 'Subprime' is a description of a form of loan in the USA. If we are comparing what we have in Australia, we have seen figures around that suggest that about 15 per cent of the US housing market is in that general category and probably less than one-tenth of the Australian market is in the same category. The issue is: is the government exposed to subprimes?

As Mr Davis will well know from having read in *Hansard* the answers the Premier has given on many occasions in the Assembly in the last few weeks, the government has obviously sought to see what the exposure, if any, is. Most government investments come through either the Victorian Funds Management Corporation (VFMC) or the Treasury Corporation of Victoria (TCV). Between them they have approximately $45 billion in investments, and the advice I have is that there is an exposure to in the order of $1 million to $2 million from that $45 billion of investments, which I think comes to less than half a cent per $100. The assumption of course that Mr Davis is making is that subprimes are going to lose the government money on the assets that the government has. That is the exposure that I am aware of from VFMC and TCV.

I go back to my opening remark — subprime loans are very hard to define. If I were now to go through every single deposit by a government instrumentality in Victoria and ask of each one, 'Is this exposed to subprimes or not?' I would be making a judgement every step of the way, because there is no accounting definition of a subprime. Secondly, there would be a judgement factor. Thirdly, there would also be the issue that often our fund managers will not know what the investment may be. Western Health, it was reported recently, has been investing through Grange Securities. These are difficult things to measure and deal with, but I can say to Mr Davis that I have been advised that our exposure through the VFMC and the Treasury Corporation of Victoria is in the order of $1 million to $2 million.

Supplementary question

Mr P. DAVIS (Eastern Victoria) — I thank the Treasurer for his answer. I would like to have confirmed for the house the detail, which obviously in an answer on the fly the Treasurer is not able to give. Will the Treasurer make available to the house the detail of that advice in written form?

Mr LENDERS (Treasurer) — The answer is no, and the reason for that is that in my substantive answer I said to Mr Davis that these are issues where you form a judgement as to the nature of a particular loan. So to use an example, the Victorian Funds Management Corporation will have money invested in a number of trusts. Those trusts will often have money invested in a number of other trusts, and those will often have money invested in still other trusts. For example, on exposure to subprimes, if Mr Davis wants me to be more definitive, if the Victorian Funds Management Corporation actually has money invested, has shares, in the four major Australian banks — I have not looked at its portfolio but I presume it has shares in those banks and a number of other Australian banks — is a bank exposed to subprimes? Those banks will undoubtedly have investments in other areas. Are they exposed to subprimes?

I would say to Mr Davis — and I am not being flippant about this — that if you were to forensically divert the entire Department of Treasury and Finance, the entire staff of the Victorian Funds Management Corporation (VFMC), the entire staff of Treasury Corp (Treasury Corporation of Victoria) and 500 consultants to say what is our exact exposure to subprimes at a given time, they might get it right for one nanosecond after they had made about 50 value judgements along the way. So what I can say to him is that I have been advised that our exposure is in the order of $1 million to $2 million out of investments of $45 billion through the Victorian Funds Management Corporation and Treasury Corp. I am satisfied that that figure is a figure that has substance, but I am not going to ask the department to be any more definitive than that. I might add that, as I understand it, the commonwealth has not asked the Future Fund or any of its funds to be any more definitive than that, and no other government in Australia has sought to be more definitive than that, so to give a report to the house in that sense is something that would require an unbelievable amount of time.

We have set up the VFMC, Treasury Corp and other bodies to prudentially manage the funds of this state. I might say that VFMC has seen growth in our investments of more than 15 per cent per annum, I think, over the last five years. Its prudential investments have seen the assets of WorkCover, the TAC (Transport Accident Commission), the State Superannuation Fund and the like grow by almost $6 billion in that period of time through sound financial management. I am satisfied with the prudential guidelines. I thank Mr Davis for his interest, but I will not provide that document.

Housing: Maribyrnong defence site

Mr PAKULA (Western Metropolitan) — My question is to the Minister for Planning. The Brumby government has been working actively to address housing affordability and sustainable community development throughout Victoria. Over the last three years VicUrban, the state government development agency, has been negotiating to purchase the Maribyrnong defence site as an important project to increase land supply in inner city Melbourne. I ask the minister to advise the house how the Maribyrnong defence site will complement the housing policy objectives of the Brumby government.

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Pakula's question because I know this is a very prominent site in the western suburbs. It is very prominent because it offers an extraordinary opportunity on a brownfield site to deliver inner city housing not seen before in this state. For those who know the area well, it has a 3-kilometre frontage along the Maribyrnong River, and it offers the potential to deliver in the order of 2000 new homes for a population of over 6000 people on this site. This is not a small development opportunity by any means.

This would be a tremendous opportunity for a demonstration project of good planning policy, good community development and good public outcomes. VicUrban has been for some time in negotiations with the federal government on this matter, and throughout the last three years there has been an enormous amount of goodwill on the part of both parties to progress this, knowing that the site is an old defence site and that it also needs significant remediation. But what is particularly disappointing is that in the lead-up to the federal election the federal government has decided to renege on those discussions and negotiations. What is particularly disappointing about this is that it appears that the federal government will offer this site to the highest bidder without any qualification of affordable housing or benefit to the local community that will be established there or to the broader western suburbs.

This means that the words of the federal government in relation to housing affordability and land release are just absolutely hollow, because if that government were legitimate, if it were serious, it would put qualification on the land release, enter into good faith negotiations and continue those with the state government of Victoria to make sure that together, in partnership, we can deliver the best public outcome with priority about affordable housing.

Can I just make this point very clear: what we have seen with the federal government, with land-holdings, airports and the like, is no planning overlay on the sites. What happens is that the federal government determines what can happen without any consultation with the local community. Worse still, when the land is sold to the highest bidder without any planning overlays on those sites, what is the developer going to do? The developer will try to recoup the highest possible value from that site without any qualification or without any formula based on any zoning provision for that site. Of course to get a little bit technical, those developers will go for the highest possible yield and potentially the lowest net community benefit.

This shows that if the federal government were serious, it would enter into good faith negotiations, but its words are absolutely hollow. This stands in contrast to the federal ALP, which is committed to unlocking commonwealth land and sees as a critical component prioritising community interests and community benefit

and making a commitment to housing affordability. All the federal government has done is reinforce its cynicism in relation to good faith negotiations. Its words are hollow when it comes to housing affordability, and they reinforce its laziness on releasing land when it has had 11 years of opportunity to do so.

We are committed to actively pursuing and developing new communities with well-established community benefits and affordable housing opportunities. This is critical not only to inner Melbourne and the state but also to the western suburbs. We want to make Victoria and Melbourne, but also Maribyrnong, great places to live, work and raise a family. It is painfully clear that the federal government is not committed to that in any sense of the word.

Water: north–south pipeline

Mr DRUM (Northern Victoria) — My question is to the Treasurer. In keeping with the Premier's promise that he would not proceed with the north–south pipeline without community support and in keeping with the Treasurer's press release entitled 'Lenders: all or nothing on water projects', does the government have the courage to conduct a plebiscite of northern Victorian communities to gauge the true level of opposition to this disgraceful project?

Mr LENDERS (Treasurer) — I welcome Mr Drum's question. The government is more than happy to engage communities. The government went on a community cabinet visit to northern Victoria at Kerang, in the shire of Gannawarra, where we were addressed, and the Premier was more than happy to face the citizens on this issue and have a discussion, as was the water minister. The cabinet also went to the rural city of Swan Hill, where we engaged the community on this matter and had a robust discussion. The cabinet also went to the shire of Buloke, where again we engaged the community on this matter and had a discussion. A few weeks later the cabinet went to the shire of Towong, where we engaged the community on water. We also went to the shire of Alpine, where we engaged the community on water, and where Ms Lovell and two friends were protesting.

We also went to the shire of Indigo, where without hesitation we had a discussion with the local community on water. I was in the city of Greater Bendigo in a Rural Finance Corporation capacity, where I engaged with farmers on this particular issue. I personally have been to seven municipalities in northern Victoria engaging the community on this issue, and other ministers, like the water minister, the Premier, the agriculture minister and the community services minister, as well as Ms Darveniza and Ms Broad from the government side, have been into those communities without fear and without hesitation.

So what I say to Mr Drum is that we are not afraid to engage the community on the difficult issues of the time. I also say I am interested that there is an obsession with plebiscites. All I can say is that it was not good enough for Mr Drum or the Greens behind him to have a plebiscite on nuclear sites, but it was good enough to have one on fluoride. We are happy to engage communities. We are not afraid of the difficult issues, because facing the difficult issues and discussing them with communities is what makes Victoria a better place in which to live, work and raise a family.

Supplementary question

Mr DRUM (Northern Victoria) — Given the minister's answer and consistent with the press release, the heading of which contains the words 'all or nothing', I ask him on behalf of northern Victorian communities: is nothing an option?

Mr LENDERS (Treasurer) — As to nothing being an option, I suggest it is a fact that The Nationals were not prepared to sponsor the fluoride bill in the Legislative Assembly this morning and nor was the Liberal Party. They voted for it in the Council yesterday and would not even sponsor it in the Assembly, so that it will fall off the notice paper. So nothing is an option for the other parties.

On the issue of the food bowl, what this government is determined to do is get the best option for irrigators in northern Victoria, for towns in northern Victoria and for the whole state. We are prepared to be part of investing $1 billion in the food bowl. Nothing being an option is a federal government that will not match it. Nothing is the option for the federal government. This state is prepared to invest $1 billion in the food bowl — $100 million from the Goulburn irrigators, $300 million from Melbourne Water and $600 million from the Consolidated Fund.

In doing that we will enable 225 gigalitres of 800 lost gigalitres of water to be recovered, of which 75 gigalitres will go into rivers to deal with issues like algal bloom — there is more algal bloom than there is in this chamber. This chamber has a blue-green algal bloom alliance, but in northern Victoria flushing the rivers gets rid of algal bloom. We will also get 75 gigalitres extra for farmers and 75 gigalitres extra for Melbourne Water. We like dealing with algal bloom; it is a scourge that needs to be cleared away. We also believe in the best use of Victoria's water for all

Victoria. No. Zero is not an answer for anyone other than a lazy national government that will not invest in the food bowl or invest seriously in Victorian water unless it suits its political agenda.

Building industry: performance

Mr LEANE (Eastern Metropolitan) — My question is directed to the Minister for Planning. The Victorian economy has recently recorded a growth rate higher than any of the non-resource states across Australia. A critical component of this great result can be attributed to the building and construction industries, in which I have spent a lot of years working and of which I am quite fond. I am very interested to ask the minister to update the house on Victoria's most recent building permit activity figures.

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Leane's interest in this matter. I thank him for his question. I know he has been a worker in the industry and is very committed to not only representing his community but also advocating very strongly on behalf of the building industry.

We have seen fantastic growth across the state. We talked yesterday about how we are excelling not only when it comes to attracting population but in relation to growth on all fronts. Ministers Lenders and Theophanous have talked about growth this last week, and Mr Jennings also has involvement in an enormous amount of growth issues that we as a government are dealing with. Much of the growth is presenting itself through and is represented by population growth, which allows us to enjoy the benefits of a flourishing building and construction industry.

It gives me great pleasure to indicate that for the calendar year to October 2007 the value of building approvals in Victoria's building industry reached nearly $15 billion. This is a phenomenal figure. This amazing growth in building activity has been achieved with the highest month on record being October, with $1.97 billion of building permits issued. Such growth follows the building figures for the September quarter 2007, which were the strongest recorded for 13 years, with $5.1 billion worth of building permits being issued.

This is great news not just for workers in the industry but also for the local industry, which produces so much material and products for the building industry and the retailers who supply things to go into houses and facilities. This highlights the need for the newly formed Department of Planning and Community Development to make sure that not only do we concentrate on building but also managing that through the planning system and making sure we do not just build for the sake of building but build strong, unified, well-functioning communities.

This is not just growth in the cities or in Melbourne because rural building permit growth contributed to Victoria's burgeoning building industry with the north-east, north-west and south-west experiencing 12.5 per cent, 17.1 per cent and 16 per cent growth respectively. That is a great result for the whole of the state. This growth is not just about in cities but in the country as well. I am sure our rural and regional members will be wholeheartedly enthusiastic about the regional activity that is taking place. That level of investment is evidence of tremendous confidence in this state, not only in the city but in the country. It reflects the confidence that exists in the commercial, private and public sectors. With that continued growth, the management of growth and the benefits that flow from that, we are ensuring that we are making Victoria an even better place to live, work and raise a family.

Lake Eppalock: feasibility study

Ms LOVELL (Northern Victoria) — My question is directed to the Treasurer. Last April the federal water minister, Malcolm Turnbull, offered 50 per cent funding for a feasibility study into raising the height of the dam wall at Lake Eppalock by 1.5 metres to increase the storage capacity by approximately 15 per cent. This was conditional upon a matching state offer. As yet there has been no response from the state government. Will the Treasurer commit the state government to funding its share of the feasibility study?

Mr LENDERS (Treasurer) — I detect a direct mail-out in the electorate of McEwen. Perhaps it will not be a direct mail-out but Malcolm Turnbull doing his voicemail to all the unlucky voters of McEwen, and this will be the text for it. What I say to anyone on the Malcolm Turnbull SMS, voicemail or whatever new Liberal Party advertising spree it has just learned from the Republican national committee in the United States of America is that it should include in this new form of Liberal Republican national committee communications that Ms Lovell is seeking information for that this government has led the way in Victoria with its water plan.

The Our Water Our Future proposal came out in 2002, which was before talking about water was fashionable in this country, before it became something on which the climate-sceptical Prime Minister jumped on board and before it became a mainstream issue. The state Labor government, under the leadership of John

Thwaites as water minister, was out there. What we have done since is that we have sought to work in partnership with regional water authorities, with other governments — —

Honourable members interjecting.

Ms Lovell — On a point of order, President, I asked a question of the Treasurer, but I cannot hear him because of the banter across this end of the chamber.

The PRESIDENT — Order! I thank the member for her assistance on the matter. I ask the house to refrain from its raucous behaviour.

Mr LENDERS — Perhaps Ms Darveniza has a better knowledge of northern Victoria than I do. Perhaps it is actually for text messaging in Indi, not McEwen. Going back to my answer — —

Mr Jennings — By Textor?

Mr LENDERS — Yes, Mr Textor by text message. That is right, Mr Jennings.

This government has led the way with Our Water Our Future. We have sought to engage the commonwealth and other jurisdictions to better manage water. We have invested more in water infrastructure than any government in the history of this state. I would urge Ms Lovell to read — —

Mrs Peulich — In the last eight years!

Mr LENDERS — I will take up Mrs Peulich's interjection. We have invested more in water capital than any other government in the history of this state. Premier Bolte got state debt as a percentage of the economy up to about 60 per cent, but he did not invest in water. This government has invested in water to address these issues.

For Ms Lovell's Liberal Party campaign purposes — and perhaps the house should be quiet so she can tape it correctly for her recording for federal water minister, Malcolm Turnbull — what this government has done is to engage the commonwealth and engage communities to invest in water across the state. Malcolm Turnbull's promise to Victoria is as worthless as the promise on roads from the federal Treasurer, Peter Costello. Firstly, Malcolm Turnbull is in caretaker mode, so he can spend like a drunken sailor. He can promise everything and be accountable for nothing. Secondly, everything Malcolm Turnbull offers to this state has always got strings attached to it, and the inevitable strings are that he wants to take water away from Victorian irrigators in Ms Lovell's electorate and give it to South Australia; that is Malcolm Turnbull's form of nation building.

We will look with active interest at any proposal brought to us by the new federal government, whatever its political persuasion. We welcome any investment in water that is for the good of Victorian farmers, people in Victorian towns, people in Melbourne and people in Victorian industry. We welcome that dialogue. But I suggest that anything coming from Malcolm Turnbull three days before an election — from a desperate man — ought be put aside. We will look seriously at anything from the federal water minister after the election, and we will work with whoever the federal government is for good outcomes in water in this state.

Supplementary question

Ms LOVELL (Northern Victoria) — I will take that as a no, considering the offer was made last April. For the information of the Treasurer, Lake Eppalock actually supplies Bendigo and not McEwen.

The PRESIDENT — Order! Is this Ms Lovell's supplementary question?

Ms LOVELL — For Ms Darveniza's information, Lake Eppalock is nowhere near Indi. My supplementary question is —

The PRESIDENT — Order! Ms Lovell!

Ms LOVELL — the state government ignored — —

The PRESIDENT — Order! I do not know whether Ms Lovell is having a problem hearing me, but when I address her I expect her to either resume her seat or at the very least to stop talking. I asked her whether that was her supplementary question, because obviously it was not. I ask her to ask her supplementary question.

Ms LOVELL — The state government ignored the water crisis in the Bendigo community. It was only after the Leader of the Opposition in the other place, Ted Baillieu, announced the Liberal's policy to build the Erskine pipeline that state Labor acted to assist Bendigo by adopting Liberal policy.

Last April, Peter Kennedy, the federal Liberal candidate for Bendigo, gained a commitment from the federal Minister for the Environment and Water Resources to fund 50 per cent of the feasibility study into increasing the capacity of Lake Eppalock, putting the federal government ahead of the game on this state government, which still it has failed to fund its share of this project. When will the state Labor government put

the needs of the Bendigo community ahead of party political expedience?

The PRESIDENT — Order! I am going to allow the supplementary question, but it is a fine-run thing. I remind the house that engaging in argument is not part of a supplementary question. I understand that we are all a bit emotional with the coming weekend. As I said, that question just gets home.

Mr LENDERS (Treasurer) — If it was not so sad I would be amused. Ms Lovell was referring to the words of Mr Baillieu like the masses in China used to in the 1960s when they held up their little red books, because the world waited until the great leader was inspired, until he gave his pearls of wisdom.

What I would say to Ms Lovell — who represents Northern Victoria Region in this Parliament — about water is: judge this government by its actions. We are seeking to get a water grid across this state for the whole state. Firstly, I remind Ms Lovell that she is a member for Northern Victoria Region, which includes Macedon. She is not just a member for Shepparton; she is a member for the whole of Northern Victoria Region. Secondly, I would say to Ms Lovell as well — —

Ms Lovell — I get around!

Mr LENDERS — I would suggest that if she gets around, she should talk to her constituents, who would benefit from a water grid, instead of attacking them. Going back to my substantive answer, this government has put in place a water plan. As part of the water plan we acknowledged, when the Bendigo community said loudly and clearly to us at the start of 2006 that we needed to act quickly on water, that we needed to act on the goldfields super-pipe. I must admit that I did not receive any accolades or hear of any support coming from Ms Lovell or the Liberal Party. We acted on the goldfields super-pipe to bring water to Bendigo. Then when we sought to extend the super-pipe to bring water to Ballarat, did we get cheers or applause from the opposition? No, it actually opposed the Water Amendment (Critical Water Infrastructure) Bill. Mr Baillieu opposed the bill that provided for the continuation of the super-pipe from Bendigo to Ballarat.

Then, when the Bracks Labor government actually came up with the money to extend the goldfields super-pipe from Bendigo to Ballarat, what did Mr Turnbull do? He offered one-third of the cost — a paltry $25 million — and he offered it as cynical rebates on water for the first year or two. What the federal government does — Ms Lovell's counterparts — —

Ms Lovell interjected.

The PRESIDENT — Order! Five minutes ago Ms Lovell asked me to address the raucous behaviour in the Council. I just remind her of that.

Mr LENDERS — The Victorian government had on the table a proposal to extend the goldfields super-pipe in effect from Bendigo to Ballarat, so that water could go to the other critical Central Highlands city. It might not be in Ms Lovell's electorate, but I suspect that Mr Koch, Mr Vogels and Mr Kavanagh might have a view from that side of the house. I certainly know that Ms Pulford has a view from this side of the house, being a resident of Ballarat, and Ms Tierney, who represents the area, has a view.

Despite the wise words of Chairman Ted, it was a Bracks Labor government and then a Brumby Labor government that extended the super-pipe and asked the commonwealth to pay half. But the commonwealth would only pay one-third as part of a cynical rate manipulation to get it through the federal election. It said to Ballarat, 'We will put your water prices up by exponential amounts because the commonwealth is not spending on Ballarat, because it is not a marginal Liberal electorate in New South Wales, South Australia, Queensland or northern Tasmania'.

We have a water plan, which is on the table. It is delivering water to this state as part of a greater investment than ever before. We are governing for the whole state. We are not climate-change sceptics who have become passionate advocates, like the Prime Minister. We have seen this, we have worked on it and the outcome will be more reliable water supplies for the rural parts of Victoria, including important cities like Shepparton, Bendigo and Ballarat.

Business: Victorian industry participation policy

Ms DARVENIZA (Northern Victoria) — My question is for the Minister for Industry and Trade, Mr Theophanous. I ask the minister to inform the house how the Victorian industry participation policy, the VIPP, has created opportunities for Victorian businesses.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank the member for her question. I know she is very much interested in the answer, as she represents a significant part of regional Victoria. By any stretch of the imagination the

Victorian industry participation policy (VIPP) has been a huge success from the point of view of regional Victoria — and I will go into the full effects of it. The VIPP was introduced by the Bracks Labor government in 2001. Prior to that there was no requirement for any local content in major government contracts in this state. The Kennett government did nothing to help regional or metropolitan-based companies in terms of getting government-related contracts in this state.

Mr D. Davis — Tell us about the EastLink gantries.

Hon. T. C. THEOPHANOUS — David Davis was around when government contracts were given out like the rail and tram orders, which were given out and finalised in the lead-up to the 1999 election without any recourse or any consideration whatsoever about local content. You can contrast that with the recently reported figures in relation to the VIPP program, where, for example, Bombardier, a Dandenong-based company, delivered 38 V/Locity fast trains for regional Victoria. As a result of VIPP more than $40 million has been awarded to local companies that would have gone overseas. The 15-year maintenance program on these trains will inject more than $400 million into the Victorian economy. That maintenance contract could have gone to an overseas conglomerate or overseas companies.

The Royal Women's Hospital is a project worth $250 million. This government is aiming to achieve 95 per cent local content using such mechanisms as the VIPP program. During the Commonwealth Games projects PTA Architecture received many of the major government contracts. That company, as a result of the experience it received in the Commonwealth Games contracts, has now been awarded work on the next Commonwealth Games in Delhi, India. There are important flow-on effects that occur as a result of the government taking action to support local companies.

Let us just see what VIPP has delivered to date. Since it was introduced in 2001 VIPP has been applied to 765 projects worth a total of almost $15 billion. That is $15 billion of economic activity which has stayed in Victoria and has been generated in Victoria. Wait for it — the number of jobs this activity has generated is more than 18 500 Victorian jobs.

This program is working. It is a uniquely Victorian project which was put up by a Labor government. Let me indicate what the results have been in the last year. One of the major beneficiaries has been regional Victoria. The number of VIPP projects in regional Victoria nearly doubled during 2006-07. Of the 224 new contracts to which the VIPP was applied, 132 were in regional Victoria. These projects account for $838 million of economic value for regional Victoria in 2006–07. If you think about the importance of the VIPP program and about the fact that $838 million — almost $1 billion — of contractual arrangements have gone to Victorian companies, you realise they have gone there because a visionary Labor government in 2001 established the VIPP program, which is delivering for country Victoria.

Sewerage: Whittlesea plant

Mrs KRONBERG (Eastern Metropolitan) — My question is to the Minister for Environment and Climate Change. As a consequence of the government's refusal to upgrade the Whittlesea sewage treatment plant in 2004, the Plenty River's lower reaches, streamside vegetation, aquatic life, platypus and passive recreation are all threatened. What action will the minister take to protect the environment, and how much money will the government commit to upgrading the Whittlesea sewage treatment plant in the next six months to remove this environmental pressure?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mrs Kronberg for the opportunity to talk about important environmental protections, but like many members of this chamber it seems to me that the question she is burning to ask is for another minister in the other place.

Honourable members interjecting.

Mr JENNINGS — It is most unfortunate, but I would think there is a good chance that about 30 or 40 per cent of the questions I get asked in this place are for ministers in the other place. I share a concern for the wellbeing of their portfolios, and I will play some role in supporting them, but the questions are the ministerial responsibility of ministers in the other place. This continues that trend in relation to — —

Honourable members interjecting.

Mr JENNINGS — I am happy to go on. I am just making introductory comments. Some people turn introductory comments into an art form — they go on for about an hour and a half. In fact Ms Lovell did that in a supplementary question she asked earlier in this question time.

But in my preamble I want to reiterate to the chamber that indeed what we are talking about is something that may fall within the responsibility of my colleague the Minister for Water in the other chamber, who has a clearly designated title and is clearly identifiable. In case members do not know, there are handouts

provided by the Parliament of Victoria that give you a bit of an update on who that may be.

My colleague in the other place and I do work on trying to ensure that there are the appropriate environmental flows and quality of water within Victorian catchments, including ensuring that the Plenty River and the Plenty Gorge are protected and that we make appropriate efforts to deal with sewage treatment. In fact a significant effort has been allocated to catchments, which include the catchments that run through metropolitan Melbourne, and to undertaking an investment strategy to deal with sewerage issues across metropolitan Melbourne. Indeed sewage treatment facilities which fall within the responsibility of the various water authorities and the Minister for Water have an extensive range of investment strategies that are being designed to be implemented.

I take on board the substantive significance of the issue in the member's question — that I am responsible for the involvement of the Environment Protection Authority in monitoring the incidence of environmental circumstances and the making of appropriate evaluations of the health of streams and waterways — and the authority does that.

An honourable member interjected.

Mr JENNINGS — But that is not the heart of the question, so as to the interjection that I am not addressing the substance of the question, the substance of the question related to the investment strategy on sewage treatment. My responsibility is to try to make sure that we are well advised and well informed, that we keep regular monitoring in place and that we take the appropriate action to preserve the environmental integrity of these rivers. On those occasions I will work with the Minister for Water and the various water authorities. I will do that, and I will continue to do so.

Supplementary question

Mrs KRONBERG (Eastern Metropolitan) — I thank the minister for his response, but he has really strayed from what the substantive point was, which was about protecting the environment. My supplementary question is this: will the minister endorse the increase in the environmental flows of the Plenty River supplemented by water from the Whittlesea sewage treatment plant?

The PRESIDENT — Order! Mrs Kronberg's enthusiasm is almost overpowering. That was obviously the supplementary.

Mr JENNINGS (Minister for Environment and Climate Change) — I thank the President for providing me with some breathing space before I respond to the question. The allocation of flows in our rivers and the release of flows through our reservoir system are the responsibility of the Minister for Water. So even in the supplementary question the best we can do is a collaborative effort between me and the Minister for Water, but ultimately the responsibility falls to the agencies he is responsible for.

Melbourne Convention Centre: progress

Mr THORNLEY (Southern Metropolitan) — My question is to the Minister for Major Projects, Mr Theophanous. Can the minister inform the house of any recent independent reports on the progress of the Melbourne Convention Centre development?

Hon. T. C. THEOPHANOUS (Minister for Major Projects) — I thank the member for his question. I have to tell the member that, yes, there was an independent report. It is an independent report of the most independent officer, which of course is the Auditor-General. Fortunately, as a result of having a Labor government, we have an Auditor-General who is independent. Under the previous Kennett government that was probably not going to be the case.

For those who have not looked at it — I am sure David Davis has not bothered to look at it — I refer members to the *Audits of 2 Major Partnerships Victoria Projects* by the Auditor-General. One of those projects is the Melbourne Convention Centre development, for which I have responsibility. I am pleased to be able to inform the house that the Auditor-General has given Melbourne's new convention centre a strong endorsement. The Auditor-General's report commended the state's investment planning, procurement and management processes for the project, reinforcing the value of the new centre to Victorians. The thorough and independent audit of one of the state's largest projects shows that it is being well managed by the government and is running according to plan after 14 months of construction.

I find it pleasing personally that the report goes further to endorse the project's needs analysis, comprehensive business case, procedure and probity processes each step of the way. I will quote one section of the report, which says:

> In particular, we noted that:
>
> > the business case was comprehensive and evidence based;

> a detailed analysis of procurement options for delivery of the development was conducted;
>
> a project brief provided the market with detailed information on the required deliverables for the project, including design and functionality expectations.

It is not the government but the independent Auditor-General who is saying these things. It puts into context all of the carping, the whining and the whingeing by the opposition that has taken place and the double act that David Davis and Peter Clarke from the Melbourne City Council have been doing to try every step of the way to undermine this project when the Auditor-General comes out and gives it a resounding commendation for its management.

I am very pleased that once again it has been shown, as it has been shown on a number of occasions by independent reports that have been made available to this house, that the opposition, and in particular David Davis, has got it wrong. David Davis continues to simply play the politics of throwing as much mud as he possibly can in the hope that some of it will stick in the process.

This independent report shows that this is an important project for the people of Victoria. It is a $1 billion project, and it is now starting to get international acclaim. That has been shown by the fact that we already have 17 conventions signed up and ready to go when the project is completed. This will build on tourism in this state. We estimate that in excess of $200 million will be coming into the state of Victoria as a result of these conventions. For those members who might not understand, participants in conventions spend something like five times the amount an average tourist might spend in a city.

This is a fantastic new facility. I am very pleased to see that the Auditor-General has supported the way it is being managed by the government. I look forward to its opening, which itself will be a major event for this city.

Water: Living Murray program

Mr BARBER (Northern Metropolitan) — I have checked my handout and my question is for the Minister for Environment and Climate Change. The government has supported the Living Murray First Step program to provide 500 gigalitres for environmental sites, and good on it for that. However, the Premier has ruled out accepting the Victorian Environmental Assessment Council's recommendation, which would provide about 800 gigalitres a year. Does the state government support federal Labor's policy to make 1500 gigalitres a year available for the Murray River and its environmental values? What feasibility studies has the government undertaken into how Victoria could provide additional water above and beyond the requirements of the Living Murray First Step?

Mrs Coote — Good question!

Mr JENNINGS (Minister for Environment and Climate Change) — There was an interjection to say that was a good question, and indeed it is a very good question. It is a question that I reflect on almost on a daily basis.

Mrs Coote — Sleepless nights.

Mr JENNINGS — No. I have had a history of having sleepless nights since I was a child, so I think it predates the Living Murray situation. But what it does mean is that I have a good many hours in the day to contemplate these matters. I use quite a number of them, usually during working hours, to tease out these issues and try to find various flow scenarios, with good officers who work within the Department of Sustainability and Environment and who deal with water-related matters.

At the heart of Mr Barber's question is a range of undertakings that have been made. Some of them are very significant and important undertakings, such as those which underpin the Murray-Darling Basin agreement and the undertaking to make 500 gigalitres of those flows available to icon sites along the Murray River. The river stream of the Murray itself is one of those icon sites. The challenge confronting this nation, and certainly Victoria, is to identify how we can meet the various contractual obligations that come from the Murray-Darling agreement and the water entitlements that are available to users within Victoria. We need to identify circumstances in which we can satisfy all of those undertakings.

Most of those undertakings were determined on assumptions about annual flows coming into the Murray. In times of extended drought it is becoming increasingly difficult to satisfy all of those contractual obligations and the integrity of the Murray-Darling agreement. That is not to say we are deserting that undertaking or that we are not trying to rise up to meet the challenge of providing protection for the river red gums, which is the brief that VEAC (Victorian Environmental Assessment Council) so purposefully undertook and on which it made recommendations about the appropriate use of water.

Any astute observer of the Murray–Darling Basin and the current water use and environmental flow practices would know that most of the savings that will be derived in the Murray–Darling Basin will come from

catchments that feed to Victoria rather than from within Victoria itself, although it becomes an integrated system by the time it arrives at the Murray.

In terms of the undertaking by my federal brothers and sisters in relation to their commitment to provide for environmental flows to the Murray River, it is most welcome. The Victorian government welcomes this commitment. We understand that their ability to deliver it depends upon structural adjustment and reforms and efficiencies that are to be derived, by and large, north of Victoria but which are integrated with ongoing efficiencies and savings that are identified within Victoria. In the total water management regime part of the answer lies within Victoria and part of it relies on reforms being implemented right across the basin.

The availability of those environmental flows to protect the icon sites and to satisfy to the highest degree possible the integrity of the VEAC recommendations will, I think, be probably the biggest challenge confronting me in my responsibility in the next year. I am undertaking extensive work in consultation with the department and various agencies to try to determine our capacity to do so. I am very happy to give updates such as this to the house as we undertake those deliberations in the year to come.

Supplementary question

Mr BARBER (Northern Metropolitan) — I thank the minister for that answer. Given the challenge the minister quite correctly pointed out, is buying water for the environment from willing sellers one of the options that the government has examined to achieve additional flows for the environment above and beyond its existing commitments to the 500-gigalitre target?

Mr Drum — They are already doing it. Of course it is.

Mr JENNINGS (Minister for Environment and Climate Change) — Mr Drum is champing at the bit to answer this question on my behalf. All the options and the appropriate mechanisms to satisfy our obligations and contractual undertakings and deliver on those commitments are being explored.

Climate change: research findings

Mr ELASMAR (Northern Metropolitan) — My question is also to the Minister for Environment and Climate Change, Gavin Jennings. Can the minister update the house on the findings of recent scientific research on climate change and its implications for Victoria?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Elasmar for his question, his concern about the wellbeing of the planet and his desire to see where Victorian climate change policy intersects with the wellbeing of our globe and how well we are informed about the implications of climate change. Most members of the chamber would be aware that a significant international report by the Intergovernmental Panel on Climate Change was released in the last week. The synthesis report gave the state of the planet from its vantage point. It was based on data which is a little bit over a year old. Members of the chamber and members of the community will see in the executive summary that the panel is unequivocal in its assessment that the globe has warmed during the last 100 years. In fact, it is absolutely certain that over the course of the last 100 years the global temperature has increased by 0.8 of a degree Celsius.

That raw statistic confirms a 150-year trend line. Remember that while we have scientific evaluation of the variations in temperature over the history of this planet, since 1850 we have had continuous monitoring of temperature on a real-time basis. Over the last 150 years there has been a continual trend consistent with a 0.8 of a degree rise over the course of 100 years. However, if you have a look at the trend line for the last 25 years, or indeed more recent times, you will see that the rate of change is higher. At the rate of change that has occurred within the last 25 years, the rise is in the order of 0.2 of a degree every decade.

What the Intergovernmental Panel on Climate Change is indicating to us is that, if you take the lowest trend line that has been determined over 150 years, temperatures will rise during the course of this century by over 1 degree Celsius. If you take the higher trend line over the last 25 years, the temperature of the planet may indeed increase by as much as 6.4 degrees Celsius. The consequences of that would be diabolical for the wellbeing of this planet. How would that actually be measured? It would be measured in a variety of ways. It would mean a significant variation in sea levels. The consequences for our coastal management would be serious erosion by variations that may be consistent with the removal of the ice caps.

A report that was issued last week by a well-recognised scientific team from the Climate Institute in Australia led by Graeme Pearman, who has undertaken the most relevant recent reports, indicates that sea levels may rise across the next century by somewhere in the order of 0.5 metres to 1.4 metres. Recently the Victorian government, through the Victorian Coastal Council, released a draft coastal strategy based upon a scenario where that increase would be somewhere between

40 centimetres and 80 centimetres, but the most recent assessment from the Climate Institute is that that prediction may be exceeded and it may be as high as 1.4 metres.

Mrs Coote — On a point of order, President, this answer is so long we have forgotten what the question was. We are not talking about an ongoing chronology of what is climate control and what its implications are. The question was about Victoria, from what I gather. It is one of the government's own Dorothy Dixers. It is not a ministerial statement. I ask you, President, to bring the minister — —

The PRESIDENT — Order! That is not a point of order. However, I would like to remind opposition members that they removed the time limits on answers to questions without notice. I am sure I can say on behalf of the majority of members in this chamber that we would all appreciate some reconsideration to be given to that particular issue on occasions. However, the question has been asked. It is indeed a very broad question. I see no point of order. The minister is entitled to go for as long as he likes on the answer, whether we like it or not.

Mr JENNINGS — I will resist the temptation to say, 'You asked for it', because I know what your expectations of me will be. In the last 30 seconds of my answer, before the member got to her feet, I referred to a report of international renown by the Climate Institute. I talked about the Victorian Coastal Council draft coastal management report. That was the last 30 seconds of my answer. What a short-term memory problem the member has. It is quite extraordinary. My answer was grounded in terms the coastal impact for Victoria and the policy development within Victoria.

I was just about to move elegantly and seamlessly to talk about the Brumby government's response in relation to mitigation of climate change, which includes our longstanding commitment to investment strategies to try to underpin renewable energy. The Victorian government led this nation in terms of providing through the Victorian renewable energy target system a stimulus for renewable energy. The target is 10 per cent by 2016. It has led to $2 billion worth of investment. We have 1300 megawatts of investment that is in the pipeline at the moment so we will be able to satisfy that policy direction of our government.

It has been augmented by some approaches in the federal jurisdiction. We have seen the current commonwealth government enter into the space, probably in a way that discounts the effect of its target, but it has established a 15 per cent target by 2020. In its calculations the federal government includes low emissions, which it is probably hoping will come through coal investment rather than renewable energy. The policy of my federal ALP brothers and sisters in this regard of a target of a 20 per cent reduction by 2020 is in the renewable sector, the sustainable sector — the sector that actually does not add at all to the greenhouse load on the planet.

In terms of the contribution of the Victorian government, we actually want our policy to go further and not be rolled back or folded into a conservative position. What we have seen from the federal government is this response to try to say that nuclear power may be the solution. It has leapfrogged renewable energy. It is not interested in sustainable energy, and it is not interested in renewable power as the solution. According to the *Herald Sun* a quarter of opposition members in this chamber would not support their federal leader in relation to his commitment to the nuclear power industry. Indeed the *Chaser*-style leaflet dropped by Jason Wood in La Trobe recently made it pretty clear. Obviously these sorts of leaflets are jokes! He did not actually mean it! Jason Wood tried to convey to his constituents that he wanted to distance himself from nuclear power.

Honourable members interjecting.

Mr JENNINGS — You are awake? You want to distance yourself from nuclear power too?

Funnily enough, when the opposition had an opportunity to distance itself from nuclear power, it resisted that opportunity. Let us take a snapshot of all of those on the other side of the chamber who are interested in having a plebiscite to stop members of our community from having fluoride in their water, but not one of whom would be interested in having a plebiscite to prevent a nuclear power station in their electorate. That is an extraordinary proposition. These might be the only elected representatives in the known Western universe to adopt those positions.

I am pleased to say that there is a great opportunity for us to be very decisive in the climate change space. It will take many millions of people across the globe to resolve the climate change issue, but with a bit of luck in two days it will only take 10 million Australians to fix the Howard government.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Treasurer) — I have answers to the following questions on notice: 770 and 801.

Ms HARTLAND (Western Metropolitan) — A number of questions on notice from me remain outstanding. They are: question 400, dated 24 May, which was directed via Mr Jennings to the Minister for Water in the other place, Mr Holding; questions 679, 680, 682 and 683, dated 17 July, directed via Mr Theophanous to the Minister for Public Transport in the other place, Ms Kosky; and question 845, dated 23 August, directed via Mr Jennings to the Minister for Health in the other place, Mr Andrews. A fax was sent to all of these offices on 29 October, and I also raised the issue in the last sitting week.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — As always, we are vigilant in pursuing with our ministerial colleagues in another place questions from members in this house, but it is always those ministerial colleagues in the other place who have to provide those answers. As soon as they are provided to me I can assure Ms Hartland that I will provide them to her.

PORT SERVICES AMENDMENT BILL

Second reading

Debate resumed from 1 November; motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise this afternoon to speak on the Port Services Amendment Bill. Quite often in this place we talk about industry. We talk about developing industry in this state, we talk about employment, we talk about prosperity, but we tend not to talk about the tools of that prosperity or the infrastructure that underpins it. Except for Mr Eideh, who has a background in transport and logistics, for many of us it is something that is below the radar. We accept that it is there, we expect it to be there, but we do not give it a lot of thought, so it is a good opportunity, having the Port Services Amendment Bill before the house this afternoon, to reflect on the role of transport and logistics and to reflect on the role of the Port of Melbourne Corporation in providing that vital infrastructure for Victorian industry.

There is no doubt that the vast majority of trade in Victoria, both imports and exports, is handled through Victorian ports. Yes, the airfreight industry is significant, particularly airfreight that is carried on an underfloor basis on passenger aircraft, but in terms of volume the airfreight industry is very small compared to the sea freight industry. It is certainly the case that Victoria relies upon its four trading ports as important infrastructure in continuing the development and operation of the Victorian economy.

When I say trading ports I am referring to the ports of Melbourne, Hastings, Geelong and Portland. This bill relates predominantly to the port of Melbourne. We are advised that there are 13 other local ports under the jurisdiction of the Victorian government within the Department of Sustainability and Environment. They are ports that are used for recreational purposes and the like. Some of them have been raised in debate by Mr Vogels in this place on previous occasions, but our main trading ports under the Department of Infrastructure are what this bill, particularly as it relates to the port of Melbourne, is about today.

This bill, as is stated in its purpose clause, is to make provision for further powers as to dredging; make further provision for port fees; make provision for powers to restrict access to certain port lands and waters; and make provision for other matters. On reading this purpose clause, indeed on reading the bill, you could be forgiven for thinking this is merely a bill to amend the Port Services Act. It makes a number of minor, in some cases, statutory interpretation amendments to the bill.

What is not clear from the bill and not clear from the minister's second-reading speech is the significance of this legislation to the channel deepening project. I will touch on that project in more detail later. It is of course a project that is supported by the Victorian Liberal Party. It has had the position of supporting it for some time, but that is with the caveat, as outlined by the Leader of the Opposition in the other house, Mr Baillieu, that there must be an environmental stop button if the project goes wrong. That is the position we will be putting through the course of this debate this afternoon and through amendments that I will introduce later in the debate. Our position is very much one of supporting channel deepening and of supporting the port of Melbourne.

It is worth reflecting on the role of the port of Melbourne in the Victorian economy. In 2005–06 the port of Melbourne handled 1.5 million, 20-foot container equivalents. That is estimated to increase to over 7 million by 2035, which incidentally is also the

period that is being considered with respect to the benefit analysis of the channel deepening project.

According to its annual report, in 2004–05 the port of Melbourne supported more than 13 000 jobs and handled more than 3500 vessels. Interestingly, the average contribution of each of those vessels to GSP (gross state product) and GDP (gross domestic product) was more than $330 000. It is worth reflecting on that figure: every ship handled through the port of Melbourne makes a bigger contribution to GSP and GDP than many of the small businesses in this state make and therefore reflecting on the value and importance of the port of Melbourne to the Victorian economy and the wider economy of south-eastern Australia. It is for that reason that the Liberal Party does support the channel deepening project, with the proviso that I outlined earlier and will speak to in more detail later.

Turning to the specific provisions of the bill, it makes a range of amendments, some of which are related to the channel deepening project and others that are not. To deal with them in turn, the first key provision is clause 5, which amends section 14A and also inserts subsection (d). It allows the Port of Melbourne Corporation and the Victorian Regional Channels Authority to undertake dredging operations and makes it clear that the port and the channels authority are permitted to deposit those materials that they dig up through a dredging operation in the waters of the port of Melbourne or the channels authority respectively. So it is a logical expansion of the existing section 14A and it clarifies the capability to do that.

Clause 6 inserts in section 22 a parallel provision that relates to the channels authority. My understanding from the departmental briefing is that that will in effect apply to the port of Geelong.

Clause 7 makes an amendment unrelated to the channel deepening project. It expands the prohibition on the directors of port corporations making loans to directors or partners of directors. The current legislation uses the term ‘spouse’ and this bill merely expands that provision by inserting the term ‘partner’, which has a wider definition under Victorian law, as this house well knows from debates had in the 54th Parliament.

The bill alters the structure for prescribed services — that is, those under which certain price controls are imposed. The bill removes that prescribed status from towage fees that are levied in relation to the ports of Geelong, Portland and Hastings and with respect to fees charged for the connection of water and electricity to vessels at the ports of Geelong and Portland. Again I understand that this arises from a recommendation of the Essential Services Commission with respect to prescribed and regulated services. They will no longer be subject to that prescribed process as to the setting of fees and charges.

The next key provision in the bill is clause 12, which substitutes a new section 74 in the principal act. The purpose of this provision is to introduce a new capacity for the ports to charge for the loading and unloading of empty containers. The current act provides that the ports can levy charges that are generally determined on a volume or weight basis. The difficulty with that of course is that where a container is empty and there is no volume or weight to charge, the legislation has not been explicit about the capacity to charge a fee for the services provided by the port. This clause substitutes an expanded section 74 that will allow the ports to charge for the unloading and loading of empty containers. They are important of course for Victorian port operations, from where a volume of agricultural produce that can be large volume but low weight — that is, bulk rather than weight — is exported in those containers.

Clause 13 substitutes a new section 75, making a technical change to the principal legislation. It removes the term ‘usage charges’ and inserts a wider term of ‘channel fees’. The advice at the departmental briefing was that the nature of this change is to increase the scope and type of fees that can be levied by the port. The current term, ‘usage charges’, has been interpreted in a narrow manner and the new ‘channel fees’ will allow for a broader scope of fees to be levied. Importantly, as part of that provision, new subsection (3) that is inserted by the bill will allow the relevant authority, the channels authority, to expand the liability for those charges. Under the provisions in the current act liability for the usage charges rests with the owner of the vessel, and the act is quite specific in restricting that provision to the owner of the vessel. The bill expands the capacity of the channels authority to levy those fees on the owner of the vessel and provides that those fees can be levied on:

> … one or more of the following —
>
> (a) the owner of any vessel that has used, is using or proposes to use the channel …

That is consistent with the current provisions. The insertions are:

> (b) the person who, immediately after any cargo is unloaded from a vessel that has used the channel, is the owner of the cargo;

(c) the person who, immediately before cargo is unloaded onto a vessel that proposes to use the channel, is the owner of the cargo.

So the capability of the channels authority will be expanded to seek the payment of its fees from not only the owner of the vessel but also from the owner of cargo that is either loaded or unloaded at the port. It may be a matter that members wish to pursue during the committee stage to expand an understanding of the intention of that substituted section to ensure that there will not be the capability to levy the same fee on more than one party — that is, on the owner of the vessel and then on the owner of the cargo. I am sure, and I take the nod of the parliamentary secretary, that that is not the government's intention. It is be something we will seek to have clarified in the committee stage of this bill.

The main provision of the bill that relates to the channel deepening project is picked up in clause 14. This inserts a new part 5A into the principal legislation. This is very much directed at the channel deepening project despite the fact that the government has not articulated that in its second-reading debate or anywhere in the bill. What this part 5A provision does is create a framework around channel deepening operations that will allow the port or channel authority, as appropriate, to exclude people from the area. This is argued on the basis of safety — to ensure the safety of other users of the port of Melbourne waters, which consist largely of Port Phillip Bay, and the safety of those involved in dredging operations.

But of course it will also ensure that those people who oppose the project and those people who wish to monitor the project will be unable to get within close proximity of it. There is no doubt, certainly in my mind, that the intention of the government is to ensure that these provisions are in place for the channel deepening project so that, either for their own safety or because their presence would be an embarrassment to the process, those people will not be allowed to be in close proximity to the channel deepening operations.

So proposed part 5A, which is entitled 'Powers to restrict access to certain areas' sets up a regime whereby the two authorities, the Port of Melbourne Corporation and the Victorian Regional Channels Authority, can apply to the minister to make a declaration of a restricted area. The restricted area can be one that is defined in terms of its waters — that is, by specific points of latitude and longitude for a defined area of up to 12 square kilometres — or it can be an area that is defined in terms of a vessel. So an area can be defined and declared a restricted access area in relation to the dredge that is being used for channel deepening under division 2 of the proposed part 5A.

In addition to the 12-square kilometre limit, the other restriction on the area that can be declared is that in respect of a vessel. A restricted area can be declared within a specified distance of a vessel, which distance cannot be further than a 1.4-kilometre radius of the vessel. That is a substantial distance. The operation of a restricted area under this provision would restrict protesters or environmentalists who were seeking to investigate for themselves the operation of channel dredging doing that. I am sure that that is at least in part the government's intention in introducing this provision.

Once the relevant authority has sought a declaration and the minister has agreed to a declaration there is a regime that lays out the effect of the declaration and the penalties for breaching that declaration. Proposed clause 85 of the principal act lays out the effect of a declaration and the restrictions that are imposed on people once the minister has declared a certain area to be a restricted area.

Clause 85 provides that the minister in making a declaration can specify any of the following: the vessels and classes of vessel that may or may not have access to the area. In relation to vessels, the minister can specify any of the following: the purposes for which the vessel may or may not have access to the area, the times during which the vessel may or may not have access to the area and the activities that may or may not be carried out by a vessel having access to the area. That gives the minister an extremely broad capacity to dictate the type of operations that can take place within a restricted area and the type of operations that will be excluded from the restricted area.

There is a similar parallel provision that relates to persons rather than vessels, and again the minister will have the capacity to outline in a declaration activities that a person may undertake or not undertake in a restricted area and the purpose and times of those activities. Additionally it allows the minister to impose any further conditions that he may wish to impose with respect to a restricted area.

The bill requires that a restricted area be declared through the instrument of the *Government Gazette*. It allows the minister to describe a restricted area by reference to a map, plan or otherwise. I have to say in passing that it is often the case — certainly it has been in my experience — that restricted areas, certainly as they apply in air navigation, are often described in a way that is convenient to the authority that is

establishing them, and that is by reference to latitude and longitude. Restricted areas are not always described in a way that is convenient for those who have to navigate around them.

I make the suggestion to the minister that, if he is proposing to establish restricted areas in accordance with these provisions, their published description should be as simple and straightforward as possible. References to landmarks and to distances from known points — buoys and the like — will be far easier for navigation on the water than references to latitude and longitude. As I say, while such descriptions might be convenient for those drawing up the declarations, they are not easy for those who have to navigate around them. I make the suggestion to the government that, if it wants vessels and people to adhere to these restricted areas, they need to be published in a form that is as simple as possible to understand.

The bill also provides the minister with the power to revoke or amend a declaration. There is nothing surprising there. It requires a publication of the declaration on the internet and in a generally available newspaper. I imagine it is the expectation of this house that that would take the form of advertising in the *Herald Sun* or the *Age*, being the daily newspapers in this state.

Having sought the declaration, having granted the declaration, having published where the restricted area is and defined who can go in, what they can do and when they can go in, the bill then lays down offences. One offence will be entering a restricted area, for which there will be a penalty of 10 penalty units. The bill will allow certain defences with respect to that offence. The bill creates a 'reasonable excuse' offence. I have to say that is an interesting one from the perspective of this house, because it very much depends upon the interpretation of the court as to what a reasonable excuse is with respect to this provision. That is another issue that we would seek to have some clarification on from the minister during the committee stage. What exactly does the government intend by its 'reasonable excuse' provision and what types of reasons does it envisage as being reasonable excuses under this provision? I seek that the minister provide some expansion on that point during the course of the committee stage.

The bill also creates the offence of interfering with activities that are taking place within the restricted area, so not only is it an offence to enter a restricted area in contravention of the minister's declaration, it is also an offence to interfere with the carrying out of activities that are authorised within the restricted area. Of course this is a provision that is clearly laid out for the purposes of the channel deepening project, and I have to say it is not something to which we have any objection. It is entirely appropriate that the contractors who are in place to carry out the channel deepening project are allowed to get on with the project as ultimately decided by the government. We have no argument at all with that provision that creates an offence of interfering with an authorised activity within a restricted area, but it clearly shows that this bill is intended for purposes of, if not facilitating, aiding the channel deepening project, despite the fact that the minister in his second-reading speech was silent on that point.

The bill also creates certain standard offences that we see in the Crimes Act and similar legislation in terms of provisions relating to the requirement to make certain disclosures to police and other authorised parties when intercepted in contravention of the ministerial declaration. Clause 88D sets out the offence of not giving certain information to police when asked to do so. It provides that:

> (1) A person who is in a restricted access area must, if asked to do so by a member of the police force —
>
> (a) give his or her name and address; and
>
> (b) state the authority under which he or she is entitled to be in the area and provide evidence that the person has that relates to that authority.

It is unclear, and it was unclear at the briefing, whether it was the expectation that all parties who are in a restricted area and who are authorised to be there by ministerial declaration would be required and expected to carry that ministerial declaration with them. It would seem perhaps a little unusual to expect that parties in that situation would be carrying the declaration that entitles them to be there. However, that is a matter that is not clear from the bill. Clause 88D(2) states:

> A person who is not entitled to enter or remain in a restricted access area without a certificate of authorisation under section 88G must, when asked to do so by a member of the police force, produce the certificate.

That clearly creates the expectation that parties in the restricted area as declared by the minister will be in possession of, on their person, the certificate authorising them to be there, which is a slightly unusual position when you think about the nature of the activities that will be undertaken in these areas and on vessels and the like.

The bill also lays out the capacity for the police to remove a vessel that is not authorised to be in the area, and again this is a logical extension of the provision. If

you are creating a declared restricted area, if you are prohibiting certain vessels and parties from being in there under certain conditions, it is logical that you then put in place a provision in which vessels and people that are contravening that restriction can be removed. That is the purpose of clause 88F.

Unrelated to the provisions relating to the channel deepening project, the bill also expands the provisions with respect to safety management plans.

Clause 15 inserts a new requirement in section 91 of the principal act that a port manager must ensure that the safety management plan and the environment management plan for the port or the part of the port that the port manager manages, superintends or controls are audited in accordance with that part. That imposes a penalty of up to 240 penalty units in the case of a commercial trading port — one of the big four of Melbourne, Geelong, Hastings and Portland — and 60 penalty units in the case of a local port. It is a substantial penalty that is being put in place in respect of the new provision for the auditing of safety management and environment management plans.

As I said earlier, although the bill is not explicit about it and although the second-reading speech is silent on it, the central elements of the bill are about facilitating the channel deepening project. As I also said earlier, the Liberal Party supports the channel deepening project for very good reasons. As I outlined earlier, the port of Melbourne is critical to Victoria's transport and logistics infrastructure. There is now substantial evidence that suggests that the capacity of the port of Melbourne as it currently exists no longer accords with the requirements of modern shipping practices. The Port of Melbourne Corporation is proposing a dredging project that will see the southern end of the existing channel dredged in two locations and the northern end of the current channel dredged leading into the mouth of the Yarra River.

The supplementary environment effects statement for the channel deepening project outlines the elements of the project in four stages. The first is the dredging of the existing shipping channels, including the Yarra River channel, Williamstown channel, Port Melbourne channel, south channel and the great ship channel at the entrance; the dredging of the berth pockets at Appleton Dock, Swanson Dock, the holding dock and Gellibrand Pier; the placement of dredging material in two dredged material grounds, one in the north of the bay and one in the south of the bay; and modification of existing infrastructure, including berth works, river works, protection of services, upgrades to existing navigation aids and the installation of new navigation aids.

The case for the channel deepening project was also outlined in the supplementary environment effects statement. It outlined the economic argument for the project and assessed the present value of the benefits of the project at just over $1.9 billion over 35 years out to 2035, which is now 28 years, and assessed the cost of the project as being in the order of $500 million, with additional costs of $137 million that have been incurred by the project to date.

Although the Liberal Party supports the project, it is my view that the Port of Melbourne Corporation has done itself no favours in its promotion of this project. In its attempts to sell the benefits of this project, it has very much undersold why the project would be good for Victoria. I think that is probably part of the reason why it is now in a situation where it does not have the level of community support that is desirable with this project. It is a matter of regret that has transpired, because I think if the project had been better sold, we could have seen this dealt with in a far more expedient manner than it has been.

The Leader of the Government from time to time criticises the commonwealth government with respect to its infrastructure program. I have to say that we really have seen this channel deepening project for the port of Melbourne badly handled by this government, because it has been allowed to drag on year after year after year without a clear decision from the government. It has become a political hot potato when it did not have to become one and should not have become one, and as a consequence the government has declined to make a decision on how to proceed. Here we are, several years after the project was first mooted, after the case was first made by the Port of Melbourne Corporation, without any tangible progress towards the project getting under way.

It is an important project for Victoria, and it has widespread industry support. I note in looking at some of the third-party endorsements that have been received for the project that we have endorsement from Victorian Employers Chamber of Commerce and Industry, which has stated that the problem of lack of channel depth has already impacted on the Victorian business community, with around 30 per cent of container vessels not being able to load to full capacity. Tim Piper from the Australian Industry Group has stated that the longer we delay the greater will be the potential loss to the state. The Victorian Farmers Federation said that around 70 per cent of Victorian agricultural product is exported overseas with a value of around $7.6 billion. Channel deepening will secure the long-term competitiveness of Victorian exporting industries. The Australian Council for Infrastructure

Development, or AusCID, says that channel deepening rates as the nation's most valuable infrastructure project, with the potential to add $14.8 billion to gross domestic product by 2030.

Very substantial arguments have been mounted in favour of the project by industry in this state, yet we have seen the government procrastinate and fail to make a decision because it has been politically difficult. As a consequence this issue has festered and has become more and more difficult for the government. The longer the project is delayed, the more expensive it becomes. The fact that we have already seen more than $130 million spent on this project out of what was supposed to be a total cost of roughly half a billion dollars without the first actual dredging taking place is an unfortunate indictment of the government.

As I said earlier, it is the position of the Liberal Party to support this project. We see its value to the Victorian economy, and we see its value to the national economy in enhancing transport and logistics infrastructure in this state. But we are also very aware of the concern expressed in the Victorian community about the potential environmental impacts of this project on the bay. There is no doubt that Port Phillip Bay is one of Victoria's jewels. It is a significant natural resource for industry; it is a significant natural resource for the tourism sector; and it is a significant community resource for those people who live around the perimeter of the bay. In my own electorate of South Eastern Metropolitan Region, which stretches along the bay from Seaford almost to Mount Eliza, a significant number of people are concerned about this project, and I am sure it is the same on the western side of the bay.

The Liberal Party has taken the position of supporting the project but on the proviso that there is a big red stop button, to use the language of the Leader of the Opposition in the other place: a mechanism by which, if the channel deepening project as it proceeds demonstrates significant environmental harm to the bay, it can be stopped. It is for that reason that I propose to move a reasoned amendment. Therefore, I move:

> That all the words after 'That' be omitted with the view of inserting in their place 'this bill be withdrawn and redrafted to:
>
> (1) incorporate the establishment of an independent expert environmental panel to monitor and oversee any dredging and disposal of dredged material in Port Phillip Bay;
>
> (2) ensure the independent expert environmental panel is required to publicly report on a regular basis on the environmental effects of any dredging and disposal of dredged material in Port Phillip Bay;
>
> (3) provide the necessary powers for the independent expert environmental panel to be able to immediately stop any dredging and disposal of dredged material to protect the environment of Port Phillip Bay; and
>
> (4) provide for a system of fair and reasonable compensation for commercial businesses, such as tourism and fishing businesses, which are significantly adversely affected by operations involving dredging and disposal of dredged material in Port Phillip Bay'.

This reasoned amendment is not about opposing the dredging project; it is not about holding up the dredging project, but it is about asking the government to go back and ensure there is a big red stop button that will put this project on hold if significant negative environmental effects are encountered during the course of the project. What the reasoned amendment requires is for the government to incorporate in the bill, before it comes back to the house, the establishment of an independent environmental monitoring panel. If the Labor Party is as committed to the environment as the Minister for Environment and Climate Change would have us believe when he comes in here, this is a mechanism the government should be endorsing.

Debate interrupted.

SUSPENSION OF MEMBER

The PRESIDENT — Order! As it is 4.00 p.m. I have to interrupt business. I am advised by the Clerk that the public lotteries licence documents required to be lodged with him by 4.00 p.m. by the Leader of the Government pursuant to the resolution of the Council of 21 November have not been lodged with him. Pursuant to the terms of the resolution the Leader of the Government is therefore suspended from the service of the Council for the remainder of the sitting this day.

Debate resumed.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — This mechanism is about getting the government to put in the red stop button. What the reasoned amendment requires is for the government to bring the bill back to the house with a mechanism in place — an independent panel that will allow this process to be stopped in the event that something goes wrong.

The first element of the reasoned amendment requires that a panel be established to monitor and oversee the dredging operation. I cannot for the life of me understand why the Labor Party would object to that; why it would object to independent environmental oversight of the bay dredging project. Again, if the

government is honest and consistent in its claim of wanting to be open and transparent, it will support this provision.

The second element of the motion requires that the panel report publicly and independently. It will not be a process that is vetted by the minister, and the report will not be a report that is watered down by the minister but a report that will be released publicly on the environmental impacts of this process, if there are adverse elements.

The third element of the provision is to empower the panel to stop the process — the big red stop button — if there are significant negative environmental impacts. These are three straightforward provisions that the Liberal Party is seeking: independent oversight, the capacity for the oversight panel to report, and the capacity for the panel to stop the process if there is a problem.

The fourth element of the motion is to provide compensation for those businesses, such as those in the tourism and fishing industries, that are adversely affected by this process. The Liberal Party recognises that benefits from this project will accrue to the Victorian economy generally, but it also recognises, in a way that the government has failed to recognise, that there will also be certain detriments for certain businesses arising from this project. Most particularly I am referring to businesses on the southern end of the Mornington Peninsula.

The amendment I have moved has come following very strong advocacy from the member for Nepean in the other place, Mr Dixon. It is also a matter which is of great concern to the member for Mornington in the other place, Mr Morris. Through the processes of the Liberal Party, Mr Dixon, in particular, and Mr Morris have been able to encourage their colleagues to encourage the government to put this mechanism in place, a mechanism that will see those businesses that are harmed by this process given a type of compensation mechanism. I am not proposing in the reasoned amendment to spell out what that mechanism should be and how it should work; it is for the government to determine the appropriate mechanism and the appropriate level of compensation.

What we are asking the government to do is to go back, reconsider this bill, and ensure there is an appropriate compensation mechanism in place for those businesses — many of which will be small businesses down the southern end of the Mornington Peninsula — that may be adversely affected by this bill. It is great that benefits will flow from the project to the Victorian economy, but we should also recognise the detriment that may occur to those businesses on the southern Mornington Peninsula.

While the Liberal Party supports the channel deepening project, it is keen to ensure that an appropriate stop button is in place. The reasoned amendment before the house today encourages the government to develop that stop button. It encourages the government to develop an appropriate compensation mechanism for those businesses that may be harmed by this process, and I encourage the house to support the reasoned amendment.

Mr DRUM (Northern Victoria) — The Nationals do not oppose the bill and we do not support the reasoned amendment. The channel deepening of Port Phillip Bay is one of the biggest infrastructure projects to be contemplated by this government. This legislation will enable some dredging material to be positioned and deposited around the bay. It is also going to give the Port of Melbourne Corporation and the Victorian Regional Channels Authority some powers that will be affirmed by this bill. The bill will allow the creation of restricted access areas which will be very important in enabling the work to be carried out.

It is worth mentioning some examples from the second-reading speech of why a restricted area is needed. Because of the hazardous chemicals and products that are needed to enable channel deepening to take place, obviously there is going to be a need to keep those areas clear of protesters or onlookers who come too close to some of the work. These restricted areas are similar to what happens when a world-class cruise ship comes into the bay — they keep a restricted area around the ship for safety reasons, not only for pleasure craft but also the cruise ship itself. This is similar to when a warship enters the bay. Quite often there are a lot of protesters who not only endanger their own lives but also the lives of the people on the warship. They are clear examples of why you need to have restricted areas. The channel authority will have the power to create those areas.

The bill is also going to clarify the imposition of wharfage and channel fees, which will increase the flexibility of the Port of Melbourne Corporation and other channel operators to increase fees. They believe they need to have the ability to increase their fees. So be it; they will have the ability to do that. That in itself is going to create some issues because this project has so far been pushed ahead without a proper cost-benefit analysis or proper business case. The uncertainty surrounding the ongoing wharfage fees is likely to

create uncertainty in a whole range of sectors that use the port facilities on a regular basis.

Whilst The Nationals are in principled agreement that the channel deepening is going to be a huge benefit to Victoria, we are also concerned that the Victorian Labor government has not released a cost-benefit analysis of the project. The government has a solid gold history of blowing out every major project it has attempted, so the people of Victoria are well within their rights to question — —

Hon. T. C. Theophanous interjected.

Mr DRUM — Can you name a major project that you have brought in on budget? Any of them? Give me one. Farce rail?

The PRESIDENT — Order! The member will address his remarks through the Chair.

Mr DRUM — I am sorry, President. I was asking the minister to give me one example of a project that this government has brought in on budget.

The PRESIDENT — Order! The member does not get to ask the minister a question. This is not question time.

Mr DRUM — He should not interject if he cannot give me examples of any project that this government has brought in on time and on budget. I was just making that point.

Victorians are well within their rights to question this government's ability to bring this project in on time and on budget. As long as it continues to withhold a cost-benefit analysis and all the business case figures, then Victorians have every right to question the government's ability to make this work on an ongoing financial basis. That is the point we are pushing. The Nationals assume that when the cost-benefit analysis is done, it is going to stack up financially. We expect that the benefits derived from being able to bring bigger ships into the bay and therefore increase the cargo loads is going to stack up quite well. We expect the government would be at the forefront of putting those figures out to the public for analysis.

Whilst this legislation will give the Port of Melbourne Corporation flexibility with its operating fees and charges, the users are going to need some comfort that the pricing regime into the future will enable them to operate their businesses, use their imports and do the deals to create the exports in a fashion that will not price them out of business. It is a very real concern, specifically to the dairy industry. We understand the dairy industry is in fact the major exporter of goods through the port of Melbourne. I believe the percentage of dairy products compared to all products is about 70 per cent — I may be a bit out there. If we get the figures wrong and the cost blows out, and the price of doing business through the port is handed on to those who are creating the exports, then it could have a detrimental effect on the dairy industry. So we need to be very, very careful about that.

We understand that it is important to be able to get that produce out. We understand how critical it is that we are able to get produce from farm gate and through the rail system and the road system. We have been constantly calling for the government to upgrade the rail system in northern Victoria, and we mentioned it in the debate this afternoon on the transport bill. Speeds on our rail system in northern Victoria are down to 15 kilometres an hour, which is a reflection on the state of the tracks in the Ouyen-Mildura-Murrayville region. Even as close to Bendigo as Inglewood and Bridgewater we have had some unbelievable speed restrictions because of the poor state of the tracks.

It is critical that we are able to get our produce out, whether it be citrus or wine and table grapes out of Mildura or dairy products out of the Goulburn Valley or wherever. I am talking about perishables, products that have a limited shelf life. There is a genuine need to get such products to markets around the world as soon as possible. That is why we will not support the amendments, which may hold up the project. We will encourage the government to get on with the project and to help it in any way it can.

The Nationals will continue to hold the government to account on the cost-benefit analysis of the project. Our support for this bill should in no way be seen as a carte blanche invitation to keep Victorians in the dark about the project. We understand that the biggest user sector is the dairy sector and that the dairy sector exports perishable goods with a limited shelf life. We need to know that that sector, along with some others, has some security in and comfort with the operating fees and charges of the port into the future. We need to know that, if there are to be substantial cost blow-outs in the future, the government will pick up those blow-outs and they will not be put onto the industry sectors that will be using the port in the future. This is a very real and pertinent issue for Victoria.

We understand there is a need to get bigger ships into the port to facilitate the transport of export goods, but Victorians have been kept in the dark over the cost-benefit analysis. Only recently have we been able to get the environmental report handed down and made

public. That was causing us great concern. We have taken the line that we will not hold up this legislation. We want it to go ahead. We want to ensure that the provisions that are being put in place through this legislation to facilitate the project that we are pushing towards will in no way disrupt that process.

With that short contribution I reiterate that The Nationals will not be opposing this legislation. We believe powers being given to the operating authorities in relation to setting fees, in relation to the restricted areas and in relation to their ability to deposit certain assets and dredge material around the bay is what has to be done, and we will support that as best we can. We will not oppose the legislation, and we hope the government can get moving on this project. We reinforce the fact that we hope the government will come clean with a genuine cost-benefit analysis and business case that all Victorians can look over in the very near future.

Ms PENNICUIK (Southern Metropolitan) — I move:

That debate on this bill be adjourned.

Ms PENNICUIK — My reasons for moving this procedural motion are that I believe we should not be having any debate on the bill before us until the approval processes and full financial strategy for the channel deepening project have all been completed, and they have not been. The government says that it is open and transparent and that it puts in place processes to look at projects, including this one. That process has by no means been completed. We have had an assessment by the Minister for Planning, but the primary decision maker is the Minister for Environment and Climate Change, and he has made no decision on this project. The channel deepening project is also a controlled action under the commonwealth Environment Protection and Biodiversity Conservation Act, and so we need to wait for approval from the federal environment minister, whoever that may be.

We also have no financial strategy for the channel deepening project. On 1 November I asked the Treasurer whether he had a recent estimate of the cost of the channel deepening project. He said:

> … there are a series of other processes that need to be in place before the government can give any firm estimate on this.

On 1 November the Treasurer told me that there is a series of other processes — which is true — which have to be completed before he can give any firm estimate on the cost of channel deepening. Mr Rich-Phillips mentioned a cost of $500 million. That was an estimate of the cost about three years ago. The estimated cost now is getting closer to $800 million, and I do not expect that there will be any change from $1 billion.

We also have an estimated benefit. Gordon Rich-Phillips mentioned an estimated benefit of $1.9 billion over 35 years. That works out to about $50 million a year for a project that is going to cost us about $1 billion. You do not have to be a mathematical genius to work out that that is a pretty dodgy investment. It is not a very good investment of Victorians money — or anyone else's money for that matter. We do not have any idea who is going to pay for the channel deepening project.

Mr Pakula says this has nothing to do with channel deepening. The Minister for Roads and Ports in the other place, Mr Pallas, was reported as saying that the legislation would pave the way for channel deepening by providing the appropriate legal framework. He went on to say that we need to introduce the laws now, before approval, so the legislation can pass through Parliament before the end of the year to allow dredging to begin as early as January. I ask the Parliament why we should be debating a bill which the Minister for Roads and Ports says is going to pave the way for channel deepening — not a very good choice of words on his part — when the important environmental approval processes have not been finished by the state and federal environment ministers.

We know that the environmental management plan put forward by the Port of Melbourne Corporation was still a work in progress on the very last day of the supplementary environment effects inquiry. That is very reassuring to the citizens of Victoria, many of whom are extremely concerned about this channel deepening proposal and the short and long-term effects it will have on the health of Port Phillip Bay, which belongs to the people of Victoria and not to the Port of Melbourne Corporation, the Victorian Regional Channels Authority, the importers and exporters, the shipping lines or the stevedores. It belongs to the people of Victoria and Australia. It is an important ecological asset and it must come first. It should come before any consideration of the needs of the entities I just mentioned, which are of secondary importance to the ecology of the bay.

I cannot believe that in 2007 we have before us a project that is going to dredge up 40 million cubic metres of the bay, one of our key ecological assets. This will put the bay at risk for basically no economic return and before we have any environmental approval of the evidence put forward. I will expand on that if we get

back to the debate. That is why I am moving this procedural motion — so that the approval processes can be completed and a full financial strategy be seen by the people of Victoria before we proceed with debate on this bill.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — On the procedural debate, it is the Liberal Party's position that this project should proceed only with the appropriate environmental safeguards. That was the position I articulated in my reasoned amendment. It has been the Liberal Party's position in this house and the other house that the required commonwealth sign-off must be achieved before the project proceeds. Given that this legislation is absolutely linked to the undertaking of the channel dredging project, we believe it is appropriate that this legislation, as indicated by our reasoned amendment, not proceed until those environmental safeguards are in place, as articulated by Ms Pennicuik.

Given that Ms Pennicuik's motion would give the government the opportunity to amend this legislation in the way we are seeking through our reasoned amendment, we will support her proposed adjournment so those changes can be made to the bill. Failing that, we will proceed with our reasoned amendment.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — The government cannot support this attempt to defer discussion of this bill, as moved by the Greens. This is another example of the level of collusion that is clearly taking place between the Greens political party and the Liberal Party. At this particular juncture the Liberal Party and the Greens are attempting to use the fact that the Leader of the Government is not in the house to artificially inflate their numbers compared to the government's numbers. That is what they are attempting to do. They know very well that Minister Lenders will not be able to come in and vote on this motion.

Ms Pennicuik knew this when she moved the adjournment motion. She knew that Minister Lenders would not be able to come in and vote on it. She is deliberately taking advantage of the fact that members opposite have taken away Minister Lenders's vote, in a cynical attempt to try to get the numbers in their favour. That is what this is about, make no mistake about it. I hope other members, including Peter Kavanagh, who I know is concerned about the abuse of the process in relation to Minister Lenders's vote, and The Nationals will identify that this is nothing more than a rort by the Liberal Party and the Greens. They are working together to try to bring on a vote when there is a legitimate second-reading debate taking place on a bill. This debate was advertised. Everyone knew this debate was happening — it is not as though no-one knew it was happening. The lead speaker for the Liberal Party got up and said they were moving a reasoned amendment. The reasoned amendment is in line with what the Greens are doing. The Liberal Party says it supports in principle channel deepening but it also wants to support the Greens in what they want to do. They want to have two bob each way. They have a cushy little liaison going with the Greens political party in the lead-up to the federal poll, because they want to show themselves as being somehow green — I do not know what that means. We have this little arrangement between the two of them to absolutely rort the voting intentions of this house.

We approached the Leader of the Opposition in this house a number of times and asked him whether he would provide a pair for the Leader of the Government, and he refused. We have now found out the real reason behind the motion to suspend the Leader of the Government — the real reason was so people on the other side could gain some short-term advantage by reducing the number of people legitimately elected to this house in order to express their view and to vote on issues such as this.

This is one of the most outrageous and cynical moves that we have ever seen in this house. The motion has been moved by the Greens. They knew very well what would happen. They lined it up with the Liberal Party. They thought, 'Here is an opportunity; we might just sneak in by one vote or two votes. We might just sneak in because we have just nobbled the Leader of the Government from having a vote in this house'. It is outrageous. We reject it. We will vigorously oppose their attempt to rort this house.

Debate interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! Before I call the next speaker I wish to acknowledge in the gallery a delegation from the Turkish Parliament and the officials accompanying them.

Debate resumed.

Mr KAVANAGH (Western Victoria) — It was my intention to vote with the Greens on this motion, but given what Mr Theophanous said and out of respect for Mr Lenders I will excuse myself from this debate.

House divided on Ms Pennicuik's motion:

Ayes, 18

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

Noes, 20

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

Motion negatived.

Ms PENNICUIK (Southern Metropolitan) — I would like to start just by saying that this bill, according to the minister, is related to the channel deepening project. The minister put out a media release saying that this project would pave the way and create the necessary legislative framework, which is why I moved the procedural motion that we just debated.

I have been interested in the channel deepening project for five years, since it was first mooted by the government. I made a submission as part of Earthcare St Kilda. I spoke at the first environment effects statement inquiry, and I made a submission and spoke at the most recent inquiry into the supplementary environment effects statement. I have been following this issue and have been concerned about it for a long time.

The channel deepening project, as I have mentioned before, is probably going to cost about $1 billion. It is very unclear at the moment how much it is going to cost because we do not know what the final environmental approvals will be and what conditions they may have on them. We do not know whether it actually will be approved under the Victorian Coastal Management Act or whether it can be stopped at the federal level under the Environment Protection and Biodiversity Conservation Act because of the great risks it poses to the health of Port Phillip Bay.

When we are acting as members of Parliament we need to know whether the project before us has an economic benefit for the people of Victoria. If it does not, then it should not proceed. There is no way that this project has been shown to have an economic benefit for Victoria. If there are risks to either the short or long-term health of Port Phillip Bay the project should not proceed. Under the Environment Protection Act we should apply the precautionary principle with respect to any risks to the bay. If something is low-risk but high-consequence — the SEES (supplementary environment effects statement) has shown that the project will have the impact of increasing turbidity, so it is admitted — then if we are applying the precautionary principle, we should not proceed.

I would like to make some comments about process. Has it been fair and has it been transparent to all stakeholders involved? No, it has not. This is because we really have to date the process from the beginning of the last environment effects statement. The first one was so bad — it was described as fundamentally flawed by the members of the inquiry panel that looked at it — that we had to go back to the drawing board. With regard to the inquiry we have just been through, we had a very truncated and unfair process. It had to go on and on, as Mr Gordon Rich-Phillips said, because the Port of Melbourne Corporation was unable to provide enough evidence to satisfy a panel that it knew what the environmental effects of the project would be. That is why it has gone on and on.

The actual process that involved the community was truncated. Only 30 days were allowed for the exhibiting of a 15 000-page SEES. That was of course criticised by many people as being a very uncohesive document. It did not tie all the issues it was supposedly looking at into any cohesive whole. They were all examined bit by bit. Witnesses got up at the hearing and spoke about this thing, that thing and the other thing, but nobody could actually give us a helicopter view of the project or tell us how all the environmental impacts that have been identified in relation to this project have synergistic or flow-on effects. That was a point made very strongly at the hearing by Dr Graham Harris, the leader of the seminal 1996 CSIRO study into the bay, which really set the standard for a study of the bay. Any information provided to inquiries by the Port of Melbourne Corporation just pales into insignificance in comparison with that study.

One of the problems with the whole assessment of the channel deepening project is that it has only ever looked at the view put by the Port of Melbourne Corporation. Although it is not supported by any evidence, the Port of Melbourne Corporation claims that various numbers — 27 per cent, 30 per cent — of ships cannot come into the bay fully loaded. But if you

take the time to wade through the detail in its own supplementary environment effects statement you will find hidden in chapter 6 the information that only 3.8 per cent of ships leaving or entering Port Phillip Bay needed any sort of tidal assistance. That means that 96 per cent of ships do not need any assistance to come into the bay.

We are going to spend gazillions of dollars and we are going to trash the bay because we want to facilitate the 3.8 per cent of ships that may need tidal assistance coming into the bay. That is what is in the Port of Melbourne Corporation's own document, but that is not the figure it uses publicly. It uses some other figure — about 27 per cent — which really applies just to the number of ships that may come in and out not fully laden because they have offloaded something somewhere else or they are going out not fully laden because they are going to pick something up somewhere else. In fact the evidence given by the shipping companies at the inquiry was very clear on that. It was very clear that Melbourne is in the middle of a shipping run. Ships come from Singapore down the east coast, drop things off, get to Melbourne and then pick things up at other ports on the west coast. They are basically not coming into Melbourne fully laden because Melbourne is in the middle of the run, and that makes perfect sense.

The inquiry was to look only at the project put forward by the Port of Melbourne Corporation — that is, to dredge 40 million cubic metres of material from the bay. It was described by the first inquiry as a mega-project, and it had nothing to compare it with anywhere else in the world. It is so big a comparison could not be made with any other project. The project is three times as big as any other one the inquiry could think of. The people of Victoria need to know that.

We are talking about a project three times bigger than any other dredging project at any other port. This is in our bay, which is a shallow lagoon that is part of a coastal system of shallow lagoons that run along the east coast of Victoria. The Gippsland Lakes, Western Port bay, Port Phillip Bay and, even stretching along the coast, the Coorong all have very similar ecological systems. They are shallow waters, and they have unique ecological features because of that. Inflicting this sort of damage on Port Phillip Bay will threaten those ecological systems.

The only project we looked at was that one. We did not look at, for example, how it compares with something that could be done as a nation-building exercise. In fact one of the projects which has already been looked at at a national level is the inland rail freight link between the Queensland ports and Melbourne, which could revitalise inland centres. It could mean containers could go up from Melbourne to Brisbane in half the time it takes by ship. They could be double stacked, if we built a standard gauge rail line up there. That is the sort of thing we should be doing instead of channel deepening, which is not even needed. No case has ever been made for it.

But we were not allowed to look at any alternatives. The community is not to know how the cost benefits or environmental impacts stack up against each other. The panels were never able to look at alternative ways of dredging, like dredging smaller amounts or dredging over a longer time. None of this stuff was ever included. It was just that project — which the panels have never diverged from.

Mr Rich-Phillips mentioned the $1.9 billion benefit. That is one of the figures buried in the supplementary environment effects statement. There is also another figure of $1.2 billion up to 2030, which is the figure the Port of Melbourne Corporation used as the benefit. I laughed when I saw that. I thought it must have left a zero off that figure, because I could not believe it was trying to justify this project on such a small return with such a huge outlay for such a big risk. I cannot think of anything more stupid for a government to be supporting than that.

Other economists have looked at the cost-benefit analysis put forward by the Port of Melbourne Corporation. The strange document put forward by PricewaterhouseCoopers on the value of the port seemed to be completely irrelevant to the whole issue. Other economists say that the cost-benefit analysis is overstated and that the return could be as low as $700 million, which would be a loss. Even the port is now conceding it is going to cost about $763 million. So we will spend $763 million — as I have said we probably will not get any change from $1 billion — and get $700 million back! I do not know who is going to get it back. There is no evidence that any Victorian citizen will get any benefit out of this. There is no evidence that any shipping company will benefit, because as we know from the bill there are going to be increased charges for cargo holders and shipping lines. Even those ships that do not need channel deepening — which is the vast majority; nearly all of them— will be charged for channel deepening. They do not need it because they can already come in to Port Phillip Bay.

I go back to the costs. The estimated cost of $763 million does not include environmental costs. It does not include maintenance dredging, of which there is no limit; it does not include sunk costs, or the cost of

the amenity of the bay or loss thereof. It does not include the loss of bay businesses; only fishing and diving losses have been estimated. There is no estimated cost of any compensation to businesses. All of these things are excluded from the costs.

Mr Barber — They hid those on someone else's balance sheet, did they?

Ms PENNICUIK — It has been said that they will be dealt with in some other strange way that we are not quite sure about. Questions have also been raised about the safety of ships coming into the deepened channel and crashing into its sides. At the moment, while the channel is shallower and the banks are less steep, that has not caused a major incident. One would think that the Port of Melbourne Corporation and the government would listen to the advice of sea pilots who actually pilot ships in and out of Port Phillip Heads and up the great ship channel. They are sounding the alarm that this is a dangerous project and that there are huge safety risks, but they are being ignored.

A well-known environmental risk is that of the rockfalls around the heads area, and the Port of Melbourne Corporation cannot be trusted on this. After the trial dredge project it told the people of Victoria that 18 cubic metres of rocks had been dislodged. Does the house want to know what the real figure was? Six thousand cubic metres! Not out by much — only by 5982 cubic metres!

Mr Barber — How did we find out about that?

Ms PENNICUIK — The corporation admitted it in the end. On the last day of the inquiry into the channel deepening project the Port of Melbourne Corporation came up with a witness. For years the corporation had been maintaining that it would be okay, that there could be some damage to the bay but that it would be right in two years, that the rockfalls would all settle in two years. The witness it brought in said that that was not the case and that the damage could continue for 30 years.

Mr Barber — Its own witness?

Ms PENNICUIK — Its own witness said that.

Mr Barber — A hostile witness.

Ms PENNICUIK — He was supposed to be a witness for the Port of Melbourne Corporation, but he admitted that the damage could go on for 30 years. I have referred to the amount of material that will be dredged from the heads entrance and this bill provides for that material to be dumped in the bay. Only a small area of the heads was to have been dredged but now we have been told that there will be anything up to 5 or 6 metres dredged. Imagine the effect that will have on the amount of water coming into and going out of the bay. It has been completely underestimated and discounted by the corporation. We are living in a situation where all coastal cities — and Melbourne is a coastal city, right next to a bay — are under a cloud because of climate change. What has the Victorian government said? It has said, 'We think we should dredge a big hole at Port Phillip Heads to let more water into the bay'. What a good idea! What a screamer that is.

Mr Rich-Phillips spoke about those who support the project. I would like to talk about those who are not supporting the project. That is definitely the Greens. It also includes the Victorian National Parks Association, the Association of Bayside Municipalities, Hobsons Bay City Council, the Metropolitan Transport Forum, the Frankston Beach Association and the Maribyrnong Truck Action Group, which is there because of the effect of trucks coming from the port. We have a Melbourne port strategic framework that says the number of trucks coming from the port will be reduced and that more freight will be moved by rail. How are things going with the tiny target on that? They are going backwards. They are not going towards the target; they are going away from the target. More freight is being moved on roads than by rail.

Others who do not support the project include independent consultants, including Economists@Large; former Department of Treasury and Finance economist Richard McEncroe; a former chief of CSIRO Land and Water, Graham Harris, who has been a long-term critic of the project and the methodology used by the Port of Melbourne Corporation in its first and second environment effects statements; the Dive Victoria Group; the Dive Industry of Victoria Association; the Victoria Blue Devils Divers Club; Citizens for a Liveable Melbourne; the Yarra Riverkeeper Association; Tourism Alliance Victoria; the Victorian Recreational Fishing peak body; the Port Phillip Conservation Council; Earthcare St Kilda; the Queenscliffe Community Association; the Queenscliff Harbour Forum; and the Geelong Environment Council. And there are more: the Blue Wedges Coalition is made up of environmental groups from the Mornington Peninsula to the Bellarine Peninsula who oppose the channel deepening.

The Greens will not be supporting this bill. We have some amendments to the bill, which I am happy to have circulated and which I will talk to.

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

Ms PENNICUIK — The first amendment proposes omitting clause 14, which establishes exclusion zones of 12 square kilometres around a fixed point and 1.4 kilometres from a vessel. The Greens asked about this in our briefing by the Department of Infrastructure and were told that this was primarily about safety and risk management. I asked whether there were any studies or documents that had been produced by the department regarding the need for this because we have had works going on in Port Phillip Bay and ships coming into and going out of Port Phillip Bay for more than 100 years without the need for an exclusion zone. Presumably there have been safety risks before. At our briefing I asked if there had ever been an incident, and I was told there had not been an incident. So I asked if there had been an incident that had brought on the need for this excessive exclusion zone, and I was told that there had not been an incident.

If we have been able to run the port of Melbourne and the shipping channels without exclusion zones for 100 years, with all types of ships coming in and going out and works going on in different parts of the port, I cannot really see why they are needed now. Given that the minister has said that this bill will pave the way for channel deepening, the cynic in me would say that this is about the actions of the foreign dredger that is going to come into Port Phillip Bay to start to remove that 40 million cubic metres.

The Scrutiny of Acts and Regulations Committee made some comments about clause 14 and stated about the Charter of Human Rights and Responsibilities that:

> The committee … considers that clause 14 engages charter sections 15(2) and 16(1).

It said also:

> … events or vessels in port waters or land may attract political protesters — for example, the entry of a warship to port waters … or dredging work.

So we get to the real reason why the clause is there, which is that while the dredge is there dredging material out of Port Phillip Bay the government does not want anyone to see what is going on. If the port corporation wants to say that it has dredged only 18 cubic metres of rock when it has dislodged 6000 cubic metres, it will be able to say that because no-one will be able to see what is going on. That is the real reason for clause 14. The committee noted that:

> … the High Court of Australia … held that a law banning protesters from an area where a politically controversial activity will occur, and therefore preventing them from collecting information about that activity or drawing public attention (via television coverage of proximate protests) to it, engaged (but, in that instance, did not infringe) the commonwealth constitution's freedom of political communication.

That is why the committee considered that clause 14 engages the charter. It said also that freedom of expression may be subject to lawful restrictions but that we should consider whether they are reasonable in a free and democratic society. I do not consider that the exclusion zones are reasonable. They are to be established just to keep people away from the dredger so that the people of Victoria can know only what they are told and not what they can see for themselves, and to keep them away from a fixed point. The cynic in me would have to say that a fixed point around which there would be an exclusion zone would probably be an area where they are going to dump dredged material. That is what the cynic in me would say, and that is what that is.

Around the dredged material grounds in the north of the bay and the dredged material grounds in the south of the bay that Mr Gordon Rich-Phillips referred to there will be a 12-kilometre exclusion zone so that no-one will be able to look at what is being done in the bay. That is what that is all about. The minister has basically admitted that is what it is about without actually saying it. That is why the Greens are proposing the deletion of that whole clause. We believe that this is a significant issue for the people of Victoria — it is about the health of their bay. It is not up to the government on behalf of the Port of Melbourne Corporation to exclude the citizens of Victoria from finding out what is going on in their bay when we are looking at a project with such significant effects.

My other amendments propose changes to clauses 5 and 6. Those clauses enable the port corporation to place or dispose of excavated or dredged material. I am cynical about the word 'excavated' as well. I presume that dredged material is material dredged out of the bay. I am not sure where 'excavated' comes from and why it is there. I will possibly ask the minister that question. I put the minister on notice that I would like to know what 'excavated' actually means. At the briefing I said, 'I would presume that under the current Port Services Act the Port of Melbourne Corporation has been placing dredged material in dredged material grounds in the bay, so why do we need these clauses?'. I was told, 'Well arguably it is not even necessary; it is implied in the act'. However, since we have these clauses in the bill I am proposing some amendments to them, which I think are reasonable amendments.

Clause 5 refers to the ability of the Port of Melbourne Corporation to place or dispose of dredged material and clause 6 refers to the ability of the Victorian Regional Channels Authority to dispose of or place excavated or dredged material. The amendment I propose to clause 5 states in part:

> "(2) Despite subsection (1)(d), excavated or dredged material must not be placed or disposed of in port of Melbourne waters …

The amendment I propose to clause 6 relates to Victorian Regional Channels Authority waters and states in part:

> … if the excavated or dredged material is —
>
> (a) noxious or poisonous; or
>
> (b) harmful or potentially harmful to the health, welfare, safety or property of human beings; or
>
> (c) poisonous or harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life; or
>
> (d) poisonous or harmful or potentially harmful to plants or other vegetation; or
>
> (e) detrimental to any beneficial use made of the waters in which it is placed or disposed of …

I did not make these words up. These words come straight out section 39, 'Pollution of waters' in part V, 'Clean water', of the Environment Protection Act. That is what we should not be doing to Port Phillip Bay.

Of the 40 million cubic metres of material that the Port of Melbourne Corporation wants to dredge out of Port Phillip Bay, 10 per cent will be contaminated material from the Yarra River. The Greens are saying, firstly, that that should not be done because so many people have said that disturbing that material in the Yarra River is folly of the highest order. The Port of Melbourne Corporation has been criticised in both inquiries as well as in public for not doing the required toxicity studies on that material in the river. I know that some toxicity studies were submitted to the most recent inquiry but were not considered. They are important studies. That is why the Greens wish to move these amendments — so that no contaminated material can be placed in Port Phillip Bay. If that were legislated for, hopefully it would make the Port of Melbourne Corporation think again about its whole project and how it deals with contaminated material.

The only reason we have ever been given for not treating that contaminated material on land and decontaminating it, as should be done, is cost — that it is going to cost too much. Instead of that we are going to put approximately 2.07 million cubic metres of it into the bay. Even the toxicity tests in the SEES found that 50 out of 114 samples would be classified as unacceptable for unconfined marine disposal, according to the national ocean disposal guidelines. That is another point: why are we using the national ocean disposal guidelines when we are talking about a bay? We are not talking about an ocean. An ocean is an ocean. We all know what an ocean is. There is the Pacific Ocean, the Atlantic Ocean, the Indian Ocean — Port Phillip Bay is not an ocean. There is a big difference, and it is a very important difference.

Instead of referring to part V of the Environment Protection Authority Act headed 'Clean water', the Port of Melbourne Corporation chose to use the national ocean disposal guidelines, and that gets us to the situation where we have proposed bunding or capping of contaminated material. I want people to think about what this material is like. It is very fine silt coming out of a river that is contaminated with heavy metals, with organochlorines, organophosphates and other toxins and pollutants which are long living and bioaccumulative. What is being said is, 'Okay, we will dig up some of that, and we will sail it across the bay to our dredge material ground'. Then we will just drop it on the dead dredge material ground and down it will go'. I want people to imagine this very fine, silty stuff. Some of it will float off elsewhere presumably. I cannot see how you can drop silty material in a dredge material ground and not have some of it move. Hopefully the operators will always pick a very still day when there are no currents, no waves, nothing, but even then I would not be convinced.

That material can stay there with no capping whatsoever on it, with nothing on it, from 140 days to 5 years. I think that is just horrific. It will settle. It will be fine. What are we going to cover it with? Wet sand. Great! It is just mind boggling that this stuff is being seriously considered by a statutory authority and is being supported by government. So we will take these fine, contaminated sediments — not the sort of stuff you sit on at the beach — and sail them in a boat, drop them over the dredge material ground and leave them there for anywhere between 140 days and 5 years until we come along with a bit of sand later — and we hope to God they will not be dispersed in the water column. I think that is outrageous. The witnesses at the inquiry were not convincing on any of this, and I think the Port of Melbourne Corporation should desist from this idea. It is a very irresponsible idea and a bad way to treat our bay. That is why we will be moving an amendment to each of clauses 5 and 6.

I want to make a few comments before I close. This project is not supported by any evidence, is not needed,

is far too expensive and poses a great risk to Port Phillip Bay. This bill should not be being debated in this house, because we have not had the approvals we were told about. The Minister for Planning, for example, has stood up in the house many times and said to me, 'It is okay. We will wait till the whole approval process is finished before we do anything'. We are not doing that. We have got this bill, which is going to allow exclusion zones around activities in the port which are directed straight at this project, and if my amendments are not agreed to, we will have the ability to dispose of dredge material in the bay, which is untenable.

I urge members to support my amendments given that my procedural motion to adjourn debate on this bill, so that we could wait until the approval process was completed and there was a financial strategy so the people of Victoria, and we on their behalf, could consider everything with the full information, was not supported. We are being asked to consider it, according to the minister, so that channel deepening can begin in January. How can channel deepening begin in January when we have not got approval for it? There is no approval for it. How can the minister publicly say that this bill is needed so that channel deepening can begin in January when we have not had approval and we do not know what the financial strategy is? I have to presume that there is such undue haste to get to January because some sort of contract has been signed unbeknown to the people of Victoria.

Given that the procedural motion, which should have been supported by all members of the house so that we could take ourselves to the approval process, was not supported, the Greens will be supporting the reasoned amendment moved by the Liberal Party and the amendments to be moved in the committee stage.

Mr PAKULA (Western Metropolitan) — Unlike Ms Pennicuik I am actually going to talk about the bill. Mr Rich-Phillips and Mr Drum were both correct when they said that the port of Melbourne, through the trade it generates for the city of Melbourne, supports tens of thousands of jobs in the transport and logistics industry and in our farming sector. But despite some of the rhetoric we have heard from Ms Pennicuik, this bill is not solely about channel deepening. This bill is essentially about tidying up a number of things relating to port services. Some aspects are related to other aspects and some are not. When this bill was introduced into the Assembly there was a lot of uninformed comment — I have seen that continue today — stating that the introduction of the bill was a green light for channel deepening, that it was pre-empting the environmental approvals process and that the government had effectively jumped the gun. That is all a load of unmitigated nonsense.

The facts are that the bill is necessary to improve the operations of Victoria's publicly owned and operated port facilities. Contrary to the speculation of Mr Barber, Ms Pennicuik, Jo Samuel-King, the Blue Wedges coalition and others and the hysterical reaction that they are trying to generate, the bill is not specifically about channel deepening and would be required even if channel deepening did not proceed. It will assist the channel deepening project, but it will only assist the channel deepening project to proceed efficiently if the environmental approvals are received. It does not pre-empt the environmental assessment process. It is very simple.

I will, again unlike Ms Pennicuik, go into some of the detail of the bill. I will also deal with some of the commentary from both the Greens and the Liberal Party a little bit later on. One of the elements of the bill relates to the facilitation of dredging not just by the Port of Melbourne Corporation but also, crucially, by the Victorian Regional Channels Authority. The Port Services Act 1995 provides a clear power to dredge, but in answer to some of the questions raised by Ms Pennicuik in her contribution, there is no express authority in the act to deposit spoil. It is probably implied, but given the nature of the project it is not worth running the risk that that implied power does not exist. This bill puts that power beyond doubt, because it would be absurd if we were to find that the port had the power to dredge but not to deposit that dredged material anywhere. It does not impact on the approvals required to dredge or to deposit.

The second element, which was gone into in some detail by Mr Rich-Phillips, goes to the issue of wharfage and channel fees. The Greens do not want to talk about any of this because there are a range of elements in this bill that are not specifically related to dredging, but it does not suit the hysteria campaign they are mounting to talk about some of these other elements in the bill. At the moment wharfage can only be charged to the receivers and senders of cargo, and channel fees can be paid only by shipping lines. That is not to say that shipping lines never pass on those fees, but nevertheless it cannot be levied on the sender or receiver of cargo.

The bill amends the Port Services Act to allow channel fees to be paid by either the shipping line or the sender or recipient of cargo, which will make the charging regime more flexible. I hope that answers one of the queries raised by Mr Rich-Phillips in his contribution, which was to seek some comfort that this part of the bill

was not about double dipping. It is certainly not the intention of the bill and it will not be the outcome of that part of the bill.

In regard to wharfage, the bill will specifically provide that the port can charge wharfage for the movement of empty containers. It does mean in effect that ports will no longer need to somehow pretend that empty containers are cargo in order to charge wharfage on the movement of those containers.

The third element that has been gone into in some detail relates to the issue of restricted access areas. While both the Port of Melbourne Corporation and the Victorian Regional Channels Authority will be able to recommend a restricted access area, only the Minister for Roads and Ports in the other place will be allowed to make that designation under this part of the bill. It applies to the land of the Port of Melbourne Corporation and the waters of both the Port of Melbourne Corporation and the Victorian Regional Channels Authority.

During Ms Pennicuik's contribution she raised some hysterical conspiracy theories about why the restricted access areas were needed. The primary purpose of the amendment is to manage and enhance public safety to prevent injury around vessels and works. If the material that is going to be dredged is as toxic as Ms Pennicuik says it is, why would anyone want to be in those waters anyway?

There are two kinds of areas that can be designated under this bill — a fixed area of no more than 12 square kilometres; and a movable site of 1.4 kilometres around a designated vessel. The designation can be for a maximum of one only year unless it is redesignated. Under the Marine Act there is already power for harbourmasters and the director of marine safety to control vessels, but there is no specific power to regulate divers, to regulate swimmers and frogmen et cetera. If dredging were to commence, it would not be a good idea for there to be frogmen swimming around the base of the dredging vessel.

Mr Barber interjected.

Mr PAKULA — You are right. We do not think that would be a very good idea, and if an exclusion zone helps to prevent that all the better. This amendment will help clarify matters for both people and vessels. The declarations can be flexible to allow access for certain vessels and persons in certain circumstances, and it is important to note that under the bill there are no limitations whatsoever on statutory authorities such as the Victoria Police, the Environment Protection Authority (EPA) or WorkSafe.

The next element of the bill is about the safety and environment management plans (SEMP). I make this clear, because there has been uninformed comment about this, this has no impact on the SEMP for the channel deepening process itself. This is focused on port lands and has nothing to do with the proposed project, nothing at all. It does make it an offence for a port manager to ignore the requirement to ensure that a safety or environment management plan is prepared and certified under the Port Services Act. It allows local ports to utilise EPA auditors rather than simply those auditors approved by the minister, and it allows the minister to vary the time frame within which an audit must occur.

The fifth element of the bill ensures that the act better accords with the Charter of Human Rights and Responsibilities Act by ensuring that in addition to prohibiting the ports from lending money to a director of a port corporation, or the director's spouse, it now extends that prohibition to any domestic partner of a director.

The final element of the bill that I want to touch on is about compliance with a recommendation of the Essential Services Commission (ESC) to remove the regulation of certain services from the control of the commission. They are specifically the connection of utilities and towage services for the ports of Geelong, Hastings and Portland. The ESC has taken a view that there is no issue of market power in the provision of those facilities and that there should be no ongoing role for the Essential Services Commission, and frankly, the government agrees with that.

I want to go to some of the amendments that have been circulated. I take issue with the reasoned amendment moved by Mr Rich-Phillips on behalf of the Liberal Party. As Minister Theophanous indicated in responding to the motion to adjourn the debate, this is yet again an example of Liberal Party members trying to have a bit each way. They want to stand up here and try to promote their credentials among the business community by saying, 'We are pro-channel deepening', but they then put up amendments that will have the undeniable effect of delaying the process if they were passed. The Liberal Party says that it is not about holding up the dredging process, but it is.

I want to go to some of the specific elements of the Liberal Party's reasoned amendment. Of course the first thing I should mention is that the reasoned amendment provides that the bill be withdrawn until the elements of

the reasoned amendment are dealt with. By itself that will provide for significant delay, particularly given we are about to come to the Christmas break. The withdrawal of the bill, which deals with the general ongoing administration of the ports and not specifically with channel deepening, would be illogical by itself. I think Mr Rich-Phillips said that we need a big red stop button. On the one hand the Liberal Party talks about the fact that there has been too much delay, that the project has taken too long and that the costs are blowing out et cetera. On the other hand it says, 'Now we want to put in place a whole range of new requirements that are going to add extra time and extra cost'.

The fact is that the Minister for Planning's assessment already proposes an independent expert group, which has provided advice to the Department of Sustainability and Environment and provided advice on the finalisation of the environmental management plan (EMP) for the project. The assessment further proposes that an independent monitor of suitable experience and authority with access to appropriate administrative and technical support be appointed to ensure the transparent and successful implementation of the EMP. On that basis the establishment of an independent expert panel, as proposed by Mr Rich-Phillips, is just another unnecessary and costly imposition on the process which has already been the subject of rigorous scrutiny, as is the proposal for an independent expert to report on a regular basis.

The fact is that the minister's assessment already proposes that the independent monitor report annually to ministers and to the public on the implementation of the environmental management plan for a period of five years following the commencement of the project. The next part of the amendment relates to providing powers for an independent expert panel to stop dredging and disposal. The Environment Protection Authority already has the necessary powers to stop the project if the environment of the bay is threatened. The power already exists and is vested in the EPA.

Finally, on the provision of a system of fair and reasonable compensation for businesses, I should just point out that unlike the previous government we have not removed the common-law right for people who believe they have been adversely affected to sue at law. We have not removed that right.

I want to read a media release because this issue of the Liberal Party seeking to create additional cost and additional delay for the channel deepening project is important and should be dealt with. The media release is titled 'Melbourne channel deepening approval — time to get on with the job'. The quote from Infrastructure Partnerships Australia states:

> The channel deepening project is the most pressing shipping and freight project in the nation. And it's a significant national issue because Melbourne is Australia's largest container port, with a direct impact on our global trading position …
>
> The international trend toward larger ships carrying more containers means that if the deepening doesn't proceed, the risk is the port will become less efficient, costing Victoria business, jobs —

and the Greens say they are friends of labour —

> and revenue. At the current depth, too many ships accessing the port of Melbourne cannot carry their full capacity — and this is expected to increase.

So it is a powerful argument about jobs and revenue for the state of Victoria. It goes on to say:

> The deepening of the channel will increase the efficiency of the port's operations, create 2000 jobs and generate economic benefits of more than $2 billion.
>
> …
>
> Deepening the channel and opening it to larger vessels will keep exports competitive, drive new investment, secure jobs and ensure continued business confidence in Victoria.
>
> Clearly the Port of Melbourne is Australia's key trade hub, connecting Australian producers to international markets. The port handles around $100 million of exports each day and it carries 38 per cent of Australia's container trade.
>
> The proposed channel deepening has — rightly — been subject to constant and rigorous assessment to strike the delicate balance between economic interests and environmental concerns, but the independent assessments show the project is both desirable and sustainable.
>
> The channel deepening will maintain the port's standing as a competitive and efficient port of national significance.
>
> The Victorian government's strong support for this project is commendable. It is now time to clear the remaining approvals and ensure that the project is delivered quickly, efficiently and at the best value for port users and Victorian taxpayers.

The clear implication in the release is that we have been through a rigorous environmental assessment process, and that if the final environmental approvals from the state minister and the federal minister and the other authorities are received then the project should proceed, and should proceed without undue delay. Who said that? Was it the government? No, it is a quote from the Honourable Mark Birrell, a former of Leader of the Liberal Party in this chamber. I do not believe for one moment that he would support the Liberal Party's amendments to simply import more delay and more cost into this.

I turn to Ms Pennicuik's amendments. In her contribution Ms Pennicuik made a number of fantastic claims, and I do not use the word 'fantastic' in a good way. I am not going to respond to all of them because, frankly, it would be tantamount to responding to some of the rantings of some of our more imaginative conspiracy theorists. However, I will deal with some of them. First of all, Ms Pennicuik asked why we did not look at dredging less? Under the current plan the proposal is to dredge less than 1 per cent of the bay. She asked, 'Why don't we dredge in a way that makes it take longer?'. I think Mr Rich-Phillips, Mr Drum and I have all indicated why dragging this process out interminably is in no respects a good idea.

In regard to Ms Pennicuik's amendment 4, let us at least be honest about this. This is an amendment that would make it a hurdle that is so high that no-one could jump it. It states that you cannot place or dispose of any excavated or dredged material that is poisonous or harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life or plants or vegetation.

Mr Barber — Whose amendment is that?

Mr PAKULA — Ms Pennicuik's amendment. It also states that it should not be detrimental to any beneficial use made of the waters. That is clearly an amendment which is designed to stop channel deepening in its tracks. In terms of the approach by the Victorian Greens to channel deepening, it is entirely unremarkable.

Being a Green in this Parliament clearly means never having to say you are sorry. It means you would never have to say you are sorry for the thousands of Victorians who would be put out of work if this Parliament were ever silly enough to adopt the Greens political party's position on projects in this state. If we did, there would be tens of thousands of Victorians out of work. This is the party that masquerades as socially progressive and the friends of working people. It appropriates to itself the Australian Council of Trade Union's campaign of 'Your rights at work'. It runs the slogan out that if you support labour, vote Green.

Mr Barber interjected.

Mr PAKULA — I have to say to Mr Barber that as far as the Greens actions are concerned, that is all it is. It is nothing more than a slogan. If you look at the actions of the Greens — what they support and what they oppose — they are completely unconcerned about the employment implications of their policies.

Ms Pennicuik interjected.

Mr PAKULA — Ms Pennicuik interjects that there are no employment implications. The transport and logistics industry supports tens of thousands of Victorians, yet the Greens say that rather than have the containers come into the port of Melbourne, if the cost of keeping the channel and the cost of getting those containers into the port of Melbourne is that you have to deepen the channel, then send them somewhere else. Send them to Brisbane, send them anywhere and truck them in, but do not send them to the port of Melbourne. Do not worry about all the jobs in warehousing and truck driving that are lost as a result of that policy.

The Greens say they are the friends of labour but in every one of their actions and every piece of legislation they support and every piece they oppose, they demonstrate that what they really represent is their true constituency — the constituency that does not want to be bothered by the messy by-product of blue-collar workers, whatever that might be.

This is a necessary bill. It improves public safety and facilitates the better functioning and operation of ports. It will assist in channel deepening if the decision is made to proceed — that is, if the environmental approvals are received. It is not channel deepening-specific and it is required even if channel deepening does not proceed. I commend it to the house.

Mr ATKINSON (Eastern Metropolitan) — One of the difficulties I have when legislation like this comes before the Parliament is that it is very easy for a member of the government to claim that the legislation is routine — which is essentially what Mr Pakula's argument is — and it does not have any implications for the channel deepening project, which is a very controversial one.

Mr Pakula — I didn't say that.

Mr ATKINSON — You did. In your summing up you said that this is needed irrespective of that project. That is what you said.

Mr Pakula — I did say that, but I didn't say there were no implications for channel deepening.

Mr ATKINSON — Essentially you did because you said this is not necessarily a channel deepening bill; it is needed anyway and if some of it applies to channel deepening, that is a by-product, and it is really not the impetus of this legislation.

I find it very difficult when it comes to a major project like this to establish where the beginning is. I have real difficulty in establishing at what point one should raise one's hand and express some concerns about a project

that has great significance for Victoria and Australia not just today but well into the future. It is a project that I do not think is actually environmentally or even economically sound.

From my point of view the process that was used to evaluate this channel deepening project has been flawed. It does not stack up. In fact, even from the government's perspective on the first occasion that it set up an environmental effects panel, it was forced to go back and redo much of the work because the initial results that came forward were shown to be very clearly flawed.

The second panel was structured in such a way by the minister as to avoid having anybody who had had any expertise associated with the first exercise involved and in such a way as to minimise the level of consultation. This has not been a consultative process. This has been a process of trying to establish a management regime in which the project could be delivered or facilitated rather than a regime in which it could be properly evaluated.

I hasten to add before I continue that my position is a personal one and is not the position of the Liberal Party, which was well enunciated by Mr Rich-Phillips. There are some aspects in fact where I am in accord with the Liberal Party's position on channel deepening. Not only do I say that the process does not stack up, but so too does the Liberal Party. It had concerns about the process as well and has on a number of occasions expressed those opinions.

Andrea Coote, the deputy leader and spokesperson for environment for the Liberal Party in this place, recently sent out a press release indicating the Liberal Party's concerns about the process and the need for the government to assure us that in fact it had done the work properly. There is real concern about that. The Liberal Party also shares my view that the costs do not stack up and that in fact this project has been dramatically undercosted in a public-relations sense. Ms Pennicuik said that she does not believe there will be any change from $1 billion — and nor do I.

The only difference between Ms Pennicuik's position and mine is that I was calling the $1 billion figure about six or seven months ago, not today. In other words, I think it is even more expensive than $1 billion. I do not think the project will be delivered for $1 billion. It has already cost $783 million. Where I part company with the Liberal Party's position is that I do not even believe it stacks up economically. While Ms Pennicuik was ridiculed for some of her comments — and I think it is a very dangerous thing to ridicule a member rather than contest the ideas or propositions that are put — she put some very important facts on the table that are indisputable. The reality is that this project has a payback of just three to one, if you use the very best economics that the government can advance in its report.

Mr Thornley — Three to one?

Mr ATKINSON — Three to one.

Mr Thornley interjected.

Mr ATKINSON — Which is very low, Mr Thornley. I do not think you would be investing in it at that rate. I do not think we would build the EastLink freeway at that rate. I do not think the economic return of the EastLink freeway is anywhere near what we are talking about with the channel dredging. In fact, with the EastLink project there is a four to five times higher economic benefit than this project will deliver. The reality is that $783 million is what the government currently believes the cost will be. It will be higher than that, but if we accept that, the return over 30 years — over three decades — will be $2.2 billion. You would not get my money for that. You would not get the money of private equity people for that. You would be going to get the money from bankers for that. Industry knows that too, which is why it has come along and said, 'Build it, we need it, we want it — but we don't want to pay for it. We can't afford to pay for it. The government is going to have to chip in. This is an important project; the taxpayer is going to have to subsidise this'. It does not stack up financially, and industry knows it.

The reality is that that $783 million cost the government advances at this point in time apparently assumes that the bay will be dredged for a one-off cost and that we will live happily ever after on the delivered $2.2 billion return over 30 years. I do not know how many members use the bay and have been out sailing or fishing or have participated in other activities on the bay, but the reality is that we have a very shallow body of water and day-in and day-out dredging is required just to maintain the existing channels. The reality is that there will be very significant ongoing costs, which I do not believe have been accounted for properly at all, which will significantly diminish the — —

Hon. T. C. Theophanous — It is part of the normal ongoing costs.

Mr ATKINSON — No, they will not be part of the normal ongoing costs. They will be significantly higher, because we are talking about maintaining a significantly larger channel and the cost of the capital equipment — which is not currently available — and

the cost of the ongoing investment to keep those channels clear will be significant. At the moment I do not believe it has been properly costed. Certainly if it has, as Ms Pennicuik advanced in her contribution, it has not been released. A lot of this debate is happening in the dark because, as she rightly said, the government has been reluctant to detail much of the information associated with this project. It is true that a lot of the debate on this project may well be speculative because the government has failed to be open and transparent, as it so often tries to parade its credentials as being. The fact is that it has been anything but open and transparent.

I must say that a number of economists have looked at this project as well. It is interesting to note — and Mr Thornley considers himself as something of an expert when it comes to financial market issues, so he might be interested in and confirm this fact — that normally economists would use a discount rate of about 8 per cent to 12 per cent for a major infrastructure project. On this one the government has used a discount rate of 6 per cent, which was designed to deliver a more effective outcome and a better outlook.

Mr Thornley interjected.

Mr ATKINSON — No, the reality is that this project will not stack up and deliver the economic results that have been suggested. I am very concerned that this project is proceeding without a proper analysis of those costs. As I said, a three-to-one return on investment is extraordinarily low for a piece of infrastructure of this nature.

The government has also lacked vision in terms of looking at alternatives. I guess this is my most crucial opposition to this project, in that options and alternatives were not looked at. Even if you went ahead with the dredging in Port Phillip Bay, you might extend Webb Dock and reduce the amount of dredging required into the mouth of the Yarra, with a significant cost saving and some advantage in terms of pollution costs associated with moving poisonous material.

Perhaps it would have been better still to look at an option that might well have used Western Port. If we really wanted to look at a project that might well achieve economic benefits, perhaps we should have looked at new international shipping technology that includes platforms, such as Singapore has used for cargo transference and shuttle ships. A Liberal Party policy person who had real expertise in this area and had studied it extensively — including talking to shipping people and ports operators around the world — came up with a cost comparison that stacked up very well against dredging the bay, without many of the environmental deficits that are associated with this project.

For me, what is also important in this project in terms of its economics is that the government might have talked to its own supply chain management committee about some of the trends in the supply chain. A lot of the industries are now saying to me, 'In our thinking, we are starting to move away from coming into Melbourne with our goods'. They are saying, 'It is not because we cannot get big ships into Melbourne, but simply because we no longer see that it is advantageous to us to bring goods into Melbourne and then put them on railway lines to send them north up to Brisbane or Sydney or west to Perth'.

If the government talked to a number of these companies, it would find that they are starting to say, 'We should bring our goods into Brisbane or Darwin', or — in a worst-case scenario for Australia — some of them are saying, 'We should consolidate the goods we want to import into Australia in warehouses in South-East Asia and then ship them direct to the specific port where we want them to end up'. That is the economics of shipping, transport, logistics and the supply chain today. I do not think any of that was taken into account in this. What I find more persuasive in terms of the economic arguments is that Victoria ought not be at an economic disadvantage in terms of its exports. To me, that is a lot more persuasive as an argument, but there are better things that we could do in Victoria.

Hon. T. C. Theophanous — A good argument.

Mr ATKINSON — Exactly! It is a good argument. It would be good if the minister's enthusiasm for the manufacturing industry in particular, which I regard as genuine, extended to better and more effective government policy at both the state and federal level to ensure that our manufacturing sector was able to remain competitive and was able to continue to build its export base. I have some real concerns about that, and the cost factor for them is not the shipping costs. The cost factors are related to many other aspects of production and even to things like the appreciation of the Australian dollar, and certainly the refusal of the Chinese to adjust their currency so that we get a reasonable valuation in terms of world currency markets.

The markets are skewed at the moment and they are not helping our manufacturers. There are issues other than shipping that are impacting on them, as the minister knows. I would hope that the federal and state

governments might give them greater support in that regard. However, as I said, certainly the export arguments are better for me.

Hon. T. C. Theophanous — Have you thought about joining the Greens permanently as their economic adviser?

Mr ATKINSON — Is there a gig available?

The interesting thing about one of the remarks Ms Pennicuik made in this debate about dredging poisonous materials and not being able to redeposit that material somewhere else in the bay but rather treating it outside the waters of the bay was ridiculed by Mr Pakula. It is interesting that the words picked up in that circulated amendment are the exact words used by the Environment Protection Authority in its requirements for maintaining clean waterways in Victoria.

These words were not plucked out of thin air, as it were. They were not plucked out of some flight of fancy by Ms Pennicuik. In fact, they have been taken from the Environment Protection Act, which is under the government's governance. It seems to be all right if you apply it to some other projects but apparently it is a humbug if you try to apply it in Port Phillip Bay.

I do not intend to continue speaking to this at any length. My position, as I said, is a different one to that of the Liberal Party. The requirement for me was simply to state some of the rationale for my taking this position. I thank members for not interjecting and for having some respect for my position, even if they disagree with some of the views I have expressed. I think that always makes for a better debate. The expression of those ideas is an important part of our parliamentary process, and I appreciate the respect that has been shown to me in taking a position that is clearly very different to that of the majority of the house, both on my side of the house and on the other side of the house.

The bay is something I feel very strongly about. One of the measurements that I now use in politics, at this stage of my career and in the decisions that I make, is what is the legacy that I leave for my children and my grandchildren. When I look at an issue like Port Phillip Bay, where I do not believe there is sufficient evidence on the table to justify the decisions that are being hurried into in a very expedient manner by the government, I do not believe I can say that that is a good legacy that I should vote to leave for my children. I think this needs a lot more justification. I think the economics of it need another look, because from my point of view they do not stack up. As I said, you would not get my money to build this project for that sort of return on investment over a 30-year period. Certainly I find the environmental issues are a major problem for me in terms of the bay's future health. I remember back to a debate we had in this place on scallop dredging. I think to myself that that really was pennies, nickels and dimes stuff, if you like, compared to what is being proposed now. We vanquished the scallop fishermen from the bay because of the damage that they were doing — yet now we are prepared to entertain this much more extensive intrusion into what is an Australian icon.

House divided on amendment:

Ayes, 18

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

Noes, 20

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

Amendment negatived.

House divided on motion:

Ayes, 34

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

Lovell, Ms	Vogels, Mr

Noes, 4

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

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

The DEPUTY PRESIDENT — Order! I call on Ms Pennicuik to move her amendment 1, which I understand is a test for her amendments 2, 3 and 6.

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 1, lines 7 and 8, omit paragraph (c).

This amendment is a test for amendments 2, 3 and 6, as you mentioned, Deputy President, the latter having the effect of deleting clause 14 of the Port Services Amendment Bill. That is the clause which establishes the exclusion zones, which are the 12 kilometre exclusion zone around a fixed point and the 1.4 kilometre radius exclusion zone around a vessel.

In my contribution to the second-reading debate I made the remark that the Greens do not support this clause because the Port of Melbourne Corporation has operated for 100 years without the need for these exclusion zones. We are told that they are there for safety and risk-management reasons. Even if that were the case, they are far too large, but we do not accept that that is the case, given that the Port of Melbourne Corporation has been able to operate for 100 years with ships coming in and out of the bay every day and with other actions being undertaken by the port without these exclusion zones being necessary.

Our view is that they are being put in place by the government in support of the Port of Melbourne Corporation in anticipation of the approval of the channel deepening project and to keep protesters and other people, including the media, away from areas where dredging or deposition of dredged material may be occurring. This means that the public will not be able to have access to gather information or to see for themselves what is going on. We will only know what is going on through what is told to us by the Port of Melbourne Corporation, and I have very little faith in any information that comes out of that corporation. In my experience over the last five years the information that has come out from that source has not been up to the standard I would expect of a statutory authority.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The Liberal Party does not oppose the creation of the restricted areas as provided for in proposed part 5A of the principal act notwithstanding their excessive size, and therefore will not support Ms Pennicuik's amendment 1.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — It is pretty obvious that the government will not be supporting this amendment, I think for the same reasons that the Liberal Party is not supporting it — that is, that the restricted areas are reasonable in the circumstances. We reject the amendment.

Ms PENNICUIK (Southern Metropolitan) — Could the minister advise on what information and what criteria the size of these exclusion zones was decided?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — It was based on operational advice from the Victorian Regional Channels Authority and the Port of Melbourne Corporation.

Ms PENNICUIK (Southern Metropolitan) — Can the minister advise how they are going to be implemented and enforced?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — This will be done on advice from the authority to the minister. In using his powers in this instance the minister must be satisfied that there are safety issues involved.

Ms PENNICUIK (Southern Metropolitan) — What safety issues and on what criteria?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I am happy to get further advice on that, but obviously the minister would be taking into consideration the normal gambit of safety issues that are involved in construction sites of this sort.

Ms PENNICUIK (Southern Metropolitan) — My previous question to the minister was about enforcing the exclusion zones — the bill allows the exclusion zones to be enforced for up to a year. I want to know how that is going to be enforced for up to a year, 24 hours a day, 7 days a week.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Again, this is an operational

question. It is a matter for the authority, and I am sure it will carry out its duties as required.

Ms PENNICUIK (Southern Metropolitan) — Can the minister advise who is enforcing the exclusion zones — which group?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I am advised that it will be the police.

Ms PENNICUIK (Southern Metropolitan) — Does that mean that the water police will be policing the exclusion zones 7 days a week, 24 hours a day for a year?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — That is an operational matter for the police.

Committee divided on amendment:

Ayes, 3

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

Noes, 35

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

Amendment negatived.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4

The DEPUTY PRESIDENT — Order! I call on Mr Rich-Phillips to move his amendment 1. I advise the committee that that is a test of amendments 2 and 3 and they are all linked to the requirement to report on excavated or dredged material being prepared by the relevant body certified by the Environment Protection Authority and tabled in Parliament.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I move:

1. Clause 4, line 18, after this line insert —

"***Environment Protection Authority*** has the same meaning as ***Authority*** has in the **Environment Protection Act 1970**;".

As you point out, Deputy President, this is a test of amendments 2 and 3. The purpose of these amendments is to insert a mechanism that will require the Port of Melbourne Corporation, with respect to amendment 2, and the Victorian Regional Channels Authority, with respect to amendment 3, to provide a report at the end of each week when dredging operations are undertaken. They would be required to report on the volume and type of material that they have dredged, the location where it is disposed and whether it contains any contamination. They would also be required to submit that report to the Environment Protection Authority, which would be required to produce a certificate indicating that the material disposed of is safe to humans and is environmentally sound. Then both bodies, the Port of Melbourne Corporation and the EPA, would be required to table their respective reports in both houses of Parliament within three days of their preparation. This will provide the environmental oversight that the Liberal Party was seeking in its contribution to the second-reading debate.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — The government believes the legislation provides adequate protection for environmental factors and consequently it cannot agree to the amendment moved by the opposition.

The DEPUTY PRESIDENT — Order! I propose to have amendment 1 standing in Mr Rich-Phillips's name test his amendments 2 and 3 as well.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

Broad, Ms	Pakula, Mr
Darveniza, Ms	Pulford, Ms
Drum, Mr	Scheffer, Mr (*Teller*)
Eideh, Mr	Smith, Mr
Elasmar, Mr	Somyurek, Mr

Hall, Mr (*Teller*)	Tee, Mr
Jennings, Mr	Theophanous, Mr
Leane, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Amendment negatived.

Clause agreed to.

Sitting suspended 6.35 p.m. until 8.07 p.m.

Clause 5

Ms PENNICUIK (Southern Metropolitan) — I move:

4. Clause 5, line 34, after this line insert—

"(2) At the end of section 14A of the **Port Services Act 1995 insert**—

"(2) Despite subsection (1)(d), excavated or dredged material must not be placed or disposed of in port of Melbourne waters if the excavated or dredged material is—

(a) noxious or poisonous; or

(b) harmful or potentially harmful to the health, welfare, safety or property of human beings; or

(c) poisonous or harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life; or

(d) poisonous or harmful or potentially harmful to plants or other vegetation; or

(e) detrimental to any beneficial use made of the waters in which it is placed or disposed of.".".

This is an amendment to add a paragraph to clause 5. Despite the fact that Mr Pakula sought to try and ridicule it, this is actually taken from section 39 of the Environment Protection Act under part V headed 'Clean water'. These are the very same words that are in that act. I am using these words to add a paragraph to the Port Services Amendment Bill so that it would preclude the Port of Melbourne Corporation from placing or disposing of any dredged or excavated material that is contaminated in Port Phillip Bay. I will leave it there, but I may have a question for the minister later.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I would like to formally respond to the amendment that the member has moved, and then if she has any further questions we can deal with them.

The provisions in the bill relating to the disposal of dredged material do not specifically relate to the channel deepening project. Section 14A of the Port Services Act currently provides the Port of Melbourne Corporation with the power to dredge and improve its channels. Section 22 of the act provides the same powers to the Victorian Regional Channels Authority (VRCA). The power to place dredged material is therefore considered to be an implied power. The provisions in this bill simply confirm the ability for the Port of Melbourne Corporation and the VRCA to place dredged material in relevant locations as an expressed legislative power.

These powers are considered necessary to provide clarification for any future dredging works by the Port of Melbourne Corporation or the VRCA, either capital dredging or regular maintenance dredging, including the proposed channel deepening project, if it is approved. It should also be noted that the current provisions in the act require that any such works can take place subject to the authorities obtaining any relevant permit, consent or other authority required by any other act. The government, therefore, believes it is not necessary to accept Ms Pennicuik's amendments, as the placing of dredge material can only take place with the approvals under other more appropriate pieces of legislation.

In respect of the location of dredge material grounds, the Port Services Act provides that dredging or any other similar or related works can take place subject to the obtaining of any relevant permit, consent or authority required by any other act. The sites proposed for the channel deepening project have been subject to rigorous review as part of the supplementary environment effects statement (SEES) process. The SEES process is based on over two years of research and more than 40 technical studies. It has been reviewed by the Minister for Planning, who found the project can be delivered to an environmentally acceptable level.

The project is currently being reviewed under the state's Coastal Management Act 1995 and the commonwealth's Environment Protection and Biodiversity Conservation Act 1999. With all of those processes in play and the safeguards that have been put in place, the government believes it cannot accept the amendment moved by Ms Pennicuik.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Notwithstanding Ms Pennicuik's amendment being based on the Environment Protection Authority Act, it is the view of the Liberal Party that the breadth of this provision is such that if any

contaminated material were identified during the dredging operation, however insignificant, the operation of this amendment would have the effect of preventing the continuation of the dredging project. As such the Liberal Party is unable to support Ms Pennicuik's amendment 4 and the parallel amendment 5.

Mr ATKINSON (Eastern Metropolitan) — This amendment proposed by Ms Pennicuik affects existing operations of the Port of Melbourne Corporation as well as proposed operations in the future. There was some debate about the fact that the current act is silent on the dredging activities and where materials might be disposed. I ask the minister whether this amendment would have limitations on existing operations as much as future operations.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — As I indicated in the comments I have already made, the provision is designed as a clarification of the power. We believe it is an existing power and the provision simply adds some certainty. We think the current practices would in any case be in accord with what is proposed in this legislation. But to answer the question specifically, obviously this would apply to any operations at the point that the act is proclaimed.

Mr ATKINSON (Eastern Metropolitan) — I indicate to the house the position I will take on a matter of principle. I am aware of the humbug it might cause in terms of the existing operations, but as a matter of principle I think it is important for us to be working towards an improved environmental outcome for Port Phillip Bay in regard to operations, notwithstanding that this clause might impinge on those existing operations, so as a matter of principle I intend to support the amendment.

Ms PENNICUIK (Southern Metropolitan) — I take issue with the minister's statement that safeguards are in place. We do not have any environmental approval for this project from either the state minister or the federal minister. We have also had, as I have said, a very substandard process carried out by the port of Melbourne with regard in particular to the toxicology studies. On the one hand the Port of Melbourne Corporation might have some consultants it has paid to do some studies, but on the other hand there are some very well-respected scientists who live in this state and teach at our universities who have taken great issue with particular toxicology studies and the fact that some of those toxicology studies were not considered by the inquiry, as they should have been; they were just ignored.

We are talking about highly contaminated material that is proposed to be dredged from the Yarra River, and I agree with Mr Atkinson that we should not be moving towards worse environmental outcomes. We have already had an improvement in the state of the bay because we stopped scallop dredging as a result of the first CSIRO study into Port Phillip Bay, which is a study we should be looking at. That is the seminal study that has been done on the bay.

Melbourne Water and other water authorities have spent millions of dollars in reducing the nitrogen load in the bay, and here we are with a project that is going to increase the nitrogen load; furthermore, it is going to put 2 million cubic metres of contaminated spoil in the middle of our bay.

I have used the words out of the Environment Protection Act to say that no person shall deposit anything in the bay that is: noxious or poisonous; harmful or potentially harmful to the health, welfare, safety or property of human beings; or poisonous or harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life; or poisonous or harmful or potentially harmful to plants or other vegetation; or detrimental to any beneficial use made of the waters in which a substance is placed or disposed of.

Those beneficial uses could be swimming, sailing, fishing or diving. That is what we are talking about here. For a government to sanction this bill against its own Environment Protection Act is really beyond me, and I ask the minister why the government thinks it is okay to go against the Environment Protection Act.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I cannot accept Ms Pennicuik's logic or her assertions in relation to this. It is the current practice when dredging does take place in the bay that any permit to dredge has already stipulated within it that it must conform with existing state and in fact commonwealth acts, including the commonwealth biodiversity and other acts. This is no different in that regard; the permit is in that same kind of category. The point I would make to Ms Pennicuik is that I understand that her party is opposed to this dredging, and that has been canvassed in the second-reading debate.

We understand the reasons, both political and otherwise, for Ms Pennicuik's position in relation to this. We do not accept those positions. We think this is absolutely critical for the development of the state. We do not accept the positions put by Mr Atkinson in relation to the economics — that is, that this does not

stack up economically. We believe that it will be hugely important for the economic development of the state, including for our competitiveness with other ports.

Thirty-eight per cent of all goods coming in and out of the country come through the port of Melbourne. We do not want to lose that competitive advantage. If ships were not able to get into the port, it would not just be a matter of cargo lost from those ships; it could also be that businesses and companies could relocate to places like Brisbane where they might be able to get that kind of advantage. I cannot accept the logic that Ms Pennicuik puts. We can continue to debate Ms Pennicuik's opposition to this, but the government will not accept her amendment.

Ms PENNICUIK (Southern Metropolitan) — Perhaps I did not put my question to the minister properly. My question was: would the Port of Melbourne Corporation, if it disposed of material fitting the description in the Environment Protection Act, be not in contravention of the act?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I said to Ms Pennicuik at the beginning of my answer to her that it has to comply with all relevant acts.

Ms PENNICUIK (Southern Metropolitan) — I wanted to ask the minister the meaning of the word 'excavate'?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Does the member want my knowledge of the ordinary, dictionary meaning? I could get the dictionary out and give the member an explanation of what 'excavate' means; or does the member want some technical definition of 'excavation'? I could say that it is just digging around for whatever you can find; that is a form of excavation, I suppose. I am not sure what it is that the member is trying to dig for or excavate for, in this instance.

Ms PENNICUIK (Southern Metropolitan) — I am trying to get to why the term 'excavate' would be used in addition to 'dredged'.

Hon. T. C. Theophanous — Sorry?

Ms PENNICUIK — Why do we need the term in addition to 'dredged' material?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I can seek advice if the member likes; I am not an expert on dredging. Obviously the people who are experts on the procedure involved in doing this believe that it is excavating and that dredging is a form of excavating anyway, and they have included it in the bill. I do not think there is any great conspiracy theory associated with this. I am not sure what Ms Pennicuik is trying to get at.

Ms PENNICUIK (Southern Metropolitan) — I was inquiring about the meaning of the word.

My next point is not really a question, but I did want to answer one of the minister's comments. I do not stand here today raising these issues as a political stunt. I do so because I believe the ecology of the bay is at risk. Unlike others in the chamber, I have read the technical reports, and I have read other reports, and I am convinced by them that the bay is at risk. That is why I stand here on behalf of the people of Victoria, who are concerned about the environmental risks. That is why I have moved these amendments — to ensure on behalf of the people of Victoria that contaminated material is not dumped in Port Phillip Bay.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I want to respond to that comment by simply saying that the government also wishes to protect the ecology of the bay, but we want to protect the ecology and the economy of the state.

Committee divided on amendment:

Ayes, 4

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

Noes, 32

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

Amendment negatived.

Clause agreed to.

Clause 6

Ms PENNICUIK (Southern Metropolitan) — I move:

5. Clause 6, line 19, after this line insert—

"(2) At the end of section 22 of the **Port Services Act 1995 insert**—

"(2) Despite subsection (1)(d), excavated or dredged material must not be placed or disposed of in port waters of VRCA if the excavated or dredged material is —

(a) noxious or poisonous; or

(b) harmful or potentially harmful to the health, welfare, safety or property of human beings; or

(c) poisonous or harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life; or

(d) poisonous or harmful or potentially harmful to plants or other vegetation; or

(e) detrimental to any beneficial use made of the waters in which it is placed or disposed of.".".

This amendment is the same as the amendment I proposed for clause 5. It seeks the same prohibition on the disposal of contaminated material as defined in section 39 of part V of the Environment Protection Authority Act. This applies to waters controlled or owned by the Victorian Regional Channels Authority.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — As I think the member has indicated, this is really the same set of issues except that here it applies to the Victorian Regional Channels Authority. In that sense the intent is the same as that in the previous clause. I just do not know whether — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! I am listening to the minister. I can hear Mr Davis, and he is not in his place!

Hon. T. C. THEOPHANOUS — This has already been tested by the previous amendment. I do not know whether the member wants to test it again, Deputy President, but you can put the clause and see.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — For the same reasons that the Liberal Party did not support Ms Pennicuik's amendment 4 we will not be supporting her amendment 5.

Ms PENNICUIK (Southern Metropolitan) — This is the same debate, but it is important to the Greens that we pursue the amendment in relation to the Victorian Regional Channels Authority as well as to the Port of Melbourne Corporation.

The DEPUTY PRESIDENT — Order! I advise the committee that this is not a consequential amendment because it affects a different clause, which is why we need to test the proposition again.

Committee divided on amendment:

Ayes, 4

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

Noes, 32

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

Amendment negatived.

Clause agreed to; clauses 7 to 19 agreed to; schedule agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I move:

That the bill be now read a third time.

In so doing I thank members for their contributions.

Motion agreed to.

Read third time.

ELECTRICITY SAFETY AMENDMENT BILL

Second reading

Debate resumed from 1 November; motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

Mr VOGELS (Western Victoria) — I rise to speak on the Electricity Safety Amendment Bill 2007. This bill makes amendments to the Electricity Safety Act 1998, which at that time was roundly criticised by Labor. However, it has obviously stood the test of time because here we are 10 years later making only a few minor amendments to the 1998 act. This bill mandates the submission of and compliance with electricity safety management schemes, or ESMSs, by major electricity companies — namely, those companies dealing with electricity and distribution businesses. It will harmonise the safety management scheme in the Electricity Safety Act 1998 with the Gas Safety Act 1997. The bill will require registered electrical contractors and licensed electrical workers to rectify defective electrical work that is unsafe. It will improve the representation of the railway and tramway industries on the Victorian Electrolysis Committee and it repeals some redundant provisions.

The Liberal opposition will be supporting this legislation as it has stood the test of time and the amendments are sound and sensible. Electricity and gas supplies are essential to 99 per cent of Victorians and we live in a state that has an abundance of both these resources. We can all argue about the merits of coal-fired powered stations versus wind, solar, hydro, gas, tidal power et cetera. However, this bill deals with the safety of the electricity industry and whether you cop a charge from a non-renewable energy source — for example, a coal-powered station — or from a renewable resource, the damage will be the same and it could probably kill you.

I fully support the fact that companies which distribute electricity will have to submit electricity safety management schemes in relation to the protection of the safety of their assets, especially in country Victoria where we have thousands of kilometres of poles and wires connecting isolated communities to the grid. These assets have to withstand hot summers, gale force winds, driving rain, without fail, if humanly possible. One spark can start a raging grass or bushfire; a blackout can cost millions of dollars in lost revenue to business, or the loss of a freezer full of food in a family home. It is important that the electricity distribution systems are maintained. There is a danger that without strong legislation maintenance may be neglected.

I had no problem with the privatisation of the State Electricity Commission, and neither did the Labor government, although it is unwilling to concede this. Labor when in government privatised the Loy Yang power station and was well on the way to privatising the whole SEC back in the early 1990s. However, safeguards need to be in place. While speaking on the subject of the privatisation of the SEC, I would like to put the record straight as we continually hear Labor members misleading the house on this issue. Labor first put legislation, which was the first tranche of privatising the SEC, in place in this house in July 1992. If I remember correctly, the election in 1992 was in September or October, four or five months later. It was the Labor Party which started the process of privatising the SEC. I want to put that on the record because we regularly hear in here that it was the Kennett government that privatised the SEC. Labor started the tranche of provisions and the legislation in these houses of Parliament to sell off the SEC.

Getting back to why safeguards need to be in place, I have noticed in my experience that whenever you take over a property or ownership of a property that has been leased out or rented, the maintenance usually has not been kept up. That is because the people who have been renting it for the last 25 or 30 years know there is only 4 or 5 years left of the contract or lease and they have stopped spending money on maintaining infrastructure — in this case poles, wires et cetera.

The opposition also supports the amendment but will require registered electrical contractors and licensed electrical workers to rectify defective electrical work that is unsafe. This rectification of work is to be carried out at no additional expense to the customer, and I think this is a good thing. I believe if you get people who have got the qualifications to wire up your house or do electrical work, there is no doubt it needs to be done properly; and if it is not done properly, they should be called to account to make sure that it is fixed up at no cost to the person who asked for the job to be done.

The Howard government's policy announcement to fund another 75 new Australian technical colleges, in addition to the 25 already funded, will boost the electrical trade industry with many more fully qualified electrical tradespeople into the future. Once again, it was Labor under its Premier, Joan Kirner, who closed Victoria's technical schools in those long, dark years of Labor government between 1982 and 1992, when assets were sold off and technical colleges were closed down.

Mr Jennings — Did the member say the Kennett years?

Mr VOGELS — I am talking about 1982 to 1992. It was probably when the minister was still in nappies, but it did happen. It was probably when the minister was having those sleepless nights, and you can fix sleepless nights by going to bed!

I am very pleased to say that Brauer College in Warrnambool, in conjunction with Baimbridge College in Hamilton, is facilitating the new Australian Technical College – Wannon across both campuses. This year saw the enrolment of 60 students, which will increase to at least 300 by the start of 2009. The students spend one day a week at the college, one day at on-the-job training and three days at school. I would like to congratulate my colleague, the federal member for Wannon, David Hawker, for achieving this great outcome for the electorate of Wannon. It is another outstanding achievement by that member.

As I said at the outset, I think this is good legislation; the Liberal Party supports it, and I commend the bill to the house.

Mr HALL (Eastern Victoria) — The amendments to the Electricity Safety Act which are contained in this Electricity Safety Amendment Bill will do principally three things. The first of those things is that it will require transmission and major distribution owners or operators to develop, to have approved and to implement an electrical safety management scheme.

The second main purpose is that this amending bill will continue to allow for voluntary electrical safety management schemes to be approved by Energy Safe Victoria. Thirdly, under these amendments, there will be a requirement for electrical contractors to rectify any non-compliant electrical installation work. With those three concepts, this is a very simple bill.

To discuss very quickly each of those three main areas: the first area will now require a transmission and major distribution operator or owner to submit an electrical safety management scheme to Energy Safe Victoria. That has pretty much been the practice in the past. Most electricity distribution and transmission owners have voluntarily sought to have an approved electrical safety management scheme for their own good. It has assisted them in improving their defence against any accidents that might occur in the operation of their particular business. Therefore, it helps them to have such an approved scheme.

In the past, many of them have voluntarily had an approved scheme, but now there will be a requirement for those particular transmission and major distribution owners and operators to have such a scheme. That is brought about by clause 7 of the bill which proposes the imposition of a new part 10 in the Electricity Safety Act. In particular, for those who have an interest in this area, they should read proposed new section 99 which spells out exactly the requirement for distribution and transmission companies to have such a scheme.

The second main area will allow for the continuation of voluntary electrical safety management schemes; those particular provisions are contained at page 18 of this bill under proposed new division 3 to be inserted in the Electricity Safety Act. Again, the sort of organisations which will be able to enter into a voluntary scheme are those organisations which employ electrical contractors but not on a major public transmission or distribution system; essentially they are organisations like some of the Victorian power companies such as Hazelwood, Loy Yang A and Loy Yang B and the company at Anglesea. I understand that those organisations will be able to submit to have an approved electrical safety management scheme.

Some of the major production companies in Victoria which have what I would describe as their own internal distribution network — companies like BlueScope Steel, Alcoa and a number of other manufacturing companies, and some of the petroleum companies like Esso Australia and Shell — all voluntarily submit an electrical safety management scheme. As I said, that assists them with any liabilities they may have with faulty workmanship and accidents which might occur in relation to their electrical undertakings.

The third provision, which is very good, is disclosed in clause 14 on page 34 of this amendment bill. It will require contra-electrical contractors who have not installed electrical work to a satisfactory standard to go back and rectify their work in accordance with that provision. The fact that you need to have a completion certificate to complete electrical work has been a good thing. It has assisted customers to ensure that their electrical contract work has been done properly in their home or business. If it is found that some of that work is faulty, now there will be a requirement for the electrical contractor to go back and rectify work. Importantly, on page 35 of this amendment bill, under new section 45AB (4), there is no cost to the consumer. That is an important provision in this bill.

There are three simple concepts which we are happy to support, because we think they improve the electrical safety management regime we have in place in Victoria.

Ms HARTLAND (Western Metropolitan) — The previous two speakers have outlined the technical aspects of this bill; I will not go over them. The Greens think this is a straightforward bill. We will be supporting it.

Mr LEANE (Eastern Metropolitan) — Because this bill amends the Electrical Safety Act I have prepared quite a comprehensive and long speech. But for the good of all the members in the chamber, Hansard reporters and the clerks, I will be very brief.

I would like to touch on something that Mr Vogels spoke about. He knows who the real villains are and why there has not been a period of time when electrical workers have been trained. That is because when the Kennett government privatised the State Electricity Commission, it put no onus on private contractors to pick up that training. He knows and we all know who the real villains are.

The Electrical Safety Act is an act close to my heart. I hold an A-grade electrical licence under that act. Even though I now do only a small amount or even no electrical work, I am sensible enough to maintain that licence for the future. I have spoken to stakeholders in the electrical industry, the national electrical contractors and power companies. I have spoken to union officials and to the workers. I have actually even spoken to union bosses, which will probably outrage some people, and they are more than supportive of this issue.

The new electrical safety regime provided in this bill will give a more flexible cost-efficient alternative to the current prescriptive regulatory approach. This of course is an advantage. These companies have very complex supply and distribution networks, which they understand better than anyone else. These companies obviously have a very sound knowledge of the best ways to improve safety and to remove hazards. I think it is very important to say that Energy Safe Victoria may require major electrical companies to obtain an independent validation of their electrical safety management scheme or any part thereof. So there is an independent process, and that is an important part of this bill.

Clause 14 of the bill requires electrical contractors or licensed electrical workers, of which I am proud to be one, to rectify work that they have performed that is non-compliant free of charge. As I said, I have spoken to the stakeholders in the electrical industry and they are more than happy with this provision.

As for electrical contractors, a very large majority understand the hazards that unsafe electrical work can generate and would be more than happy if notified to rectify any unsafe work that a member of their company might have done or they themselves had installed. In saying that I believe unsafe electrical work that has been installed can be put down to using inferior material and products and cutting corners, therefore undercutting other contractors in the tender process. A level playing field for electrical contractors is very important, and they would not want to be seen to be undercut by a contractor who cuts corners. That is why they were surprised when the Howard government removed from the Workplace Relations Act the ability to pattern bargain, without actually discussing it with this employer group. But there you go; we might be able to fix that in a couple of days.

Mr Atkinson — That is not what Julia Gillard says.

Honourable members interjecting.

Mr LEANE — Like Con the Fruiterer says, 'Squeeze a bit of fruit and give it a couple of days'. I have always found licensed electricians to be fine, upstanding citizens with pride in their trade and in their work and who would frown upon any substandard electrical work for whatever reason. Sparkies understand their importance to the community in the businesses and households in which they do electrical wiring. I am sure they would join me in commending this fine bill to the house.

Mr THORNLEY (Southern Metropolitan) — I will be very brief. Other members have covered the bill in more detail and I realise that people are keen to move forward. There are just a couple of items that I want to address. I thank my colleague Mr Leane for his inside knowledge of the industry. He certainly educated me on a thing or two about how the trade works, and I value that. It is terrific to have someone with his experience here with us in the house.

An element to this is an important element in itself — that is, the harmonisation of the ESMS (electricity safety management scheme) regime with the gas safety regime in order to streamline processes and allow energy companies that work in both fields to have similar harmonised regulation. That is part of the broader effort that we have put in place, not just within the state but increasingly between the states, to ensure that we make things easier and simpler.

Secondly, the structure of this regulatory regime is moving away from a very prescriptive, detailed, 'Thou shalt do all of these things and thou shalt not do all of those things', to a more overall structure which allows the use of safety audits to ensure that it is actually being

complied with. That is a very sensible path for our regulatory environment to travel.

I take up the point made by Mr Leane about industry support for this, particularly across the industry — all segments and all participants in the industry — and for the rectification of defective electrical work to be done for free. It sends the right cultural signal. If there is one thing that any sparky knows, it is that if they do substandard work the potential victim of that will be a fellow sparky sometime later in the process. Clearly the whole industry supports this as a way of ensuring high quality and setting a culture of safety in the industry, which is so important. They are the only matters that I will add to the debate. I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In so doing I thank members for their very erudite contributions to the debate.

Motion agreed to.

Read third time.

MELBOURNE AND OLYMPIC PARKS AMENDMENT BILL

Second reading

Debate resumed from 1 November; motion of Hon. J. M. MADDEN (Planning).

Mr DALLA-RIVA (Eastern Metropolitan) — On behalf of the Liberal Party I am pleased to make a contribution to the debate on the Melbourne and Olympic Parks Amendment Bill. The Liberal Party sees this legislation as an important move towards consolidating the land management arrangements in the Melbourne and Olympic Parks precinct. There is no doubt that we have heard much from members on the government side about the precinct being created by, owned by and provided with support by them. However, I think that over the last 150 years governments of all persuasions have had a significant impact in terms of the development of that precinct. Only recently I attended a night of World Wrestling Entertainment in the precinct. I went there with my son and, along with 15 000 other people, watched the wrestling. The facilities are unique, as are the people who go to watch the wrestling, which I think might reflect on the wrestlers themselves. Rod Laver Arena is very accessible; it is easy to get into that venue and the other facilities around it. I look in awe at the capacity Melbourne has in being able to cater for thousands of people who attend events at that venue and other venues nearby. It is fair to say that Melbourne and Victoria are fortunate to have these facilities so close to Melbourne's central business district.

This is an important bill and the opposition will not oppose it. In terms of my understanding of this bill, the only issue that has been raised is the lack of consultation from a government that says it wants to consult with stakeholders and observe due process. It seems to have been a process that has ignored the elected representatives of the Melbourne City Council. It is interesting to note that the Melbourne City Council was concerned about some of the areas dealt with in the bill. The only person who voted in support of the bill was the Lord Mayor. He supported it even before a vote was taken by the council. Obviously he had had a tap on the shoulder and was told which way to go.

That aside, the bill is complex in terms of some of the land and what is happening to it. The bill consolidates the management by the Melbourne and Olympic Parks Trust of Gosch's Paddock. It also provides that the trust is able to grant licences for up to 21 years for Gosch's Paddock.

I will not take too much longer on this legislation, other than to say it is important for people to understand that, as these facilities grow, they are accessible by public transport. The tram system leading to the precinct is very effective, but the issue of car parking is become more acute as more people drive into and move around metropolitan Melbourne. Car parking is going to be a significant issue, especially as the construction of the new stadium proceeds in whatever form that it may take.

The Liberal Party has consulted with and sought comment from various organisations, which is something the Labor Party did not do in the development of this bill. There is no doubt that consolidation of land management is needed in the precinct. The government did not consult with the Melbourne City Council councillors, and there is the broader issue of car parking in the area. The long-term vision for car parking seems to have been ignored in this bill. Having said that, the Liberal Party will not

oppose the bill and we look forward to its passage through the Parliament in due course.

Mr DRUM (Northern Victoria) — The Melbourne and Olympic Parks Amendment Bill 2007 gives us a chance to reflect, as Mr Dalla-Riva has, on the fantastic sporting precinct in the Olympic Park area. We really are very lucky. Subsequent governments through the years have set us up with an outstanding precinct. I listened to the member for Murray Valley in the other house, Mr Jasper, talk about the vote when it came down to the wire on whether we were going to proceed with the National Tennis Centre. He is very proud of the fact that he was part of the then opposition that voted to support the government in proceeding with that.

This legislation deals with some of the smaller parcels of land that together make up the precinct that we know as the Olympic Park precinct. Currently parcels of land are managed and operated by different authorities. This bill will in effect consolidate those parcels of land under one management arrangement. These parcels of land are adjacent to the National Tennis Centre. They will be incorporated into the precinct and will be reserved for tennis, other sports, recreation and/or entertainment. Like Mr Dalla-Riva, I too went to Rod Laver Arena to watch the wrestling when it came out a couple of years ago.

Those of us who have a love affair with the various sports that are catered for in the precinct, and those that will be catered for in the future with the new rectangular stadium, would know just how many groups there are at our sports centre. Currently athletics operates out of Olympic Park. We have Rugby League with the Melbourne Storm. We have soccer, represented by Melbourne Victory. We have the Victorian Institute of Sport, which shares the Lexus Centre with the Collingwood Australian Football League club. We will also have the Melbourne Football Club using that area into the future. Many others use Vodafone Arena, the Melbourne Cricket Ground, Rod Laver Arena and so on.

We must be mindful not only of the sports we have today but also of the sports we will have into the future. With the new rectangular stadium there is every chance we will be in a position to chase a licence with the Super 14 Rugby Union competition, which operates very well throughout Australia, New Zealand and South Africa. We nearly got a Rugby Union licence for Melbourne two years ago, but unfortunately our bid was defeated by the Perth bid, and the licence for the newest Super 14 team went west. If we had had a stadium like this and we had been a bit more proactive in luring that licence to Victoria, we might already have a Super 14 Rugby Union team here in Melbourne. Nevertheless, maybe we will soon have our own team anyway.

These tenants need security of tenure so they can plan for the future. While they would like 10-year and 15-year lease arrangements, they have not been afforded to them at the moment. They need to know that their capital investment is going to be a sound investment. This will now be possible given the length of the leases they will be able to enter into once the new management arrangements have been enacted.

At the moment parts of this land are managed by different organisations. The Melbourne and Olympic Parks Trust manages parts of the land. The City of Melbourne manages other parts. The minister responsible for Crown land also has a role in certain aspects of this parcel of land, as does VicTrack. There are some parcels of land that do not have any formal management arrangements at all.

The Nationals will not oppose this legislation. Hopefully it will lead to consolidated management arrangements that will facilitate the tenants within the Olympic Park precinct, including Gosch's Paddock. It will pave the way for the new rectangular stadium to be built as soon as possible. The new rectangular stadium looks like it is going to be a fantastic addition to the precinct. I am still not quite sure of the capacity, whether it is going to be 31 500 or whether it is going to get up towards 50 000, but it will certainly be a fantastic stadium. We hope that once it is built both Victory and the Storm will be able to bring huge crowds to the stadium and help their viability into the future. As I said, The Nationals will not be opposing this legislation. We hope the new management arrangements for this parcel of land around Olympic Park and Gosch's Paddock will lead to a better future for the tenants.

Mr BARBER (Northern Metropolitan) — The Greens will be supporting this bill.

Mr SOMYUREK (South Eastern Metropolitan) — I am tempted to follow Mr Barber's lead. The ALP will be supporting this bill. I therefore commend the bill to the house.

Mrs PEULICH (South Eastern Metropolitan) — I was not expecting such expeditious treatment of this bill. I will add a few brief comments, but will not cover the ground that has already been covered. It is fantastic that these important facilities at the heart of our city, enshrined and dedicated to the things that we love —

sport, recreation and entertainment — are going to be consolidated further, placed under the one authority so that they can be managed better, and perhaps developed better, to further enhance the facilities available not only to our athletes and sportspeople but also to the people who enjoy watching them.

I have spent quite a bit of time in that precinct, and I wanted to place a couple of concerns on the record on behalf of the athletes who use the area. The lack of parking is a very serious issue. For athletes, bussing it or taking the train or the tram is not really an option. Currently parking is inadequate. There is enormous scope to look at some sort of multilevel car parking facility that would provide for a much greater capacity than is currently provided for. Many athletes, whether they are young and developing athletes or high performance athletes, have a routine where they are driven in, usually by somebody who supports them — partner, mother, father and so forth — and in many instances they stay in the car to relax and focus before they warm up. So it is really important that adequate car parking be developed in the area. I note the concerns expressed by Mr Dalla-Riva about the diminution of car parking space. I point out that it becomes pretty chaotic and is deficient, especially when multiple events are being staged at the same time.

The other concern I have is as a mother of a hammer thrower. I have spent many hours watching my son at Yarra Park. I am not sure whether that is the same bit of land as Gosch's Paddock — it is near the corner of Punt Road and Swan Street. There are currently hammer cages there. In fact that is where some of the highest levels of competition in Melbourne are conducted, not at Olympic Park, where perhaps other events are conducted such as various athletics or track and field events. Events are staged there for good reason — because of the danger of throwing the javelin, the hammer, the discus and, less so, the shot. It would be very easy to see the loss of that important space. Some of our best athletes train there. A hammer thrown by a developing athlete can travel 70 metres, which is a fair distance. I certainly hope we do not see the disappearance of those facilities.

It is very important that we preserve the opportunity for these athletes, many of whom have represented Australia at the highest levels — they have been to Commonwealth Games, world junior and world youth games and so on — to continue to train without undue stress or concern about injuring someone or creating public liability concerns. I commend a lot of the coaches who spend many thankless hours, in many instances free of charge, tutoring and guiding our young athletes. I look forward to a continuation and perhaps enhancement of that facility, and in particular to the planting of more trees, for which there is a need. I have spent many hours around the area. We are all concerned about the incidence of skin cancer, yet there are very few trees under which athletes — whether they are training or competing — and of course their support people and coaches can shelter.

The issues of car parking and preserving Yarra Park for throwers are two things that need to be addressed most seriously. In addition there is enormous opportunity to further integrate that entire area to make it work more harmoniously and hopefully eliminate some of those conflicts that have caused quite a degree of inconvenience. Whilst we certainly all support our team games — rugby, soccer and tennis; they are wonderful events that we all enjoy going to — we must not forget that athletics, from Little Athletics right up to the senior competitions, are also the source of developing athletes for many other sporting codes. Let us not squeeze athletics out of this precinct.

With those few words, I commend the bill to the house. I look forward to a further enhancement of those facilities, as well as facilities that better support our athletes. Perhaps it is not as rich a sport, but it is certainly one that brings an enormous amount of glory to the nation.

Mr THORNLEY (Southern Metropolitan) — I will speak very briefly on this bill. Others have spoken to it, and we need to keep moving. As people have said, this bill consolidates the patchwork quilt of titles and management arrangements into a forward-looking, unified management and title structure. That is obviously important. We arrive at this point from a series of historical accidents, but they are now being woven together to ensure a coherent, strategic approach going forward.

That is obviously very important with what we have. I think Carrillo Gantner recently described Melbourne as having a barbell structure, with the arts precinct on one side of the Princes Bridge and the sports precinct on the other. I think it is fair to say — and I have had the privilege of travelling to many of the great cities in the world — we probably have the best single sporting precinct of any major city in the world. The fact that we are now consolidating the management and titles to enable us to develop that further and continue to improve it is very exciting to me.

The fact is that not only can we host all of our major football codes and obviously the cricket — and, as Mrs Peulich said, athletics and track and field events — but we also host one of the best-run events in the world

in the Australian Open Tennis Championship. This legislation will ensure that all the facilities for all of those sports are managed in a coherent way and will continue to be improved. I commend it to the house.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

I thank members for their extremely succinct contributions to the speedy passage of this bill.

Motion agreed to.

Read third time.

GAMBLING LEGISLATION AMENDMENT (PROBLEM GAMBLING AND OTHER MEASURES) BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Gambling Legislation Amendment (Problem Gambling and Other Measures) Bill 2007.

In my opinion, the Gambling Legislation Amendment (Problem Gambling and Other Measures) 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 objectives of the Gambling Legislation Amendment (Problem Gambling and Other Measures) Bill 2007 are:

(a) to amend the Gambling Regulation Act 2003 —

(i) to require venue operators to conduct self-exclusion programs; and

(ii) to require various licence-holders and others under that act to have a responsible gambling code of conduct; and

(iii) to make it an offence for a venue operator or the holder of the wagering licence or the wagering operator to knowingly allow an intoxicated person to gamble in a venue; and

(iv) to require the removal of any automatic teller machine from a gaming venue if that machine allows a customer to withdraw more than $400 in total within a period of 24 hours; and

(v) to require the removal of any automatic teller machine within 50 metres of an entrance to a gaming machine area of venues that are racecourses that allows a customer to withdraw more than $400 in total within a period of 24 hours; and

(vi) to impose further limits on venue operators with respect to the cashing of cheques by customers; and

(vii) to ensure that the Victorian Commission for Gambling Regulation does not specify a gaming machine area that is located outdoors; and

(viii) to amend the requirements relating to the order that the minister makes in respect of community benefit statements; and

(ix) to improve the operation and effectiveness of the restrictions on the use of Victorian race fields by wagering service providers; and

(b) to amend the Casino Control Act 1991 —

(i) to require the removal of any automatic teller machine within 50 metres of an entrance to the casino gaming floor that allows a customer to withdraw more than $400 in total within a period of 24 hours;

(ii) to require the casino operator to have a responsible gambling code of conduct;

(iii) to make it an offence for the casino operator to knowingly allow an intoxicated person to gamble in the casino;

(iv) to make it an offence for the casino operator to provide gaming machines outdoors; and

(c) to make a consequential amendment to the Liquor Control Reform Act 1998.

Human rights issues

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

Section 12: freedom of movement

Every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

The bill also introduces new requirements for gaming venue operators to:

have a self-exclusion program which has been approved by the Victorian Commission for Gambling Regulation (VCGR); and

ensure that intoxicated people do not play gaming machines at their venues.

Clause 23 of the bill introduces a new requirement to ensure that the wagering operator and the holder of the wagering licence do not accept bets from intoxicated people.

These new obligations may limit the right of individuals to move freely in two distinct ways.

The effect of self-exclusion programs is to restrict participating individuals' access to nominated venues where gambling occurs.

The effect of the new offence of knowingly allowing an intoxicated person to gamble may also result in licensees removing people from premises in order to ensure compliance.

Consideration of reasonable limitations — section 7(2)

The limitations contained in the two sets of provisions are separately considered in turn.

Firstly, with respect to the requirement for self-exclusion programs, the limitation is reasonable principally because it is confined to affecting only those individuals who have voluntarily opted into the self-exclusion program and have freely sought to have their capacity to enter and remain on certain premises restricted. I consider any such limitation is demonstrably justified for this and the following reasons.

The nature of the right to move freely is not an absolute right. As with all human rights enshrined in the charter, it can be subject to reasonable limitations in accordance with our democratic society.

The importance of the purported limitation of this right is a critical plank in the government's strategic approach to establishing a regulatory framework that fosters responsible gambling. The legislative requirement that gaming venue operators provide self-exclusion programs is an important responsible gambling measure that will, in confluence with a range of other measures, serve to minimise the harm caused by problem gambling thereby serving the broader public interest.

In practical terms, it will enhance existing protections for vulnerable individuals who have self-identified as problem gamblers and who require additional assistance to refrain from participating in gambling activities.

It is also important to note that the nature and extent of the limitation of this right is partial. As previously mentioned, the limitation only applies to those individuals who freely elect to participate in the scheme. Furthermore, individuals nominate the specific locations that they wish to be excluded from and the exclusion pertains to those venues only.

Importantly, the bill also requires approved self-exclusion schemes to contain a mechanism to enable individuals to opt out of the scheme.

There is a direct relationship between the partial limitation on an individual's right to move freely and the objective of ensuring self-identified problem gamblers have structured support to refrain from participating in gambling activities. There is no other less restrictive means available to achieve that objective.

Secondly, the new offences prohibiting licensees to knowingly permit intoxicated persons to gamble also involves a potential partial curtailment of the right to freedom of movement. However, there is a direct correlation between the partial limitation and the objective of the offences.

I consider that the limitations are outweighed by the broader public interest served by minimising the harm caused by problem gambling. Those harms are real and impact upon problem gamblers, their families and friends. Existing research indicates that problem gamblers often have other health and lifestyle problems such as alcohol abuse. In introducing measures that will reduce the likelihood of intoxicated people being able to gamble, I believe the right balance has been struck between protecting individuals' rights and achieving a broader purpose of protecting vulnerable consumers.

The new offences do not give licensees any new powers. Rather, they place an obligation on the licensees to ensure intoxicated persons do not participate in gambling activities. The restriction is extremely narrow and limits licensees from permitting individuals from either playing a gaming machine or placing a bet.

The new offences specifically prohibit licensees from allowing intoxicated persons to gamble. Accordingly, the partial limitation of the right to move freely is inextricably linked with the objective of restricting such persons from participating in gambling activities. There is no other less restrictive means available to achieve that objective.

Accordingly, I consider that the new provisions of the bill are compatible with the right to move freely. Any limitation on the right of problem gamblers who opt into a self-exclusion program or intoxicated persons to move freely, is reasonable and demonstrably justified.

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

Section 20: property rights

A person must not be deprived of his or her property other than in accordance with the law.

A deprivation of property is in accordance with law where the deprivation occurs under powers conferred by legislation and the law is precise and not arbitrary.

Clause 7 of the bill introduces a new requirement that the VCGR not approve gaming machines being placed outdoors in gaming venues. There is a marginal possibility that this new requirement may engage the property rights of licence-holders because it restricts them from applying for authorisation to use their property and/or deriving profits from their property. However, the conclusion that this clause places such limitations on property rights is difficult to sustain. That is essentially because the right to use gaming machines, and the terms of the licence that is issued, are already highly regulated by the VCGR. Accordingly, it is doubtful that the new restrictions amount to a deprivation of

property that would engage the rights protected under section 20 of the charter. Even if it does engage the right, the deprivation is in accordance with law and the right is not limited.

Similarly, clause 56 of the bill introduces a new offence for the casino operator to allow a person to play a gaming machine outdoors. This new offence raises the same marginal possibility that property rights may be engaged because the casino operator will be restricted from using gaming machines in a certain way — that is, placing them outdoors. I consider that my assessment of this offence is precisely the same as my assessment of clause 7 insofar as to whether it amounts to a deprivation of property. Again, even if the offence does engage the right, it is in accordance with law and the right is not limited.

Clauses 13 and 58 introduce new requirements prohibiting the placement of automatic teller machines (ATMs) that permit withdrawals in excess of $400 over a 24-hour period, in gaming venues or within 50 metres of the casino gaming floor. These requirements may raise individual leaseholders' rights to use their property (being the actual ATMs). Nevertheless, any such restriction is in accordance with law and is not arbitrary and therefore does not amount to a limitation of property rights.

Clause 14 prohibits gaming venue operators from cashing more than one cheque per customer per day, up to a maximum of $400. While these new offences may raise individual property rights, they do not amount to any form of deprivation of property as individual consumers are free to cash their cheques elsewhere.

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

Section 13: privacy and reputation

A person has the right to not have his or her privacy unlawfully or arbitrarily interfered with.

Clause 6 of the bill provides that applications made by wagering service providers to publish race fields must be accompanied by any additional information the controlling body requires.

Clause 54 provides in part that an application for a casino licence must contain, or be accompanied by, any additional information that is required by the VCGR. This requirement is already contained in section 8(3) of the Casino Control Act 1991. It is restated in the bill so that the new requirement that an application for a casino licence be accompanied by a responsible gambling code of conduct can be included in that section. Clause 29 also provides for an equivalent power by the VCGR with respect to applications for interactive gaming licence applications. This requirement is already contained in section 7.3.1 of the Gambling Regulation Act and it is restated for the same reason I have just outlined.

Similar provisions exist throughout the Gambling Regulation Act, affording the VCGR the power to require additional information with respect to licence applicants. These provisions are prescribed in legislation and are consistent with the objectives of ensuring licence applications are granted to applicants who conduct themselves honestly and are free from criminal exploitation. Accordingly, the right to privacy is not limited in these circumstances.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, to the extent that it limits human rights, those limits are reasonable and proportionate.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill has three main objectives.

Firstly, the bill implements the next phase in Taking Action on Problem Gambling, the government's five-year strategy to combat problem gambling. It introduces new responsible gambling measures that will form part of the government's coordinated approach to addressing problem gambling which integrates consumer protection measures with prevention, early intervention and treatment of gambling-related harm.

Secondly, the amendments to the existing race fields legislation introduced by this government in November 2005 will strengthen the capacity of the Victorian racing industry to effectively monitor all interstate and overseas wagering service providers and ensure that they make a fair economic contribution to the industry on which their businesses are based.

The third objective of this bill is to further amend the provisions relating to the requirement that a club make an annual community benefit contribution from its net gaming revenue. This will enhance the ability of the government to ensure that all clubs make an appropriate contribution direct to the community.

I will now turn to the provisions of the bill.

Responsible gambling measures

The bill amends the Gambling Regulation Act 2003 and the Casino Control Act 1991 to include a number of additional responsible gambling measures.

Firstly, the bill includes amendments to the Gambling Regulation Act 2003 and the Casino Control Act 1991 to reduce the availability of cash at gaming venues.

The bill prohibits an automatic teller machine in a gaming venue if it does not limit the amount that a customer can withdraw to a total of $400 in a 24-hour period. It also prohibits the placement of an automatic teller machine within 50 metres of an entrance to the gaming area of the casino and the entrance of a gaming machine area in a racecourse, unless the machine is limited in the same way.

The bill also prohibits a gaming venue operator from cashing more than one cheque per customer per day up to a maximum of $400. I consider that there is merit in reviewing the practice of cashing cheques in venues altogether. Accordingly, I will direct my department to review this practice by 2010.

The bill also amends the Gambling Regulation Act 2003 to include in that act the existing prohibition on the placement of automatic teller machines in the gaming machine area of a venue. This prohibition is currently contained in rules made by the Victorian Commission for Gambling Regulation.

Recent research has shown that:

> regular and problem gamblers tend to access ATMs at gaming venues more frequently than do recreational and non-problem gamblers;
>
> access to cash is a 'common trigger' to overspend limits;
>
> moderate risk and problem gamblers make significantly more withdrawals from ATMs than non-problem or low-risk players;
>
> most gaming machine players access an ATM at least once during a gambling session.

Findings such as these show why it is imperative that the government act to reduce the availability of cash at gaming venues. It is clear that this measure has the potential to deliver a vital responsible gambling measure that will:

> reduce the harm caused by problem gambling by limiting the amount of money a person can spend in one continuous session of play;
>
> help all gamblers to keep to any precommitment decisions they might have made before entering the gaming venue or casino.

Those wanting to obtain additional cash will be required to break their play and leave the venue. Breaks in play are an important harm-minimisation measure. They provide gamblers with a valuable opportunity to reappraise their decision to continue to gamble.

The bill will not require the removal of ATMs altogether. This ensures that the measure to restrict cash can be introduced in a way that minimises the inconvenience to recreational gamblers and non-gambling patrons while still providing an important safety net for those who are at risk.

Secondly, the bill amends the Gambling Regulation Act 2003 and the Casino Control Act 1991 to require a range of licence-holders to have a responsible gambling code of conduct approved by the Victorian Commission for Gambling Regulation.

The government acknowledges that many industry participants already have a voluntary responsible gambling code of conduct. This amendment recognises the important role responsible gambling codes of conduct can play in achieving the objective of providing gambling products in a manner that fosters responsible gambling.

While government can do much to achieve its objective of fostering responsible gambling by establishing an appropriate regulatory environment, the active involvement of the gambling industry is also important. Industry has a responsibility to ensure that the gambling environments they provide encourage responsible gambling and that consumers understand the risks of excessive gambling.

Government has already done much to encourage a responsible gambling industry by:

> establishing the Responsible Gambling Ministerial Advisory Council to engage industry participants in the debate surrounding problem gambling;
>
> making training in the responsible service of gambling compulsory for all staff employed in the gambling machines area of a venue or the casino;
>
> supporting the staging of Responsible Gambling Awareness Week.

The government's next step is to require industry participants to develop and implement a responsible gambling code of conduct. Making this requirement mandatory will enhance the effectiveness of this responsible gambling measure.

Industry participants will be required to develop codes that are appropriate for the nature of their business and the type of gaming that they provide. This approach acknowledges that there can be more than one means of achieving the objective of responsible gambling and that a degree of flexibility is appropriate.

It is the government's intention that this policy will be made to apply to the licensing arrangements for the provision of gaming, wagering and Keno after the current licences expire in 2012. Subject to this exception, the requirement to have a responsible gambling code of conduct will apply to new licences captured by this bill as well as to existing licences.

The bill also requires gaming venue operators to have an approved self-exclusion program. These licensees already operate self-exclusion programs on a voluntary basis.

The establishment of an effective self-exclusion program has been recognised across Australian jurisdictions as an important harm-minimisation measure that can help and support problem gamblers. The government acknowledges the importance of this harm-minimisation measure and will ensure that it applies to the playing of gaming machines.

The Casino Control Act 1991 requires self-excluded persons who enter Melbourne casino to forfeit any winnings. By virtue of section 78B of that act, those winnings are paid into the Community Support Fund. Money in the fund may be applied for a range of purposes including conducting research into the causes of problem gambling, and the provision of problem gambling services. Forfeiture provisions are appropriate in this context, as they are enforceable by virtue of Melbourne casino's tailored loyalty program. However, such a model could not easily be rolled out with respect to all other gaming venue operators. Substantial enforcement issues would be raised with respect to each individual venue.

Making the requirement to have a self-exclusion program mandatory will provide consistency with the mandatory requirement to have a responsible gambling code of conduct and will ensure that an appropriate approval process and enforcement regime can be put in place.

While the requirement to have a mandatory self-exclusion program will not apply to wagering, the government

recognises that wagering is another form of gambling where self-exclusion could play an important harm-minimisation role. Consultation with industry has indicated however that a more flexible approach is required to accommodate the range of ways in which wagering is delivered.

As the bill provides the minister with the power to issue directions about responsible gambling codes of conduct, I will consider making a direction that requires the holder of the wagering licence to develop a self-exclusion program that can be applied to those aspects of its business where such a program can be effectively implemented.

The third responsible gambling measure introduced by the bill is a prohibition on the outdoor placement of gaming machines. This is a proactive measure to ensure that gaming venue operators and the casino operator are not able to reduce the effectiveness of smoking bans that have been introduced in Victoria by locating gaming machines in outside areas. The need for this amendment was highlighted by a media report earlier this year that reported several NSW gaming venue operators have received approval to place gaming machines in outdoor areas, the consequence being that patrons will be able to smoke while gambling. Such an occurrence would be a retrograde step in minimising the harm caused by both problem gambling and smoking and the government proposes to deal with this possibility before a similar situation develops in Victoria.

The fourth responsible gambling measure in the bill is to make it an offence for a venue operator to knowingly allow a person to play a gaming machine or for the holder of the wagering licence or the wagering operator to knowingly allow a person to place a bet while intoxicated. This measure will also apply to gambling and betting at the casino.

There is little doubt that the consumption of alcohol can have an adverse effect on a person's decision-making ability, including the ability to make appropriate decisions about precommitment and whether to continue to gamble. This measure will reduce the risk that a person who is cognitively impaired by the consumption of alcohol will continue to gamble.

Race fields

The bill includes amendments to the existing race fields legislation which, at the time, was the first of its kind anywhere in the world. The legislation seeks to ensure that all wagering operators based outside Victoria make a fair and reasonable economic contribution back to the racing industry on which their businesses are based.

First of all, the bill allows for a controlling body to impose or vary conditions on the grant of an approval to publish race fields and to revoke or suspend an approval. This provision will give the controlling bodies a tool in which to effectively manage the applications of interstate and overseas wagering service providers.

The next amendment allows for a person to apply to VCAT to review a decision made by a racing controlling body to reject or cancel an application or vary the conditions of an approval. This enables any applicant to appeal to VCAT if they feel aggrieved by a decision made by a controlling body and ensures fairness. Applicants will however not be allowed to challenge the payment of fees to controlling bodies for the use of Victorian race field information.

The bill allows for a racing controlling body to impose a charge as a condition of granting an approval. The amended legislation clarifies the right of a controlling body to charge a fee and should prevent the threat of legal action by interstate and overseas wagering providers over the imposition of charges for the use of Victorian race field information.

Finally, the bill provides authorisation under the commonwealth Trade Practices Act 1974 for racing controlling bodies to enter into agreements for the purpose of collecting race field publication fees. This amendment will provide surety to interstate and overseas wagering service providers applying to use Victorian race field information as controlling bodies can now implement a consistent policy in relation to the charging of fees.

Community benefit statements

Under section 3.6.6(2)(c) of the Gambling Regulation Act 2003, gaming venues with a club licence pay 8.33 per cent less tax from their net gaming revenue than do gaming venues with a hotel licence. Clubs are required instead to make a direct community benefit contribution of 8.33 per cent of their net gaming revenue.

Activities and purposes that can be claimed as a community benefit are set out in an order made by the Minister for Gaming and clubs are required to lodge a community benefit statement annually showing what community benefit contribution they have made.

Hotel gaming venues were required to lodge a community benefit statement until the Gambling Regulation Amendment Act 2007 removed this requirement from the Gambling Regulation Act 2003. As hotel gaming venues are not required to make a direct community benefit, the requirement to lodge a community benefit statement was unnecessary.

The Gambling Regulation Amendment Act 2007 also varied the consequences for clubs that fail to lodge a community benefit statement as required, or fail to make the required community benefit contribution of 8.33 per cent of net gaming revenue.

The relevant amendments in the Gambling Regulation Amendment Act 2007 represented the first stage of the government's overall review of community benefit contributions.

The government also proposes to vary the types of contributions that clubs can claim as a community benefit by restricting claimable activities to those that provide a genuine community benefit. This will involve making a new ministerial order specifying the kind of activities or purposes that constitute a community benefit. A draft order was released in June 2007 and significant stakeholder consultation occurred.

The review process has shown that in order to ensure that a new ministerial order can be made that achieves the objective of ensuring that clubs are required to make a clear and direct community benefit contribution, an additional amendment of the Gambling Regulation Act 2003 is required.

For this reason, the bill will amend the Gambling Regulation Act 2003 to enable the minister to make an order that determines not only the kind of activities or purposes that constitute community purposes but can also specify:

activities or purposes that do not constitute a community purpose, and

the maximum amount or percentage of gaming revenue that can be claimed for any specified community purpose or activity.

Conclusion

The amendments contained in the bill form an integral part of the government's overall policy on the regulation of gambling in Victoria. They will:

help to ensure that the Victorian gambling industry operates in a balanced way that minimises the incidence of problem gambling while creating an environment where those who gamble safely are permitted to do so;

improve the operation and effectiveness of the restrictions on the use of Victorian race fields by interstate and overseas wagering service providers;

provide increased flexibility for making of ministerial orders about community benefit contributions.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 29 November.

LIQUOR CONTROL REFORM AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Liquor Control Reform Amendment Bill 2007.

In my opinion, the Liquor Control Reform 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 establishes two schemes directed at reducing alcohol-related violence or disorder. One enables immediate action to be taken by police officers, through the giving of notices banning persons from designated areas, or from licensed premises within a designated area, for up to 24 hours. The other enables the courts to impose orders excluding persons from designated areas for up to 12 months.

The bill also makes a number of amendments that strengthen liquor licensing penalties and enforcement powers and facilitates and supports voluntary liquor accords.

Human rights issues

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

1. Banning notices and exclusion orders — freedom of movement

The issuing of a banning notice by police or an exclusion order by the courts imposes limitations upon an individual's right to move freely within Victoria, as protected by section 12 of the charter. However, the limitation is reasonable and justifiable under s. 7(2) of the charter.

(a) The nature of the right being limited

The right to move freely within Victoria is one that can be subject to restrictions. The International Covenant on Civil and Political Rights expressly recognises that the right may be subject to restrictions that are necessary to protect public order, public health or morals or the rights and freedoms of others.

(b) The importance of the purpose of the limitation

The purposes of the banning notices and exclusion orders are to reduce alcohol-related violence and disorder. They are aimed at protecting public order and the rights and freedoms of others, including the right to life in section 9, the right to privacy in section 13, the rights in respect of property in section 20 and the right to liberty and security of the person in section 21 of the charter.

(c) The nature and extent of the limitation

Banning notices and exclusion orders impose restrictions upon a person entering a designated area or licensed premises within a designated area. A banning notice can be imposed for up to 24 hours. An exclusion order can be made for up to 12 months.

The director is empowered to designate areas. The director must believe that alcohol-related violence or disorder has occurred in the immediate vicinity of licensed premises in the area and that the giving of banning notices and/or exclusion orders is likely to be an effective means of reducing alcohol-related violence or disorder in the area. No restrictions are placed upon the size of the area, but it is anticipated that the areas will be relatively confined. Some potential areas have already been identified.

The right to free movement within Victoria is important to the exercise of a number of other rights that are not included in the charter, such as the right to work. However, there are a number of safeguards contained in the bill to prevent or minimise interference with such rights.

The power to give a banning notice is discretionary. The officer can give a notice in respect of the entire area, or only in respect of licensed premises in the area and the ban need not be for the full 24 hours. The officer is directed to take

account of a number of factors in determining whether to give a notice.

Section 148B(6) prohibits the giving of a banning notice in respect of the designated area if the police officer believes or has reasonable grounds for believing that the person lives or works in the designated area. In those circumstances, a notice can only ban the person from the licensed premises in the designated area. Section 148B(7) ensures that this more limited notice cannot affect the person's ability to work or to live where they choose, by providing that if the person lives or works in licensed premises in the designated area, the banning notice does not prevent him or her from entering those premises.

Section 148E enables variation or revocation of a banning notice by a relevant police member above the rank of sergeant.

In making an exclusion order section 148I enables the court to make the order subject to any conditions the court thinks fit. This broad discretion ensures the court can reduce the adverse effects that could otherwise arise from an order that can last for up to 12 months, such as through the imposition of a condition enabling the offender to travel through the area to attend work. Section 148M enables the offender to apply for a variation of an exclusion order where circumstances have changed, such as the offender now working in the designated area.

(d) The relationship between the limitation and its purpose

The limitation imposed on freedom of movement is directly and rationally connected with the purpose of the provisions.

Banning notices can only be made where:

> An area has been designated by the director and, accordingly, where the director believes that alcohol-related violence or disorder has occurred in the immediate vicinity of licensed premises in the area and that the giving of banning notices and/or exclusion orders is likely to be an effective means of reducing alcohol-related violence or disorder in the area.
>
> The officer suspects on reasonable grounds that a person is committing or has committed a specified offence wholly or partly in a designated area.
>
> The officer believes on reasonable grounds that the giving of the notice may be effective in preventing the person from continuing to commit the specified offence or committing a further specified offence.
>
> The officer considers that the offence or further offence may involve or give rise to a risk of violence or disorder in the designated area.

Exclusion orders can only be made where the court finds an offender guilty of a specified offence within the designated area and is satisfied that the order may be an effective means of preventing the commission by the offender of further offences in the designated area.

(e) Less restrictive means reasonably available to achieve the purpose

Any less restrictive means would not achieve the purposes of the provisions as effectively.

(f) Other relevant factors

A further safeguard exists in that the power to give banning notices is given only to 'relevant police members' as defined in section 4. The intention is that only officers who have received training in liquor licensing or have been authorised by such officers, will be able to give a banning notice.

2. Banning notices and exclusion orders — liberty and security

Sections 148H and 148L enable police officers to use reasonable force to enforce banning notices and exclusion orders. This power involves an interference with the right to liberty and security of the person in section 21 of the charter. However, for the reasons already set out above and the fact that the force used can be no more than is reasonably necessary, I consider that the limitation is reasonable and justified pursuant to section 7(2) of the charter.

3. Banning notices and exclusion orders — privacy

Section 148P enables the disclosure of certain information for the purpose of enforcing banning notices and exclusion orders. Whilst this may well interfere with a person's privacy, the interference is neither unlawful nor arbitrary and does not violate the right to privacy in section 13 of the charter.

4. Strict liability offence provisions — presumption of innocence

Sections 148F and 148J

Sections 148F and 148J prescribe offences in respect of breaching a banning notice or exclusion order and for failing to comply with direction given by a police officer to leave a designated area or licensed premises. Express defences are prescribed in sections 148F(3) and 148J(4). These enable a defendant to escape liability if the defendant satisfies the court on the balance of probabilities that:

> the defendant was under a mistaken but honest belief about facts which, had they existed, would have meant that the conduct would not have constituted an offence; or
>
> the conduct constituting the offence was caused by circumstances beyond the control of the defendant and the defendant had taken reasonable precautions to avoid committing an offence.

By placing the burden of proof on the defendant, the provisions limit the right to be presumed innocent in section 25(1) of the charter. However, I consider that the limitation is reasonable and justified pursuant to section 7(2) of the charter.

(a) The nature of the right being limited

The right to be presumed innocent is an important right and one that has long been recognised well before the enactment of the charter. However, the courts have recognised that it may be subject to limits particularly where, as here, the defences are enacted for the benefit of the accused in respect of what would otherwise be an absolute liability offence.

(b) The importance of the purpose of the limitation

The purpose of the imposition of a burden of proof on the defendant is to provide the defendant with an opportunity to

escape liability in circumstances of honest and reasonable mistake or total absence of fault, without undermining the ability to enforce compliance with banning notices and exclusions orders. The defences involve facts that are within the knowledge of the accused and it would be difficult for the prosecution to prove absence of those matters. If the burden were on the prosecution, it would be too easy to escape liability.

(c) The nature and extent of the limitation

The onus only applies where a defendant seeks to rely upon one of the defences. It does not apply to any essential element of the offence. Further, the onus relates to matters that are within the knowledge of the defendant.

(d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the defendant is directly related to its purpose.

(e) Less restrictive means reasonably available to achieve the purpose

Less restrictive means would not achieve the purpose of the provisions as effectively. An evidential onus would be too easily discharged by a defendant and the prosecution would have difficulty in proving the absence of the defence beyond reasonable doubt. Removing the defences altogether would not infringe the right to be presumed innocent. However, this would not achieve the purpose of enabling the defendant to escape liability in appropriate cases. The enactment of the defences with a burden on the defendant to prove the matters on the balance of probabilities achieves an appropriate balance of all interests.

(f) Other relevant factors

It is also relevant that this offence is one that carries a relatively small fine only.

Sections 148F(4) and 148J(4)

In respect of the offences of failing to comply with a direction of a police officer, sections 148F(4) and 148J(4) expressly provide that it is not an offence if the officer fails to comply with the obligations in section 148G or 148K, such as where the officer fails to produce proof of his or her identity. Although the defendant will need to point to or adduce evidence that raises this issue, provisions do not require any proof by the defendant on the balance of probabilities. If the issue is raised, the prosecution will have to prove compliance with the requirements beyond reasonable doubt. Accordingly, the right to be presumed innocent is not limited.

Section 108(4)

Clause 21 amends section 108 of the act by inserting an offence of a licensee or permittee permitting drunken or disorderly persons to be on licensed or authorised premises. Express defences are prescribed enabling a defendant to escape liability if the defendant satisfies the court on the balance of probabilities that:

> the defendant did not know that drunk or disorderly persons were on the premises; or
>
> the defendant had taken all reasonable steps to ensure that drunken or disorderly persons were not on the premises.

By placing the burden of proof on the defendant, the provisions limit the right to be presumed innocent in section 25(1) of the charter. However, I consider that the limitation is reasonable and justified pursuant to section 7(2) of the charter.

(a) The nature of the right being limited

The right to be presumed innocent is an important right and one that has long been recognised well before the enactment of the charter. However, the courts have recognised that it may be subject to reasonable limits. Courts in other jurisdictions have consistently recognised that such limits may be appropriate in the area of public welfare regulatory offences, such as that in clause 21.

(b) The importance of the purpose of the limitation

The purpose of the offence provision is to ensure that licensees and permittees do not allow drunk or disorderly persons in their premises and to take reasonable steps to ensure this does not occur. It would be very difficult for the prosecution to prove beyond reasonable doubt that a licensee knew a drunk or disorderly person was on the premises or failed to take reasonable steps to prevent it.

(c) The nature and extent of the limitation

The provision imposes on the defendant the burden of proving, on the balance of probabilities, that he or she did not know that the person was on the premises or that he or she took all reasonable steps to prevent this. These are both matters that are within the knowledge of the defendant.

(d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the defendant is directly related to its purpose. The prosecution must prove that a drunk or disorderly person was on the premises. Given the obligations of the licensee or permittee not to allow such persons on the premises, it is reasonable to presume that inadequate steps have been taken to prevent this.

(e) Less restrictive means reasonably available to achieve the purpose

Less restrictive means would not achieve the purpose of the provisions as effectively. An evidential onus would be too easily discharged by a defendant and the prosecution would have great difficulty in proving the absence of these matters beyond reasonable doubt. The matters are within the knowledge of the defendant and there would likely be difficulties for the prosecution in obtaining the cooperation of potential witnesses, such as staff members.

(f) Other relevant factors

It is also relevant that this offence is one that carries a relatively small fine only.

5. Restriction on use of licensed premises — freedom of expression

Clause 13 imposes a limit on the use of licensed premises outside ordinary trading hours for the performance of live music or playing of recorded musical works. Outside of trading hours music must be kept at a background music level, unless the music is part of a private function.

This amounts to a limit upon the freedom of expression in section 15 of the charter. However, as set out in section 15(3)

of the charter, special duties and responsibilities are attached to the right and may be subject to lawful restrictions in certain circumstances. These restrictions are necessary to limit the adverse impact upon the rights of others, including the privacy rights of neighbours, of loud music.

Accordingly, the provisions do not breach section 15 of the charter.

6. Prohibited advertising or promotion — freedom of expression

Clause 23 inserts new section 115 and enables the director to give notice to a licensee banning advertising or promotions he or she considers are likely to encourage irresponsible consumption of alcohol or is otherwise not in the public interest.

This amounts to a limit upon the freedom of expression in section 15 of the charter. However, as set out in section 15(3) of the charter, special duties and responsibilities are attached to the right and may be subject to lawful restrictions in certain circumstances. The circumstances in which the advertising or promotion may be banned come within the scope of section 15(3) as the restrictions are necessary to respect the rights of others and for the protection of public order, public health or public morality. Accordingly, the provisions do not breach section 15 of the charter.

7. Suspension of licence by police — property rights

Clause 18 inserts a new provision enabling a senior police member to suspend a licensee's licence for up to 24 hours if the member believes on reasonable grounds that:

> the licensee has engaged in conduct that would constitute grounds for an application for an inquiry into the licensee;
>
> it is likely that the licensee will continue to engage in that conduct; and
>
> there is a danger that a person may suffer substantial harm, loss or damage as a result of the licensee's conduct unless the licence is suspended.

As the clause involves interference with a licence, by a person other than the person granting the licence, it engages the property rights in section 20 of the charter. However, the interference is neither unlawful nor arbitrary and does not limit the right.

8. Liquor accords

Liquor accords are a mechanism by which private persons in the liquor industry are able to reach agreement to take measures to ensure appropriate and responsible supply and consumption of liquor, for the purpose of minimising harm arising from the misuse and abuse of alcohol.

Section 146B enables persons to be banned under a liquor accord. The exercise of this power will be subject to the Equal Opportunity Act and cannot be operated in a discriminatory way. Accordingly, the right to equality in section 8 of the charter is not limited.

Section 146D facilitates the disclosure of information relating to persons who are subject to a ban under a liquor accord. Such disclosure is limited to information that is necessary to give effect to the ban. It is neither unlawful nor arbitrary and, accordingly, does not limit the right to privacy in section 13 of the charter.

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 demonstrably justified in a free and democratic society.

JUSTIN MADDEN
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill will implement a range of initiatives to enhance community safety in and around licensed venues.

The bill implements one of the government's 2006 community safety election policy commitments: to reduce the incidence of violence in the community by giving police the power to ban troublemakers from entertainment precincts. The bill also strengthens liquor licensing enforcement powers.

The bill fulfils the Premier's commitment in August to introduce legislation to address a rise in assaults in and around licensed venues. The amendments proposed in this bill will complement recent amendments to the Control of Weapons Act 1990, which doubled penalties relating to the possession of either prohibited or controlled weapons, and strengthened the balance of penalties in that act, particularly clamping down on crimes involving weapons in and around licensed venues.

To deter alcohol-related violence in and around licensed venues, the bill will enable police to ban troublemakers from designated entertainment areas for a period of 24 hours where police reasonably suspect that person has committed a specified offence involving violent or disorderly behaviour. The bill will also allow courts to issue exclusion orders from specific entertainment areas of up to 12 months to repeat offenders.

The bill will enable the director of liquor licensing to declare an area to be a designated entertainment area where the director believes that alcohol-related violence has occurred in a public place that is in the immediate vicinity of licensed premises. The director must also believe that the exercise of the new banning powers will be effective in reducing or preventing the occurrence of alcohol-related violence or disorder in the area proposed for designation.

The director must consult with the chief commissioner prior to making an order to designate an entertainment area. The

areas to be designated will be discrete, localised areas, and will be published in the *Government Gazette*. Areas currently under consideration are King and Queen streets in Melbourne and Chapel Street in Prahran.

To deter alcohol-related violence in and around licensed venues, the bill will enable police to ban troublemakers from either all licensed premises in a designated entertainment area, or from the designated entertainment area, for a period of 24 hours where police reasonably suspect that person has committed a specified offence involving violent or disorderly behaviour.

The bill requires police to consider a number of matters prior to issuing a banning notice, such as, whether the person is likely to continue to commit the specified offence or commit a further specified offence, or whether the person is capable of comprehending the nature and effect of the notice.

These measures are intended to ensure that in circumstances where a person is not able to comprehend the nature and effect of the banning notice, for example where the person may be too drunk; police members will not issue a notice and will take alternate actions to address the situation. Similarly, if the person lives or works in the designated entertainment area in which the offence was committed, the police member may not issue an order that encompasses the entire designated area but will be limited to banning the person from all licensed premises in the designated area.

The police-issued banning notice will contain information relating to the specified offences that the police member suspects the person has committed and the grounds for the suspicion, the name, rank and place of duty of the relevant member, the designated area in which the banning notice applies and the specified period for which the notice applies. The notice will also clearly indicate whether the notice bans the person from the entire designated area or from all licensed premises within the designated area, and will specify that it is an offence not to comply with the notice or with a direction of the police member to leave the designated area or licensed premises.

The bill creates a number of new offences to support the police-issued banning notices, including penalties for entering, or attempting to re-enter the designated area or licensed premises from which the person who is the subject of the order is banned, or failing to comply with a police direction to leave the designated area or licensed premises.

The bill will also allow courts to issue exclusion orders from specific entertainment areas of up to 12 months to repeat offenders. The court may make such an order if the court finds the offender guilty of a specified offence committed in the designated area and does not sentence the offender to a term of imprisonment of 12 months or more in respect of the specified offence, and is satisfied that the order may be an effective and reasonable means of preventing the commission of further specified offences.

In determining whether the court is satisfied as to the effectiveness of the order in preventing the commission of further specified offences, the court must consider the nature and gravity of the offence, whether the offender has previously been found guilty of a specified offence committed in the designated area and whether the offender is, or has been, the subject of an exclusion order in relation to another specified offence committed in the designated area, or another designated area.

The court must also consider the likely impact of the exclusion order on the offender, the victim of the specified offences and public safety and order, and any other matters the court considers relevant.

The court may make an exclusion order excluding the offender from the designated area, or all licensed premises within the designated area, or a specified licensed premises or a class of licensed premises, for a period of up to 12 months. The bill specifically provides that the court order may exclude the offender from the designated area or licensed premises for all times during the period of the order, or for specified times. Similarly, the court order may allow the offender to enter the designated area or licensed premises for specified purposes subject to conditions specified by the court. The court may otherwise make the order subject to any other conditions the court thinks fit.

The offender who is the subject of an exclusion order may apply to the court to vary the conditions of the order. Such variation may also be sought by the Director of Public Prosecutions or a member of the police force.

The bill creates a number of new offences to support the court-issued exclusion orders, including penalties for entering, or attempting to re-enter, the designated area or licensed premises in contravention of the conditions of the order, or failing to comply with a police direction to leave the designated area or licensed premises.

To aid in the enforcement of the regime, the director of liquor licensing or a relevant police member may disclose to a licensee or permittee relevant information in relation to a banning notice or exclusion order, including the fact that a banning notice or an exclusion order has been made that excludes the person from the licensed premises and the name of the person to whom the notice or order applies, and if available, a photograph of that person.

It will be an offence for a licensee or permittee, or an employee or agent of the licensee or permittee, to knowingly permit a person to whom a banning notice or exclusion order applies to enter or re-enter the premises in contravention of the notice or order.

The range of specified offences for the purposes of the banning notices and exclusion orders are specified in schedule 2 of the bill and include offences involving violent or disorderly behaviour, such as destroying or damaging property, offences against the person, such as assault, and a range of sexual offences, and other offensive or obscene behaviour offences, and carrying a prohibited weapon in or around a licensed premises.

The bill provides that the Chief Commissioner of Police must annually report on a range of information in relation to the banning notices and exclusion orders. This will assist in determining the effectiveness of the regime.

The bill also provides a range of measures to strengthen the existing liquor licensing regime to deal with the minority of licensees who do not behave in a responsible manner.

The bill amends the definition of associate for the purposes of the act to explicitly include any person with a relevant financial interest, or who is or will be entitled to exercise any

relevant power, or significant influences over or with respect to the management or operation of any business of the person applying for a licence involving the sale of liquor. The bill also requires that the date of birth of the associate be supplied. This is critical in undertaking appropriate probity-related checks.

This will strengthen the ability of the director to consider the appropriateness of any person who may exercise any significant influence over the conduct of the licensed venue.

The bill also addresses an increasingly disturbing trend where restaurants are operating late as bars and nightclubs outside ordinary trading hours. The concern with such activity is the impact upon amenity and the public safety risk posed by the operation of such venues late into the night or early morning without appropriate security measures that would otherwise apply to such venues.

On-premises licenses are currently granted under the act to a range of premises, including restaurants, where permitted under the Planning and Environment Act 1987. The predominant activity of such premises is the preparation and serving of meals for consumption on the licensed premises. The bill will amend the conditions applying to such premises to require that the licensee must not permit the live performance of any musical works, or the playing of any recorded musical works on the premises, at higher than background music level at any time outside ordinary trading hours.

The act currently allows the director to make a late-hour entry declaration (lockout) by way of written notice to each of the licensees within the area or locality to which the declaration is proposed to apply. The act provides a 21-day period after the notice is issued for the licensee to give the director notice of objection to the proposed declaration. This process does not enable the director to act decisively and quickly in circumstances where the director believes on reasonable grounds that there exists alcohol-related violence in an area or locality, and that a declaration is likely to be an effective means of reducing or preventing such violence.

The bill therefore amends the act to enable the director to make a late-hour entry declaration without the 21-day notice period where the director believes that such declaration will address alcohol-related violence or disorder in the area or locality. Such declarations will take effect on the day specified in the notice provided to the licensees by the director. Such declarations will expire when either the declaration is revoked by the director, or a period of three months elapses after the day on which the declaration is made.

It is not intended that the new power would be used to circumvent the existing consultation requirements in the act, or to issue annual late-hour entry declarations in relation to a particular event. It is expected that the power to make temporary late-hour entry declarations will be exercised when circumstances require a speedy response.

The act currently enables the director to apply to the Victorian Civil and Administrative Tribunal to conduct an inquiry into the licensee or permittee where the director (or the chief commissioner, a licensing inspector or the local council) consider that a licensee or permittee has contravened the act, the regulations, or specific conditions of their licence or permit, or have been convicted of specific offences. The amendments extend the range of conditions upon which an inquiry may be sought to include circumstances where a licensee or permittee is a body corporate a director of which has been convicted in Victoria or elsewhere of an offence punishable by a term of imprisonment of three years or more, or is a club that is not a body corporate, a member of the committee of management of which has been convicted of such offence. These amendments address a gap in the existing conditions upon which an inquiry may be sought where the licensee or permittee is a body corporate or a club.

The bill will also enable an assistant commissioner of Victoria Police to immediately suspend a liquor licence for a period not exceeding 24 hours. This will enable police to respond to immediate threats to public safety.

The amendments provide that the senior police member issuing the notice must believe on reasonable grounds that a licensee has engaged in conduct that would constitute grounds for an application for an inquiry into the licensee, and that the licensee will continue to engage in that conduct, and that there is a danger that a person may suffer harm, loss or damage as a result of the licensee's conduct unless the licence is suspended.

To further strengthen licensing enforcement and compliance, the bill will amend the act to enable the director to serve a breach notice against a licensee if the director believes on reasonable grounds that the licensee has engaged in conduct which would be grounds for an inquiry into the licensee's suitability to hold a licence under the act. The notice to be served by the director will set out the steps the licensee must undertake to rectify the breach and will state the time period within which the licensee must respond to the notice, being a period of not less than 14 days.

The notice will also set out the consequences for the licensee for not responding to the notice including potential suspension of the licence or variation of conditions, including reducing trading hours for a period of seven days.

The bill also addresses a gap in the existing act with respect to the operation of 'party buses'. The bill will introduce a provision to specifically prohibit permitting or allowing the consumption of liquor on a 'party bus' without a licence or BYO permit.

There have been a number of instances where the nature of liquor advertising or promotion or conduct in relation to liquor consumption has caused community concern. A recent case has been the inappropriate promotion of free alcohol supply to those women prepared to wear a bikini to the venue. The bill addresses such inappropriate promotions by enabling the director to ban the licensee from advertising or promoting liquor supply, or conduct of licensed premises by the licensee, if the advertising or promotion is likely to encourage irresponsible consumption of alcohol, or is otherwise not in the public interest.

The bill will also enable the director to accept a written undertaking from a licensee in connection with any matter in relation to which the director has a power or function under the act or in relation to a contravention of this act. The written undertakings provide a mechanism for the director and the licensee to agree on the steps that must be undertaken to comply with the requirements of the act.

Voluntary liquor accords have been a feature of the liquor licensing regime in Victoria since the early 1990s. Provisions are included in the bill to place these voluntary accords on a statutory footing and to allow the director or a member of the police force to disclose information to licensee members of the accord, to assist in effective enforcement of the accord provisions.

An accord allows licensees to make agreements on conduct but without the conduct offending the provisions of the Trade Practices Act 1974 and the competition code.

The bill also doubles the penalties for certain offences under the act, including supplying liquor to a person in a state of intoxication or permitting drunk and disorderly persons to remain on licensed premises. The bill also clarifies that the existing offence of an unlicensed person selling liquor includes offering liquor for sale. This addresses an emerging trend of unlicensed sale of liquor on the internet.

The bill contains amendments that will strengthen the existing liquor licensing regime and it delivers on the key election commitment of government to further combat alcohol-related violence and disorder by introducing 24-hour bans for individuals from licensed premises in designated areas and exclusion orders for offenders. This will make attending entertainment precincts a safer and more enjoyable experience for all law-abiding members of the community.

I commend the bill to the house.

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

Debate adjourned until Thursday, 29 November.

POLICE REGULATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Police Regulation Amendment Bill 2007.

In my opinion, the Police Regulation Amendment Bill 2007, as introduced to the Legislative Council, is compatible with human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill establishes a scheme for drug and alcohol testing of police officers.

Human rights issues

The alcohol and drug testing scheme established by the bill represents a careful balancing of a number of competing rights and interests.

The bill enables testing of officers following a critical incident that results in death or serious injury, where the chief commissioner reasonably believes that an officer's ability to perform his or her duties is affected by alcohol or drugs, and where the chief commissioner reasonably believes that an officer ought to be tested for the good order or discipline of the force.

The bill gives effect to the right to life in section 9, the right to liberty and security of the person in section 21, the right to protection from torture and cruel, inhuman or degrading treatment in section 10, and the right to humane treatment when deprived of liberty in section 22 of the charter. These rights require that the state take measures to ensure proper treatment of detained persons and that the state does not arbitrarily deprive a person of their life or interfere with their liberty and security. The rights also require that the state undertake effective investigations where a person is killed or injured by actions of the state or while in the custody of the state. In Victoria, a number of investigatory mechanisms are available including coroner's inquests, criminal proceedings, civil proceedings and disciplinary proceedings.

On the other hand, by enabling the chief commissioner to direct that an officer undergo drug and alcohol testing, the bill has the potential to impact upon the rights of individual officers, including the right to liberty and security in section 21, the right not to be subjected to medical treatment without consent in section 10, the right to freedom of movement in section 12, and the right to privacy in section 13. The results of the testing can be used in disciplinary proceedings against the officer. In the case of a critical incident the results can also be used in any proceedings arising out of the incident, including criminal proceedings and coronial inquests. However, I consider that the privilege against self-incrimination incorporated within sections 24 and 25 of the charter is not engaged. To the extent that these provisions of the charter protect the privilege against self-incrimination, the rights apply only to persons charged with a criminal offence and do not extend to the collection of real evidence during an investigation.

I consider that the bill represents an appropriate balance between these competing rights and any limitation upon the rights of individual officers is reasonable and justifiable under s. 7(2) of the charter.

The nature of the right being limited

The rights of the officers are important and must be respected. However, they are rights that can be limited and must be balanced against the rights of the broader community.

The importance of the purpose of the limitation

Police officers are charged with protecting the community and are given a broad range of powers in order to do so. These include the ability to use force and to detain persons.

The exercise of these powers can limit or interfere with the rights of individuals, including the rights to life, liberty and security. It is essential to the protection and promotion of those rights that the chief commissioner has sufficient powers to effectively investigate cases where police action has resulted in death or serious injury, to investigate and take action in cases where alcohol or drug use may be affecting the ability of an officer to carry out his or her duties, and to investigate and manage the performance of police officers. The provisions also serve to enable identification of officers with alcohol or drug problems so that treatment and rehabilitation can be provided.

Enabling alcohol and drug testing of officers also assists in maintaining the integrity of the police force, including risk of corruption, and the public's confidence in it.

The nature and extent of the limitation

The limitations on the individual officers' rights are minimal. An officer's right to liberty and freedom of movement may be limited by requiring him or her to attend for the purpose of drug or alcohol testing. An officer's right to security of the person and not to be subjected to medical treatment without full, free and informed consent may be limited by a direction to allow a blood sample to be taken. Although the officer can refuse to comply with the direction of the chief commissioner, given that such a refusal could result in disciplinary proceedings, consent cannot be regarded as truly free. Further, section 85D(4) enables a blood sample to be taken without consent where an officer involved in a critical incident is unconscious, although the officer can subsequently refuse consent for the use of any evidence obtained from such a sample. The right to privacy is not limited as the circumstances in which such testing can be directed cannot be regarded as unlawful or arbitrary, and sections 85F and 85G protect the confidentiality of the test results.

The relationship between the limitation and its purpose

To the extent that the rights of officers are limited, those limitations are directly connected to the purposes of the scheme. The power to direct officers to undergo testing following a critical incident and the ability to use the results in any proceedings arising out of the incident is necessary to ensure an effective investigation into a death or serious injury arising out of or connected with police actions. The powers of the chief commissioner to direct an officer to undergo drug or alcohol testing in other circumstances are broader, but are also directly connected with the purposes of the limitation. The powers apply only where there are concerns that a member's ability to perform his or her duties is affected by drugs or alcohol, or where it ought to be undertaken for the good order of the force. Pursuant to section 85B(3), a direction can only be given where testing may be relevant to the management of the member's performance of his or her duties, an investigation in respect of the member, or a proceeding arising out of or in connection with such an investigation.

Less restrictive means reasonably available to achieve the purpose

To the extent that the rights of officers are limited, the interference is necessary to achieve the purposes of the scheme. Less restrictive means, such as further limiting the circumstances in which testing can be undertaken or enabling an officer to refuse consent without any disciplinary consequences, would not be as effective in achieving the purposes of the provisions.

Other relevant factors

It should also be noted that police officers are subject to the same alcohol and drug testing schemes as other road users under the Road Safety Act.

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 demonstrably justified in a free and democratic society.

JUSTIN MADDEN
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

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

That the bill be now read a second time.

Incorporated speech as follows:

Victoria Police members have a difficult job to do. For the vast majority of members this job is carried out with expertise and integrity. But some police members, as do some members of the broader community, suffer from drug or alcohol dependencies.

This bill contains some important initiatives to further promote the highest ethical and professional standards within Victoria Police. It will support internal occupational health and safety and ultimately improve community safety and public confidence in policing. It recognises that organisational ethical health must be continuously reinforced and supported.

The bill provides legislative power for the Chief Commissioner of Police to direct Victoria Police members to undergo drug and alcohol testing. Most other Australian police jurisdictions have testing regimes. New South Wales, Queensland, the commonwealth (in relation to Australian Federal Police) and Tasmania have legislative provisions supporting drug and alcohol testing of police officers.

The power to direct testing will be a broad one that will ensure that the testing regime is flexible enough to meet current and future operational purposes. Testing may be carried out in circumstances including but not limited to:

testing for welfare treatment purposes where a member is incapable of, or inefficient in, performing his or her duties;

testing following a critical incident. A critical incident is defined in the bill as where a person dies or suffers serious injury as the result of the use of a motor vehicle, the discharge of a firearm or the use of force by a

member whilst on duty, or while in the custody of the police member; or

testing where the chief commissioner reasonably believes it is necessary for the good order and discipline of the force.

Police members cannot be forcibly tested under the bill; however, a failure to comply with a direction may lead to a range of actions including treatment, discipline or management action as in other states.

Treatment information and test results must be dealt with in accordance with the charter of human rights, information privacy principles and health records legislation. Accordingly, a range of measures in the bill will support members seeking welfare treatment for an alcohol or drug dependence, and also protect the privacy of members. The bill creates an offence for disclosing information that identifies a member who has been directed to undergo testing, except in accordance with the purposes set out in the act or regulations. The bill also prevents the identity of a member being released in public reports.

Treatment information and test results will be protected from admissibility in unrelated legal proceedings. This is important to protect the administration of justice being substantively and unreasonably delayed or blown out through irrelevant 'fishing' expeditions by criminal defence teams. For example, a police member may be involved in a critical incident during a search, and then test positive to a drug of dependence. It is not intended that the drug test result could be used by the party subjected to the search, to attempt to discredit a charge against him or her such as possession and handling of stolen goods resulting from the search. The test results are not related to the other proceedings in this context.

Importantly however, test results created after a critical incident will be admissible in civil, criminal and coronial proceedings arising directly from the critical incident. So the person injured in the critical incident may issue civil proceedings against the member, in which the drug test result could be admissible. And, if criminal charges were laid against the police member arising from the critical incident, the drug test results would be admissible in those proceedings.

Some other exceptions to this inadmissibility of test results will also operate. This includes certain proceedings under occupational health and safety or WorkCover legislation.

Secondly, the bill separates the offices of the Ombudsman and the director, police integrity.

The original decision to establish the office and to appoint the director, police integrity, to be the same person as the Ombudsman, meant that the Office of Police Integrity was able to rapidly build its operational capacity using the established infrastructure of the Ombudsman. It also meant intelligence gained by the Ombudsman in monitoring and reviewing police complaints over the years would not be lost but would transfer seamlessly to the new agency. As a result the Office of Police Integrity was able to start achieving results much faster than it would otherwise have done. However, the office is now an effective, proactive and fully operational police anticorruption body, comparable, in general terms of its powers and resources, to similar bodies in other Australian jurisdictions.

It is therefore timely to make the amendments allowing the separation of the two offices.

Lastly, the bill removes a 'sunset' clause that would otherwise come into effect in early 2008, thereby preventing the director, police integrity, from accessing 'contempt' powers. The Police Regulation Act 1958 provides that a person attending an investigation in answer to a summons issued by the director may be guilty of a contempt in certain circumstances, such as failing without reasonable excuse to produce documents or things or failing to attend and give evidence or refusing to be sworn and answer questions. The director may issue a certificate charging the person with contempt and the person so charged may be arrested and brought before the Supreme Court to be dealt with.

This provision attracted some interest when it was introduced and a 'sunset' provision was therefore included to ensure that the process could be evaluated over a three-year period. Although it has not been utilised to date, its retention is supported by the director.

The measures in this bill will support police integrity and assist in maintaining community confidence in our police.

I commend the bill to the house.

Debate adjourned on motion of Mr DALLA-RIVA (Eastern Metropolitan).

Debate adjourned until Thursday, 29 November.

ROAD LEGISLATION FURTHER AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) on motion of Mr Jennings.

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Road Legislation Further Amendment Bill 2007.

In my opinion, the Road Legislation Further 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.

Part 1 — Overview of bill

The Road Legislation Further Amendment Bill 2007 ('bill') amends the following acts:

Road Safety Act 1986

Transport Act 1983

Melbourne City Link Act 1995

EastLink Project Act 2004

Road Management Act 2004

Chattel Securities Act 1997

The bill will amend these acts as follows:

Road Safety Act 1986

To implement the National Transport Commission's model legislation on fatigue management for drivers of heavy vehicles.

To introduce a new offence for drivers who deliberately or recklessly enter level crossings when warning devices are operating or a train or tram is approaching, and providing for the impoundment, immobilisation or forfeiture of the relevant vehicle in certain circumstances.

To allow VicRoads' records to be used and disclosed for the purpose of locating missing persons, facilitating road safety related research projects and enabling infrastructure managers to issue or defend civil proceedings arising out of their statutory functions under the Road Management Act 2004 or damage resulting from road accidents.

To enable VicRoads to delay serving a further demerit points option notice if the initial notice is returned undelivered.

To enable regulations to be made allowing for different procedures or requirements to be imposed on a driver licence depending on the person's age or experience, and allowing VicRoads to grant a probationary licence to a person under the age of 21 years for a longer term than usually applies to a probationary driver licence issued to an older driver.

Chattel Securities Act 1997

To make various amendments regarding the registration of security interests in motor vehicles, including clarification of the power to make regulations imposing fees, and the ability to waive or reduce those fees for account holders and the sheriff.

Melbourne City Link Act 1995

To apply the 'operator onus' provisions of the Road Safety Act 1986 to tolling charges, so that a recipient of a tolling invoice who was not driving at the relevant time may nominate the 'responsible person' in relation to the vehicle.

To convert the expression of the amount of a CityLink infringement penalty to monetary units, thereby allowing such infringements to be indexed each year.

EastLink Project Act 2004

To make the tolling provisions in relation to EastLink more consistent with those that apply to CityLink, thereby ensuring that persons who drive vehicles on either Melbourne CityLink or EastLink without being registered to do so are treated equally with respect to the enforcement of offences.

Road Management Act 2004

To make compliance with a road management plan a defence to civil proceedings arising out of the exercise of road management functions generally (that is, not limited to road maintenance).

To establish new arrangements for the funding and management of street lighting on arterial roads.

Part 2 — Human rights protected by the charter that are engaged by the bill

Section 8 — recognition and equality before the law

Section 8 of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

Driver licences

The following provisions of the bill engage the right to recognition and equality before the law under section 8(3) of the charter:

Clause 5 provides that regulations may be made to ensure that procedures and requirements that a person must comply with before VicRoads can grant a driver licence may differ depending on a person's age.

Clause 6 provides that VicRoads may grant people under the age of 21 years a driver licence for different terms than the terms that usually apply to people who are aged 21 years or more.

The provisions engage a person's right to enjoy his or her human rights in Victoria without discrimination in that they enable the making of regulations that may restrict a person's right to obtain a driver licence, or to obtain a licence for a different term than would otherwise apply, on the basis of that person's age.

The reasonableness of the limitation on the right for the purposes of section 7(2) of the charter is considered in part 3 below.

Section 12 — freedom of movement

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

Driver licences

Clause 5 engages, but does not limit, the right to freedom of movement under section 12 of the charter. It provides that regulations may be made to ensure that procedures and requirements that a person must comply with before VicRoads can grant a driver licence may differ depending on a person's age.

Clause 5 enables the making of regulations that may restrict a person of a certain age from applying for a driver licence, and therefore restricts the person's ability to move freely in

Victoria. However, the provision only limits the mode of that movement. Courts in Canada and New Zealand have considered arguments that restrictions on the ability to drive represent a limitation on the right of freedom of movement. The balance of judicial opinion in both jurisdictions suggests that this is not the case.

Accordingly, clause 5 does not interfere with, and therefore does not limit, the right to move freely within Victoria under section 12 of the charter.

Level crossing safety

The following provisions engage, but do not limit, the right to freedom of movement under section 12 of the charter.

Clause 9 inserts new section 68B into the Road Safety Act 1986, which creates a new offence of 'deliberately or recklessly entering a level crossing when a train or tram is approaching'.

Clause 15 inserts a new paragraph (ea) into the definition of 'relevant offence' with the effect that repeated breaches of the offence created by new section 68B are punishable by the impoundment, immobilisation or forfeiture of the offender's motor vehicle.

If the right of freedom of movement encompasses a right to drive or use highways, it might be argued that the right would be limited by the removal of the person's vehicle. Courts in Canada and New Zealand have considered arguments that restrictions on the ability to drive represent a limitation on the right of freedom of movement. However, the balance of judicial opinion in both jurisdictions suggests that this is not the case.

Accordingly, clauses 9 and 15 do not interfere with, and therefore do not limit, the right to move freely within Victoria under section 12 of the charter.

Fatigue management: substantive provisions

Clause 20 inserts several new sections into the Road Safety Act 1986 which engage a person's right to freedom of movement.

New sections 191ZZJ and 191ZZK authorise an inspector under the Road Safety Act 1986 who believes the driver of a fatigue-regulated heavy vehicle has worked a period in excess of the maximum period allowed under a maximum work requirement, or who has taken a rest period that is shorter than the rest period required under a minimum rest requirement, to issue a written notice requiring the driver to take a rest or to work for a shorter period.

New section 191ZZL authorises an inspector under the Road Safety Act 1986 to issue a written notice requiring a driver to stop work immediately and not work again for a stated period if the inspector believes the driver is impaired by fatigue. An inspector may authorise a person who is qualified to do so to drive the vehicle to a suitable rest place.

These provisions engage a person's right to freedom of movement in Victoria because they enable an inspector to require a person to rest before continuing to drive a fatigue-regulated heavy vehicle until certain requirements of rest are satisfied.

The reasonableness of the limitation on the right to freedom of movement for the purposes of section 7(2) of the charter is considered in part 3 below.

Fatigue management: application of part 11 of the Road Safety Act 1986

Clause 23 substitutes for section 192(2)(a) of the Road Safety Act 1986 a new section 192(2)(a), which extends the operation of the section to cover contravention of a maximum work limit, a minimum rest requirement, or a work diary requirement.

The effect of this amendment is to apply the provisions of part 11 of the Road Safety Act 1986 to the fatigue management requirements inserted in new part 10A. Part 11 of the act sets out a range of compliance and enforcement provisions which apply to a 'relevant heavy vehicle offence'.

Part 11 includes provisions which allow inspectors to issue improvement notices to persons believed to be committing or to have committed a relevant heavy vehicle offence. An improvement notice can direct the person to take specified action to stop the offence or prevent it from recurring.

This provision also limits a person's right to freedom of movement in Victoria because it enables an inspector to direct a person to not drive a vehicle until certain action is taken.

The reasonableness of the limitation on the right to freedom of movement for the purposes of section 7(2) of the charter is considered in part 3 below.

Section 13 — privacy and reputation

Section 13 of the charter provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Tolling provisions

Clauses 10 and 11 amend sections 84BB and 84BE of the Road Safety Act 1986. The clauses expand the existing definition of a 'responsible person' to include a person who has been nominated in an effective tolling statement under either the Melbourne City Link Act 1995 or EastLink Project Act 2004 and the provisions relating to nomination of drivers.

To avoid liability for tolls and fines arising out of the use of CityLink or EastLink, a vehicle operator may need to nominate the driver or another person who may have been responsible for the vehicle, and in doing so divulge personal information (such as name, address and date of birth).

The amendments made by clauses 10 and 11 allow vehicle operators to provide personal information about a 'responsible person' they wish to nominate for the purposes of collecting a relevant toll under part 4 and part 5 of the bill which amend the EastLink Project Act 2004 and the Melbourne City Link Act 1995, respectively.

Under amendments made by part 4 and part 5, the operator of a vehicle will have default liability to pay tolls charged to it, unless it can nominate another person as the person responsible for that payment. Making such a nomination will involve divulging personal information and will allow an

enforcement agency to use that information to pursue the nominated person.

These provisions engage, but do not limit, the right to privacy under section 13 of the charter.

Any interference with privacy authorised by these provisions is lawful and not arbitrary.

It is lawful because it is authorised by the legislation as amended by these provisions. They contain a number of procedural and substantive safeguards which prevent the interference from coming about in an arbitrary manner. The safeguards include:

The operator of the vehicle is required to provide reasons for the belief that the person they are nominating had control and/or possession of the vehicle at the relevant time.

The enforcement official must accept the nomination as effective in order for it to have any consequence (under section 199 of the EastLink Project Act 2004 and section 72(3C) of the Melbourne City Link Act 1995).

The making of false and misleading statements is prohibited by way of criminal sanctions (in both section 199B of the EastLink Project Act 2004 and section 72AB of the Melbourne City Link Act 1995).

Accordingly, to the extent that these provisions do provide for the collection or disclosure of personal information, they do not limit the right to privacy under section 13 of the charter.

Use and disclosure of information obtained by VicRoads

Clause 16 amends section 92 of the Road Safety Act 1986 by inserting three further exemptions to the prohibition on the release of personal and commercially sensitive information kept by VicRoads. The new provisions will allow VicRoads to release information:

to an authorised body for the purpose of contacting and locating missing persons or facilitating family reunion (section 92(3)(ic)),

for the purpose of road safety research and the dissemination of information and advice in relation to road safety (section 92(3)(id)),

to a road authority or utility as defined in the Road Management Act 2004 for the purposes of issuing or defending civil proceedings relating to the road authority or utility's functions as defined under that act or damage to infrastructure resulting from road accidents (section 92(3)(ie)).

These provisions engage a person's right to privacy in that they allow VicRoads to release information of a personal nature which it has collected as part of its statutory functions without obtaining specific authority from the individuals to do so.

Any interference with privacy authorised by the clause is lawful and not arbitrary.

It is lawful because it is authorised by the act as amended by the clause. Section 92 of the act provides for disclosure for limited purposes and contains a number of procedural and substantive safeguards, both of which prevent the interference from coming about in an arbitrary manner.

The purpose of new paragraph (ic) is to facilitate reunion programs which will assist in re-establishing contact between separated family and friends as well as helping find missing persons by accessing personal information held by VicRoads. The exception contains a safeguard in requiring that disclosure can only be to bodies or persons approved by the minister.

The purpose of the new paragraph (id) is to allow VicRoads to access personal information or commercially sensitive information for the purpose of road safety research and disseminating and advising in relation to road safety.

The purpose of the new paragraph (ie) is to assist road authorities and infrastructure managers to carry out their statutory functions under the Road Management Act 2004. The efficient carrying out of these functions is also important to all road users in Victoria and the greater public of Victoria generally.

Existing safeguards in section 92 of the Road Safety Act 1986 for the protection of personal information used or disclosed by VicRoads will apply to use or disclosure for the purposes specified in clause 16. Those safeguards are as follows:

It is a serious offence to use or disclose information in contravention of the section.

Persons to whom information is disclosed must enter into a confidentiality agreement with VicRoads, which must amongst other things set out how the confidentiality of the information is to be protected.

Accordingly, to the extent that clause 16 provides for the use or disclosure of personal information, it does not limit the right to privacy under section 13 of the charter.

Section 20 — property rights

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

Clauses 9 and 15 of the bill engage, but do not limit, the right set out in section 20 of the charter.

Clause 9 inserts new section 68B into the Road Safety Act 1986, which creates a new offence of 'deliberately or recklessly entering a level crossing when a train or tram is approaching'.

Clause 15 inserts a new paragraph (ea) into the definition of 'relevant offence' with the effect that repeated breaches of the offence created by new section 68B are punishable by the impoundment, immobilisation or forfeiture of the offender's motor vehicle.

These provisions raise, but do not limit, the right to not be deprived of property under section 20 of the charter. The charter allows deprivation of property 'in accordance with law'. A deprivation of property will be in accordance with law when it is in conformance with a set of procedures established by law. Deprivation of property under these provisions must follow the set of procedures established by part 6A of the Road Safety Act 1986.

Temporary deprivation of property, in the form of impoundment and immobilisation, is made by the police. The procedures set out in the act allow for notification, internal review, appeal rights and possible costs consequences against the Crown. Permanent deprivation of property, in the form of forfeiture, can only be ordered by a court.

Therefore, these provisions provide for deprivation of property in accordance with law and do not interfere with the right to not be deprived of property.

Section 21(8) — imprisonment for inability to perform contractual obligations

Section 21(8) of the charter provides that a person must not be imprisoned only because of his or her inability to perform a contractual obligation.

Operator onus for tolling

Parts 4 and 5 of the bill engage, but do not limit, the right to liberty under section 21(8) of the charter.

These clauses amend the EastLink Project Act 2004 and Melbourne City Link Act 1995 respectively, by applying the operator onus provisions of the Road Safety Act 1986 to the liability to pay tolls and administration fees.

The provisions have the effect that a person who drives a vehicle on EastLink or CityLink without the vehicle being registered for that purpose will commit an offence for which they may be liable for an infringement penalty as well as for payment of the toll and any administration charge.

The ultimate consequences of a failure to pay an infringement penalty include that a person may be imprisoned. Hence, it appears that the provisions have the potential to impose an imprisonment penalty for failure to comply with a contractual obligation.

However, the relevant provisions (section 204 of the EastLink Project Act 2004 and section 73 of the Melbourne City Link Act 1995) only impose a criminal liability on a person who is not registered for the purpose of using one of the relevant toll roads. They therefore only impose a criminal liability in the absence of a contractual relationship with the operator of the tollway.

Accordingly, the provisions in parts 4 and 5 engage, but do not limit, the right to protection from imprisonment for an inability to perform contractual obligations under section 21(8) of the charter.

Section 25(1) — presumption of innocence

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

A number of provisions engage the presumption of innocence under section 25(1) of the charter.

Fatigue management

Clause 20 of the bill inserts new sections 191A to 191ZZZD into the Road Safety Act 1986.

The intent of the new provisions is to establish a scheme to properly manage fatigue in the drivers of heavy vehicles on an industry-wide basis, thus improving safety on Victorian roads. It aims to do so by imposing criminal liability, in cases where the driver of a heavy vehicle contravenes maximum work or minimum rest requirements, and in some cases work diary requirements, on a 'chain of responsibility' basis.

New section 191B defines 'fatigue regulated heavy vehicle'. The requirements set out in new part 10A will generally apply to such vehicles. A 'fatigue regulated heavy vehicle' is a motor vehicle or combination with a gross mass of more than 12 tonnes, or a bus. Expressly excluded from the definition are trams, motor homes and vehicles that primarily operate off public roads, such as agricultural machinery and road building plant.

New sections 191D–191K impose duties on various persons ('parties in the chain of responsibility') who may be liable for an offence where a driver of a fatigue-regulated heavy vehicle contravenes a maximum work requirement, a minimum rest requirement or a work diary requirement.

These provisions also provide defences for parties in the chain of responsibility. A person (other than an operator) who was in a position to influence the conduct of the driver will be able to invoke the reasonable steps defence set out in new section 191ZZP.

New section 191ZZP provides that for a person who has the benefit of the reasonable steps defence, it is a defence if the person charged establishes that:

> the person did not know, and could not reasonably be expected to have known, of the contravention; and
>
> either the person took all reasonable steps to prevent the contravention or there were no steps the person could reasonably have taken to prevent the contravention.

New section 191ZZQ sets out various matters to which a court may have regard when deciding whether things done or omitted to be done by a person charged constitute reasonable steps.

New section 191ZZO(2) provides that a court must consider a person to have taken reasonable steps to prevent an act or omission that led to a contravention if the person establishes that they did certain things to prevent the act or omission. In general terms, those things include identifying and assessing (at or within specified times) aspects of their activities that may lead to a contravention of a fatigue management requirement, and taking steps to eliminate or minimise the risk.

New section 191ZZS enables a person charged with a fatigue management offence to establish that they took all reasonable steps to prevent the contravention by providing proof that they complied with relevant standards and procedures, including an industry code of practice.

New section 191ZZX provides that proceedings can be taken against more than one person who is liable to be found guilty of a fatigue management offence. Proceedings may be taken against a person regardless of whether proceedings have been taken against anyone else, and regardless of the outcome of those proceedings.

Effectively, a number of people including the owner and persons involved in the scheduling of trips and the loading and consigning of goods may be deemed to have committed the same offence as the driver, unless they can establish the existence of the reasonable steps defence.

The scheme is intended to place an evidential onus on parties in the chain of responsibility to establish their innocence. The offences carry penalties.

The provisions engage the right to be presumed innocent until proven guilty under section 25(1) of the charter because various influencing persons and their associates are effectively deemed to be guilty until they establish that they are innocent. Overseas jurisprudence indicates that this kind of reverse onus provision has been widely held to amount to a limitation on the right to be presumed innocent.

Therefore, these provisions limit the right to the presumption of innocence. The reasonableness of the limitation on the right to the presumption of innocence for the purpose of section 7(2) of the charter is considered in part 3 below.

Operator onus for tolling

Clause 10 will amend section 84BB of the Road Safety Act 1986 to expand the existing definition of a 'responsible person' to include a person who has been nominated in an effective tolling statement under either the Melbourne City Link Act 1995 or EastLink Project Act 2004. By doing so, it makes persons nominated in such tolling statements subject to the 'operator onus' provisions of part 6AA of the Road Safety Act 1986.

The operator onus provisions in part 6AA have the effect that 'a responsible person' is liable for an infringement and for certain purposes will be deemed to have committed an offence unless that person establishes that he or she was not in control of the vehicle at the time.

The person must do so by providing a statement in a particular form and with prescribed particulars.

While the provisions in clause 10 appear to have the effect of attributing guilt to a nominated person, these provisions also allow a person so nominated to identify another person as responsible for the vehicle. Subject to certain procedural requirements being satisfied, the person so nominated then becomes liable. Various provisions allow a nominated person to dispute the nomination, and the effect is that the nomination under these provisions is akin to an 'allegation' rather than a conclusive attribution of guilt.

Accordingly, the provisions in clause 10 do not limit a person's right to be presumed innocent until proven guilty under section 25 of the charter.

Part 3 — Consideration of reasonable limitations under section 7(2) of the charter

This part of the statement considers, for each of the provisions that are identified in part 2 as limiting one or more charter rights, whether the limitation is reasonable as required by section 7(2) of the charter.

Section 8 — recognition and equality before the law

For reasons set out above, the following provisions limit the right to recognition and equality before the law under section 8 of the charter:

> Clause 5 provides that regulations may be made to ensure that procedures and requirements that a person must comply with before VicRoads can grant a driver licence may differ depending on a person's age.
>
> Clause 6 provides that VicRoads may grant people under the age of 21 years a driver licence for different terms than the terms that usually apply to people who are aged over 21 years of age.

(a) The nature of the right being limited

The right to equality before the law without discrimination on the basis of age is an aspect of section 8 of the charter. This right is not an absolute right in international human rights law. Under the charter, the right may be subject to reasonable limitations that are demonstrably justified.

(b) The importance of the purpose of the limitation

The purposes of clauses 5 and 6 are to provide for measures to be put in place (through regulations) that will ensure that drivers have the appropriate levels of experience and ability to drive a vehicle safely, having regard to the conditions under which they are permitted to drive.

A driver licence is a privilege that is available to people who satisfy the necessary prerequisites of age, driving experience and ability, medical fitness, and compliance with the road rules.

There is a well-established correlation between age and experience of a driver and the risk of involvement in a collision. Unfortunately, young people are significantly overrepresented in road accident statistics in Victoria. In particular:

> one-third of the road toll (120 people) results from crashes involving drivers aged 18 to 25 years;
>
> drivers aged 18 to 25 years make up 13 per cent of licensed drivers, but account for 27 per cent of all driver deaths;
>
> people aged 15 to 25 years are more likely to die as a result of a car crash than any other cause;
>
> the relative risk of casualty crash involvement per million kms driven in Melbourne for probationary drivers is three times greater than that for full licence-holders.

These provisions provide a framework to make regulations which will allow measures to be targeted to specific risk groups, whether the risk relates to age, experience or other factors intended to address this.

In addition, allowing for different licence terms for people under the age of 21 is necessary to maintain consistency between the total period of probation for these drivers (one year on P1 and three years on P2), and the term of their licence.

(c) The nature and extent of the limitation

Clauses 5 and 6 apply to the making of regulations that establish procedures and requirements to be complied with before VicRoads can grant a full driver licence to a person.

Clause 5 enables regulations to be made which impose different requirements for obtaining a driver licence depending on the person's age.

Clause 6 will allow drivers under 21 years of age to be placed on a probationary licence for a longer period than drivers over 21. A probationary licence contains conditions and restrictions (including a condition that the driver maintain a zero BAC) that are designed to minimise risks associated with inexperience.

(d) The relationship between the limitation and its purpose

It is well established at international law that the limitation can be fully justified in specific circumstances. Here, the limitation is justified in light of the risks associated with having people at different ages, and accordingly having different physical coordination and cognitive skills, in charge of a vehicle.

In relation to clauses 5 and 6, the limitations are rationally connected to the purpose they seek to achieve by ensuring that people who are granted driver licences have satisfied necessary prerequisites to ensure that they are capable of driving a vehicle safely. By providing a framework to make regulations, they allow measures to be taken which are targeted and proportionate to particular risks.

(e) Any less restrictive means reasonably available to achieve its purpose

Age is one of a number of prerequisites that must be satisfied before a driver licence may be granted. There are no other means reasonably available to achieve the purpose of the limitations and restrictions imposed.

Section 12 — freedom of movement

As noted, clause 20 inserts new sections into the Road Safety Act 1986 and clause 23 amends section 192(2)(a) of that act. These provisions limit a person's right to freedom of movement.

(a) Nature of the right being limited

The right to move freely in Victoria is an aspect of the right to freedom of movement provided in section 12 of the charter. This right is not dependent on any particular purpose or reason for a person wanting to move or to stay in a particular place.

This right is not an absolute right at international human rights law. Under the charter, the right may be subject to reasonable limitations that are demonstrably justified.

(b) The importance of the purpose of the limitation

In clause 20, the purpose of new sections 191ZZJ to 191ZZL is to ensure that people who drive fatigue-regulated heavy vehicles comply with rest requirements and therefore that they can drive a heavy vehicle safely. The amendment to section 192(2)(a), to the extent that it makes the power to issue an improvement notice available for fatigue-related offences, has a similar purpose.

It is well established that driver fatigue is a significant contributing factor to vehicle incidents in Victoria. The new sections 191ZZJ and 191ZZK contain powers which can be used to prevent a vehicle being driven when an enforcement officer suspects a driver may be fatigued or where the driver is unable to provide the information required to satisfy the enforcement officer that he or she is not impaired by fatigue.

New section 191ZZL is also necessary to ensure that drivers of fatigue-regulated heavy vehicles are parked in a designated rest place so as not to cause congestion to road traffic or risk to other road users on the road network.

(c) The nature and extent of the limitation

The power to require a person to rest or to direct a fatigue-regulated heavy vehicle to a designated rest place is limited to circumstances where an inspector reasonably believes that the driver of a fatigue-regulated heavy vehicle:

has worked for a period in excess of the maximum period allowed under a maximum work requirement; or

has taken a rest period that is shorter than the minimum rest period required under a minimum rest requirement; or

is impaired by fatigue.

The provisions limit the movement of drivers of fatigue-regulated heavy vehicles in limited circumstances. The limitations apply only to driving fatigue-regulated heavy vehicles. Drivers of fatigue-regulated heavy vehicles are unlikely to be restricted in their movement because of the availability of private vehicles and public transport for private travel.

(d) The relationship between the limitation and its purpose

The limitations are rationally connected to the purpose they seek to achieve as they establish an effective means of ensuring that drivers of heavy vehicles are not impaired by fatigue.

Importantly, the limitations do not restrict the right to freedom of movement any more than is necessary to achieve the purpose. In this regard, the restrictions are only applicable to the driving of fatigue-regulated heavy vehicles. Accordingly, the limitations are narrow and focused on the purpose and objective of the bill. In this regard, the limitations are proportionate to the risk associated with incidents involving heavy vehicles as a result of driver fatigue.

(e) Any less restrictive means reasonably available to achieve its purpose

No other means are considered reasonably available to achieve the purpose of the restrictions imposed.

Section 25(1) — right to be presumed innocent until proven guilty

As noted above, the insertion by clause 20 of the bill of sections 191A to 191ZG into the Road Safety Act 1986, which establish a 'chain of responsibility' scheme to properly

manage fatigue in the drivers of heavy vehicles, limits the right to be presumed innocent.

Under the charter the right may be subject to reasonable limitations that are demonstrably justified.

(a) The nature of the right being limited

The right to the presumption of innocence is aimed to ensure that the burden is generally on the prosecution to prove, beyond reasonable doubt, that a defendant committed the relevant elements of the offence.

The presumption of innocence is not an absolute right. Jurisprudence in other jurisdictions has confirmed that the right may be limited.

(b) The importance of the purpose of the limitation

The limitations in these provisions are generally intended to improve road safety by better regulating fatigue in the drivers of heavy vehicles. They give effect to fatigue management policies developed by the National Transport Commission ('NTC') for implementation on a uniform basis by all states and territories. In developing the policies, and the 'chain of responsibility' principles under which influencing persons and their associates are made liable for fatigue-related offences, the NTC consulted widely with transport regulators, unions and the transport industry.

It is well established that there is a clear correlation between driver fatigue and road safety. In the transport industry, a combination of factors such as shift work, long consecutive shifts without a day off, work in unfavourable conditions and an older workforce provide the preconditions for a fatigue problem. The impacts of this problem extend beyond the immediately affected transport workers to the community in general when fatigue interferes with tasks such as driving on the public road network.

Fatigue is an occupational health and safety issue, a commercial issue, a public safety issue and can be an environmental issue. Fatigue has both direct and indirect economic consequences not only for workers in the road transport industry and for the industry itself, but for the community as a whole.

The road transport sector has a work-related fatality rate per 100 000 workers — nearly eight times the average for all industries.

From the consultations conducted by the NTC it appears that there is a widely held view that a range of persons involved in road transport other than drivers can and do influence driver behaviour, in particular by encouraging or providing incentives for drivers to contravene regulatory requirements designed to combat driver fatigue, or by failing to prevent or discourage such conduct when they are in a position to do so.

It is accordingly considered appropriate to seek to impose liability on such persons where they engage in conduct which encourages, rewards or fails to deter such contraventions on the part of drivers.

Therefore, the importance of this limitation satisfies the tests enunciated in overseas jurisdictions, including the strict test enunciated by Canadian courts that the limitation must address 'societal concerns which are pressing and substantial'.

(c) The nature and extent of the limitation

The limitation on the presumption of innocence is effected by various sections in new part 10A. The effect of those sections is summarised above.

(d) The relationship between the limitation and its purpose

The purpose of the provisions which place the onus of proof on a person to demonstrate that they took reasonable steps to prevent it is to ensure that such persons are not found guilty of offences in circumstances where such a person could not be said to bear any culpability for the contravention of the driver.

A person who is seeking to establish the defence has the burden of proving that they took reasonable steps to prevent the contravention. If they seek to establish that they took reasonable steps, they will in most cases have to lead evidence to address at least some of the matters specified in new section 191ZZQ.

Many of the matters that might need to be put to the court by the defendant are matters for which evidence would not readily be available to the prosecution. For example, in the absence of detailed admissions, the prosecution would not ordinarily be able to establish that a person did not know of the contravention, nor that it took all reasonable steps to prevent the contravention.

Other matters that might need to be put to the court by the defendant are matters for which evidence would be no less readily available to the defendant than to the prosecution. For example, both the prosecution and the defence would (assuming they have equivalent resources for the purpose of conducting the proceedings) be equally able to establish the cost of measures available to prevent or eliminate a risk, or to give evidence of accreditation schemes, expert opinion, standards or other relevant knowledge.

Taken as a whole, the matters that would ordinarily need to be put before a court to satisfy it that the defendant was not in a position to influence, or took reasonable steps to prevent, a fatigue-related offence are matters which are more readily able to be proven by the defendant than by the prosecution.

It is therefore considered that imposing the onus on the defendant in these circumstances serves the legitimate purpose of providing a proper balance between:

> the objectives of the chain of responsibility approach to compliance (that is, to ensure that persons who are in a position to influence or prevent conduct of the driver are held responsible where that conduct gives rise to a breach); and
>
> the need to ensure that influencing persons are not found liable where they could not be said to bear any real culpability for the conduct of the driver.

It should also be noted that:

> The availability of this defence avoids the potentially harsh impacts of what would otherwise be absolute liability offences. There is UK case law to suggest that a reverse onus is not incompatible with the charter where the incompatibility could be removed simply by removing the defence altogether (*AG of Hong Kong v. Lee Kwong-kut* (1993) AC 951 and *Sheldrake v. DPP* (2003) 1 WLR 1736).

It is expected that proper exercise of prosecutorial discretion will ensure that persons who fall within the definition of 'influencing persons' but who in no sense could have influenced or prevented the offence, are not prosecuted.

While the offences carry potentially high maximum fines, they are not directly punishable by imprisonment.

The amount of fine that may be imposed is a matter of judicial discretion which will take into account the degree of culpability.

In light of the above factors, it is considered that the limitation on the presumption of innocence is an appropriate and proportionate means of addressing the purpose sought to be achieved by the fatigue management provisions.

(e) Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

It is considered that the implementation of a 'chain of responsibility' scheme which imposes liability on parties in the transport chain other than the driver is a reasonable and appropriate way of achieving the purpose of combating driver fatigue.

An alternative to the approach taken in new part 10A would have been to make all persons guilty of an offence on an absolute liability basis, in effect depriving them of any defence, thereby relying on prosecutorial discretion and the sentencing discretion of courts to avoid or ameliorate any unfair operation of the provisions.

Another alternative approach would have been to make all persons guilty of an offence on a strict liability basis, with the effect that persons charged would have recourse to the honest and reasonable mistake defence but otherwise be relying on prosecutorial discretion and the sentencing discretion of courts to avoid or ameliorate any unfair operation of the provisions.

The proposed reasonable steps defence is considered to provide greater scope for an influencing person to avoid being found guilty inappropriately than either of these alternatives.

An alternative to imposing a burden on the defendant to establish the reasonable steps defence would have been to impose a burden on the prosecution to prove that the defendant did not take reasonable steps, and to rely on section 130 of the Magistrates' Court Act 1989, which only requires the defendant to point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the excuse. However, many of the matters specified as relevant to whether a person took reasonable steps are matters that are peculiarly within the knowledge of that person, and on which the prosecution could not reasonably be expected to gather and adduce evidence, and accordingly it is considered reasonable to frame the defence in the manner provided for in this bill.

Part 4 — Concluding statement

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

Provisions of the bill engage but do not limit rights conferred by sections 8(3), 12, 13, 20, 21(8) and 25(1) of the charter.

Provisions of the bill engage and limit the rights conferred by sections 8(3), 12 and 25(1) of the charter, but none of those rights is an absolute right, and the limitations are reasonable and demonstrably justifiable having regard to the matters set out in section 7(2) of the charter.

Theo Theophanous, MLC
Minister for Major Projects

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill makes a number of amendments to road transport legislation in Victoria. The most important of these relate to heavy vehicle driver fatigue, the legal effect of road management standards, the funding and management of street lighting, driver behaviour at level crossings, extension of recent operator-onus reforms to toll roads and access to VicRoads records.

Heavy vehicle driver fatigue

The National Transport Commission has undertaken a comprehensive review of the regulatory approach to managing fatigue in drivers of heavy vehicles. In February 2007 the Australian Transport Council approved new national laws based on the NTC's recommendations. The bill before the house implements those agreed reforms.

The key elements of the agreed reforms are:

new work and rest limits;

flexible driving hours, using a three-tiered approach;

a risk-based categorisation of offences;

a general duty to avoid driver fatigue;

enhanced enforcement powers;

a chain of responsibility, in which a duty is imposed on persons who share, with drivers, the responsibility for fatigue management;

strengthened record-keeping requirements, with a work diary replacing the current log book.

The catalyst for the reforms is the recognition of three interrelated factors:

crashes in which the heavy vehicle driver is fatigued are reasonably prevalent and are costly;

levels of compliance with driving hours requirements are unacceptably low;

current driving hours limitations have little basis in the scientific understanding of fatigue.

The NTC's findings, on which the reforms are based, recognise that although work produces fatigue, the length of time working is less important than the time of day in which work takes place and the length of time awake. Fatigue can be managed better if there is some flexibility in the way work and rest are managed.

Based on these findings, the bill provides for a more flexible, performance-based approach that includes standard hours, basic fatigue management and advanced fatigue management options. The latter two options require accreditation with VicRoads, which will be subject to conditions relating to compliance with the relevant fatigue management standards and business rules.

The bill departs from the national model bill in that the 'reasonable steps defence' will not be available to heavy vehicle drivers and operators. Other parties in the chain of responsibility who have been charged with an offence will have a defence available that they can establish that they did not know, and could not reasonably be expected to have known, of the contravention concerned, and either they took all reasonable steps to prevent the contravention or there were no steps they could reasonably be expected to have taken to prevent the contravention.

Not allowing drivers and operators to have access to this defence is consistent with the approach taken in relation to heavy vehicle mass, dimension and load restraint chain of responsibility offences introduced in 2005, and with the level of control drivers and operators have over the freight task. Furthermore, introducing this defence would mean that under the government's infringements policy, it would not be appropriate to deal with driver and operator offences under the proposed fatigue laws by an infringement notice. This is because the question of whether a defendant took reasonable steps requires a subjective assessment which should normally be left to the courts.

Another departure from the national model bill concerns the outer limit for the advanced fatigue management module not exceeding 15 hours work in any 24-hour period, when the national model bill allows for an outer limit of 16 hours. This is based on expert advice regarding fatigue management received by Victoria which suggests that 16 hours work in any 24-hour period imposes an unacceptable risk to the safety of the driver and other road users.

Road management standards

The bill includes amendments to the Road Management Act 2004 to allow compliance with a road management plan to be a defence to all civil actions in relation to the exercise of road management functions, not just road maintenance.

The Road Management Act enables a road authority to set a standard in relation to the performance of a 'road management function'. A road authority has a duty to carry out these road management functions to such a standard, and may incur civil liability if it does not.

Conversely, compliance with the standard constitutes a defence against civil actions arising from alleged negligence or breach of statutory duty in relation to the performance of road management functions.

The current civil liability provisions in the act are ambiguous as to whether compliance with road management standards is an acceptable defence only in relation to the maintenance of a road, or also in relation to the performance of other road management functions, such as design, construction, inspection and traffic management functions.

The proposed amendments clarify that the legal defence for compliance with appropriate standards is available to road authorities in relation to the manner of performance (or non-performance) of road management functions generally, and not only in relation to maintenance.

The proposed amendments do not restrict the rights of a person to bring actions against road authorities, but clarify the standards to be applied in such cases.

Street lighting

The bill will establish new arrangements for the management and funding of street lighting on arterial roads. These arrangements have not been changed over the last few decades and are now outdated.

The bill does not change the arrangements for street lighting on municipal roads or freeways. The responsibilities for these remain with municipal councils and VicRoads respectively.

Arterial roads are administered by VicRoads for the purposes of managing transport on key routes. Street lighting on these roads serves an important road safety role for through traffic. It also serves a local community purpose for the safety and security of residents, businesses and local road users. The benefits of street lighting on arterial roads accrue to both through traffic and local constituents.

The proposal is to implement a new cost-sharing arrangement for street lighting on arterial roads, in which the state (through VicRoads) will bear 60 per cent of the ongoing operational and maintenance costs, and local government will bear the remaining 40 per cent. Street lights on service roads adjacent to arterial roads would remain fully funded by local government. It is proposed to phase in this new arrangement over six years, beginning on 1 July 2008.

Driver behaviour at level crossings

On 25 June 2007, the government announced a package of measures to improve railway level crossing safety. One part of this package was an enforcement boost, including the introduction of a new traffic offence.

This bill introduces a new traffic offence for drivers who recklessly or deliberately disregard traffic controls such as signs, boom gates and lights at level crossings. These drivers may engage in risky behaviours such as racing to beat a train to a crossing, weaving around boom gates, and ignoring lights and bells at level crossings.

While there are existing offences that regulate these behaviours, those offences do not provide an appropriate punishment for drivers who deliberately or recklessly behave in a manner that could cause a catastrophic collision.

The new offence will be punishable by a maximum fine of 30 penalty units. The offence will also be a relevant offence for the vehicle impoundment scheme, and police may impound the motor vehicle driven by the offender for a minimum of 48 hours. The motor vehicle will only be

released once towing and storing costs are paid. In addition, if the driver commits a second offence within three years, a court order for impoundment of the motor vehicle for up to three months may be made. If the driver commits a third offence within three years, then the court has the power to order that the motor vehicle be forfeited. Drivers who are prepared to place others at risk by engaging in this reckless behaviour will risk losing their motor vehicles.

It should be noted that the vehicle impoundment scheme incorporates safeguards to ensure that innocent parties are not unfairly affected. If the driver of the motor vehicle is not the owner of the motor vehicle, the police have the discretion to release the motor vehicle to that owner. Also, the owner has a right to be heard if an application for long-term impoundment or forfeiture of his or her motor vehicle is made by the police. Owners of motor vehicles, however, have a responsibility to ensure that they are driven responsibly, and owners who do not take reasonable steps to ensure that this occurs are at risk of having their vehicles impounded or forfeited.

Tolling offences

Last year the government introduced amendments to the owner-onus system in relation to traffic and parking offences. Those amendments are operating effectively. This bill now extends the new provisions to tolling offences on CityLink and EastLink. The major features of the amended procedure are as follows:

A registered operator may nominate the person or company who had possession or control of the vehicle at the time of the offence, as well as the actual driver. The nominated person then becomes the 'responsible person' for the offence.

A nomination must be accompanied by supporting information sufficient to enable that person to be identified and located. The nominated person can avoid liability by showing that their nomination was incorrect, in which case responsibility reverts to the person who nominated them. Responsibility may also be avoided by showing that the vehicle was stolen at the time of the offence.

A 'responsible person' has the same options as the registered operator. They can nominate another person as the driver or person in charge, and that person becomes then the 'responsible person'.

The nomination process repeats until the actual driver is ultimately located.

A 'responsible person' will be required to assist police to identify the driver of a vehicle, in the same way as an owner must at present.

There is an offence of providing a false statement in relation to the operator-onus system.

In addition, the offence provision under the EastLink Project Act 2004 is being altered to make it consistent with the CityLink offence provisions. The existing offence is based on the failure by the driver of a vehicle on EastLink to pay a tolling invoice. This is being amended so that the offence is driving on a toll road without being registered as a user of that road. As for the equivalent CityLink offence, it will be a defence if the responsible person subsequently pays the toll within 14 days or transfers responsibility under the operator-onus system I have just outlined.

Use of VicRoads records

The Road Safety Act 1986 provides important restrictions on the manner in which personal information provided to VicRoads as a licensing and registration authority may be used. There are exceptions to these restrictions, such as use of the information for law enforcement or ensuring that information may be exchanged with interstate registration and licensing authorities to prevent the issue of multiple licences. When these exceptions allow the use or disclosure of personal information, the Road Safety Act imposes strict confidentiality obligations on the recipient of the information.

Victoria has been a world leader in the introduction of road safety initiatives, such as alcohol interlocks and the testing of motorists for illicit drugs. This leadership has been achieved in part as a result of VicRoads and other Victorian agencies conducting road safety research and communications programs. While the Road Safety Act already permits the use of personal information for the administration of that act, it is not certain that road safety research and communication programs can be described as administration of the act. To ensure that road safety research and communications are not unnecessarily hindered, it is necessary to introduce an exception to the restrictions on use of personal information in the VicRoads registration and licensing databases. This exception will only permit the use of this information for road safety research or for disseminating information or advice on road safety, and existing controls will be used to prevent misuse of the personal information.

The bill also allows for the disclosure and use of information from VicRoads records to or by a road authority or utility for the purposes of issuing or defending civil proceedings relating to their road management functions or damage to infrastructure resulting from road accidents.

Finally, the bill will facilitate the reunification of families and friends by allowing approved bodies to use VicRoads records to help locate missing persons. There are a variety of community organisations such as the Red Cross which provide a valuable service helping people affected by wars and other social tragedies to regain contact. The privacy provisions in the Road Safety Act currently prevent VicRoads from providing information, such as addresses, that may be of assistance to these organisations. Therefore this bill amends the Road Safety Act to introduce an exception to allow VicRoads to disclose personal information to community organisations approved by the minister for the purpose of facilitating these missing people services.

The measures in this bill contribute to the effective and efficient use of the Victorian road network.

I commend the bill to the house.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until Thursday, 29 November.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 4 December 2007.

Motion agreed to.

EMERGENCY SERVICES LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 11 October; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr HALL (Eastern Victoria) — I am pleased to lead the debate this evening on the Emergency Services Legislation Amendment Bill. I do not want people to misconstrue my opening comment, which is that in the Gippsland region we have probably seen too much of our emergency services personnel in action in recent years. It is not that we do not appreciate the great effort they have all put in towards assisting our community, but that because of natural disasters of fire and flood in the last 12 months or so the emergency services in Victoria have been called on significantly to assist the good people of Gippsland, and I pay great tribute to them.

Our firefighters in the Country Fire Authority, the Metropolitan Fire Brigade, the Department of Sustainability and Environment, and Parks Victoria came to our assistance, as did interstate and overseas firefighters. We have also witnessed some remarkable efforts by other emergency service organisations like the State Emergency Service, the ambulance services in Victoria, and the Red Cross. A whole range of volunteer organisations have assisted at times of disaster.

I am going to be brief this evening, because I know that time is pressing on. It has been a long week. Other members wish to comment on this piece of legislation, and I do not wish to deny them the opportunity to do so.

I also take this opportunity to alert members to two great pictorial records of disasters that have occurred in Gippsland in the last month. They are the publications I have in my hand. One is called *Red Alert* and is a pictorial record of the 2006–07 Gippsland fires. The other publication is called *Of Fires and Flooding Plains* and is a pictorial record of the 2007 Gippsland floods. These are excellent documents that people would be well advised to pick up. The funds from their sale go to the Gippsland Emergency Relief Fund, which is a great organisation that has distributed many hundreds of thousands of dollars over the years. They cost $20 each, and if anybody wants to leave an order with me tonight, I am sure I could supply those publications to them. They are a good read, and a preview is available while I am on my feet and speaking for anybody who wants to pick them up and have a look at them.

It is important that the fine work performed by both volunteers and professional emergency service workers be supported by a sound legislative framework, and that is why we have such acts as we are amending tonight, in particular the Country Fire Authority Act 1958, the Emergency Management Act 1986, the Metropolitan Fire Brigades Act 1958 and the Victoria State Emergency Services Act 2005. What we are hoping to do is strengthen each of the acts under which our emergency services operate in Victoria.

This is quite a significant bill of some 135 clauses. It goes to a whole range of matters. Time will prevent me from covering most of those matters, but I will quickly mention some of the important provisions. For instance, this bill makes clearer compensation provisions under the Emergency Management Act for volunteer emergency workers; it clarifies roles and responsibilities of interstate and overseas emergency workers; it strengthens emergency management powers, especially the emergency services commissioner's powers to monitor non-financial performance of emergency services agencies; and it imposes tougher penalties on those who are caught lighting fires and those interfering with the work of firefighters. The bill contains a significant range of good amendments that are deserving of the total support of the chamber.

There are two important issues, though, that I want to single out and make particular comment on — namely, access to water, and directing movement at fire scenes.

Access to water has been a controversial issue, and I want to first of all set the context of my comments by quoting what the minister said in the second-reading speech about this matter:

> The bill clarifies that the fire brigades may access and use water for the purposes of their functions or duties under the CFA act and MFB act. This would include emergency response or preventing a fire reigniting. Free access and use of water also includes free access and use of water infrastructure, and information regarding the location of water. Where the CFA or MFB takes water from a person's well or tank for firefighting purposes, this loss of water would

be deemed to be fire damage within a person's insurance policy against fire.

Therein lie a few problems for us. The government has said it will continue the practice of taking water when required from private water storages for the purpose of fighting fires. We do not object to that, but we believe that that water should be replenished or that people should be at least compensated. I do not think it is good enough for the government to say, 'This can be claimed on your fire insurance policy'.

The fact of the matter is that the Insurance Council of Australia has still not made a definitive ruling on this matter. Indeed there is some serious doubt as to whether this will be able to be claimed as fire damage on fire insurance policies at all. Even if it is, it is going to reflect on the premiums paid by those who hold insurance and of course the taxes they pay by way of the fire services levy and the like on their insurance premiums. We believe it is unsound and poor advice by the government to suggest that land-holders will be able to claim on their insurance policy for the recompense of water taken for the purposes of fighting fires.

The Minister for Environment and Climate Change commented on this matter in response to a good question and supplementary question from Mrs Petrovich on 9 October. The member asked the minister to clarify whether the government will compensate all landowners whose water is taken for use in Department of Sustainability and Environment firefighting operations. In response, the minister answered with a very clear and definitive yes. We welcomed that response from the minister.

We are saying that that 'yes' should be put into legislation, which is the view shared by many people in many Victorian organisations, particularly the Victorian Farmers Federation. Time prevents me from quoting extensively from its views on this matter as expressed to members of Parliament, but clearly it says the government should legislate and guarantee that any water taken from private water storages for the purposes of fighting fires, whether that water be taken by DSE, government departments or by fire authorities, will be replaced.

Because of that very reason in this important issue The Nationals are prompted to move a reasoned amendment, which I am happy to circulate at this point. I move:

> That all the words after 'That' be omitted with the view of inserting in their place 'this bill be withdrawn and redrafted to provide for the replenishment, by the government, of all water from privately owned storages, used by the Country Fire Authority and/or the Metropolitan Fire Brigade to fight fires and to undertake other authorised activities'.

I do not think the government should have any problems in supporting my reasoned amendment, particularly if they are true to the word of the Minister for Environment and Climate Change in response to Mrs Petrovich's question of 9 October 2007.

I rest my case with respect to that reasoned amendment. It is straightforward. It is an important issue, particularly at times of drought which we know we are experiencing as part of climate change. Farmers are willing to assist by allowing water to be used for fighting fires, whether that fire be on public land or private land, but we think they should be recompensed for that.

I want to move on to the other issue of critical importance for The Nationals that goes to matters addressed in clauses 11, 13, 21 and 35 — that is, directing movement at fire zones. I refer to what the minister said in the second-reading speech. I was going to read, but I will not take the time to do that. It very clearly throws some doubt on the policy relating to whether people will still be able to stay and defend property if that is their choice. In particular, some provisions include the terminology of 'pecuniary interest', which has upset many volunteer firefighters and others living in country Victoria. I am sure most members have been contacted by Alex Hooper and others, who have made extensive representations on this particular matter.

I am delighted — I will not steal her thunder — that Ms Hartland will move an amendment to the effect of ensuring without doubt that people who wish to stay and defend their own personal property will have an unfettered right to do so and that they will not be handicapped by overzealous people controlling entry to and exit from fire zones. I do not have any problems with that control; the emergency services personnel need to be diligent and ensure that onlookers or people with an unnecessary interest do not get in the way of firefighting operations. However, those with personal property should be allowed to stay and defend it if that is their choice, and there needs to be some provision for them to be able to move in and out of a fire-zoned area to protect that property. Members of the constituency have been saying that they want some time for consultation on this matter, and they have said, 'Let's work it out properly'.

I say to the house that accepting the reasoned amendment I have moved would give the government time to work through the identified difficulties that people have with the particular provisions in clauses 11,

13, 21 and 35. This important matter needs to be addressed and support for the reasoned amendment will allow that.

There are other matters to which I could refer. In particular I was going to talk about how important fuel reduction burning is and the need to continue and improve our efforts in regard to it. I was going to talk also about fire services funding. I do not have time to do that, given that we hope to get this bill through this evening. I finish, therefore, by saying that there are two important issues and both can be addressed by supporting the reasoned amendment I have put to this chamber. I urge all members to support that reasoned amendment.

Mr DALLA-RIVA (Eastern Metropolitan) — Members of the Liberal Party are pleased that we are able to speak on this important bill. One of the issues we have with the bill is addressed by the reasoned amendment, so I will cut to the chase. The reasoned amendment addresses the crux of the issue that we are concerned about — that is, that nothing in this bill allows for the replenishment by the government of water taken from privately owned storages. Members of the Liberal Party understand that there is a necessity to take the water, and we do not see that as an issue. The issue is what occurs subsequent to that. There is nothing in the legislation which would give clarity on that matter.

I understand that the Greens propose moving a number of amendments. Certainly members of the Liberal Party are keen to move forward on those as well and we will get to them in the committee stage. For the purposes of expediency, I indicate that members of the Liberal Party support a range of matters addressed by the bill. We do not oppose the bill because of those matters but because of the matter addressed by Mr Hall's reasoned amendment. We look forward to the bill being moved through the house very quickly.

Ms HARTLAND (Western Metropolitan) — I would like to acknowledge that the bulk of the Emergency Services Legislation Amendment Bill is straightforward and that it simply serves to update and modernise the language of a number of acts. It should be noted that the bill incorporates amendments to seven separate acts and that it certainly has been time intensive and warrants scrutiny by members. While I do not have any experience of bushfires, living in Footscray I have had the unfortunate experience of being poorly evacuated on a number of occasions in response to chemical fires.

As I understand it, it is quite clear in rural communities that since Ash Wednesday fantastic work has been done between the communities, the Country Fire Authority, and government and other agencies. People now understand that they have to be prepared, and they have to know whether they are going to stay or to go. The Country Fire Authority (CFA) has promoted the concept of the well-thought-out bushfire survival plan, and the community understands that they need to be active about their plans and know what they are going to do. This has obviously meant a reduction in loss of life and property.

Unfortunately, as Mr Hall has already outlined, we feel that clauses 11 and 13 create unnecessary confusion around people's right to make their own decision to stay and defend their property, as the CFA and the Australasian Fire Authorities Council (AFAC) encourage them to do. Clauses 11 and 13 create a situation where a person defending their own property can be removed from it by force. I will be proposing an amendment to prevent this occurring.

In the bill it states that a person can only be removed if 'interfering', but what does 'interfering' mean? When we raised the issue of pecuniary interest exemption and asked what was meant by 'interfering' at our briefing, we received a memo which said:

> While there is no definition of 'interfering' in the act or the bill, the second-reading speech states that this power applies to any person who interferes or is 'obstructing the fire services in the course of their duties'.
>
> The CFA will work with relevant stakeholders to develop new guidelines for the application of this amendment once the bill is passed.

I find that quite bizarre and I think it is the wrong way around. I would have thought they would work with the stakeholders first, especially on these matters, to develop the guidelines. This work should have been done before the bill and not thought necessary afterwards.

The community members who have contacted my office have been concerned that they may be evacuated from their own property when it is unsafe to do so. I do not believe that the Parliament should be passing this kind of legislation. I feel it undermines the fantastic work that has been done in the community since Ash Wednesday to make sure people are prepared. I have received correspondence from a number of individual members of the Victorian Rural Fire Brigades Association expressing their concern and opposition to the proposed changes, and also from friends who are long-term members of CFA branches.

From the emails and letters I have received I believe there has been a lack of consultation, particularly with volunteer firefighters. I reiterate that one of the great successes of the way things have changed since Ash Wednesday has been consultation, working with the community, training the community and making people aware of their responsibilities. Not to consult on these matters undermines that work. The effect of the amendments I will move will allow people to retain the right to activate their bush survival plans on their own properties or properties of family members, even in a declared state of disaster.

The Greens will be supporting The Nationals reasoned amendment, although I have to say that even though we are supporting that amendment at this stage, we will decide when the bill comes back to the house whether we will support it. Our reasons for this are that we do not believe the government has successfully proved to us that water is being replaced. We are told that people do receive water, but the department has not been able to give me the name of one person I can speak to so that I can talk through with them how it works. I have been told I cannot do this for issues of privacy. I have suggested that they ring a person who can then ring me, but this has also not been possible.

I also have concerns about the definition of what is reasonable and sufficient. On the website it says that essential private water supplies will be replenished. What is the definition of 'essential'? I would also like to quote from a good and trusted friend, Marcus Ward, who is a long-time CFA member. He has told me that when the water is taken, nobody cares because they are more worried about the fires. Mr Ward said that in his community people put up the red signs on the roadside to direct firefighters to their dams as it is the best insurance they can get to have the fires fought, but they also want to know how their water is going to be replaced. They understand the need for it to be taken, but they want it replaced. While I understand that many of the changes in this bill are necessary, the Greens have strong concerns with it, and that is one of the reasons we will be supporting The Nationals amendment.

Mr TEE (Eastern Metropolitan) — We remember the horrific fires of last year, in which we had 1.2 million hectares burnt, houses lost and at least one life lost. We also know that more is to come. We know that the CSIRO has predicted that by the year 2050 extreme fire days will have increased by 70 per cent. This bill goes a long way to making sure we are ready. It picks up a number of issues, including volunteers. It provides additional compensation and support for volunteers, including interstate and international firefighters who come and support us. It also homes in on those who deliberately light fires, by increasing penalties to deter risky behaviour. For all of those reasons I support the bill. In view of the lateness of the hour I will confine my comments on the bill to those reasons.

I will just refer to a couple of other issues that have been raised. The first one is consultation. I understand there has been extensive consultation. There has been consultation with the Victorian Rural Fire Brigades Association, the Victorian Urban Fire Brigades Association, Volunteer Fire Brigades Victoria, the Victoria Emergency Service Association, the United Firefighters Union Australia, the Community and Public Sector Union and Victoria Police.

As Mr Dalla-Riva identified, the nub of the debate tonight is the issue put forward in the reasoned amendment moved by Mr Hall. Much has been made of the use of private resources to fight fires, and there is a clamouring, or a suggestion, that somehow rights have been taken away, or that there have been some changes. It is important that we get a couple of facts on the record.

Firstly, private water is only used to fight fires when there are no public sources of water available, and often of course water is used to fight fires on the very properties from which it has been taken. Since 1915 farmers and others whose water has been taken have claimed that loss on their insurance. This has been the practice, as I said, for some 90 years. This bill does not in any way impact on that longstanding practice and entitlement. We also know that the government has a procedure in place for providing compensation for or replacement of water when that water that is needed is taken. That is the arrangement that needs to be in place because the nature of the circumstances mean that the government needs flexibility.

What Mr Hall's amendment seeks to do is enshrine in legislation a requirement that all water used is replaced. I must say that while at a simplistic level this seems attractive, it is an idea that does not appear to have been very well thought through. The amendment simply does not address the critical question of where the water is to come from. As I said, private water is only used where public water is not available. If you read the amendment, you see it is almost like the old-fashioned days, because the water, it says, is to come from the government. It is as if the government were in a position to magically invent the water, as if the government could make it rain, or as if it could legislate to make it rain.

The immediate or central question that arises when you have a look at Mr Hall's reasoned amendment is: what is the government to do if the water is just not available? There may be options where water can be taken or bought on the market, but there may be implications in terms of the price of water. More significantly, and I think more practically, what will happen is that the water will be taken from environmental flows.

I suspect this is the nub of the problem — that is, the only way we can get water is to take it from the environment; to take it out of our rivers. What you have got here is a proposal that protects one sector but does not provide a voice for the environment; it does not provide an alternative perspective, it does not provide for any sort of balance. For that reason I am surprised at one level that the only side of the house standing up for the environment is this side. The alliance with the Greens extends to cutting off the environmental flows without any consideration for the impact and the devastation that might be caused to the environment.

For those reasons I oppose what is the potential vandalism of the environment. I support the current practice which makes available water where it is needed. It is a practice that needs to be flexible so that it can be balanced against the needs of farmers and their rights, and there is some opportunity for the environment to have a voice at the table. I am pleased that this side of the house at least stands up for a balance between the rights of the environment and the rights of farmers.

Mrs PETROVICH (Northern Victoria) — I rise to make a contribution to the debate on the Emergency Services Legislation Amendment Bill 2007. I would like to start by congratulating community participants who are involved in emergency services and their continued enhancement of community safety as a direct result of their efforts.

I think it is important to note that many of these workers are volunteers and that their continued community service in many cases is made more difficult because of the economic hardships caused by drought in our rural communities. This has placed additional pressure on employers, particularly those who were self-employed in agricultural pursuits. Many of these people have now had to seek employment outside of their communities, and that has in many cases drastically reduced the number of people able to volunteer, particularly for the Country Fire Authority (CFA).

This bill seeks to address the constantly changing demands of the emergency services, and will ensure that compensation provisions relating to the Emergency Management Act 1986 apply to all volunteer workers performing emergency response and recover activities.

The pecuniary interest provision of this bill causes alarm bells to ring for me. I am concerned that over-zealous officials may abuse these provisions and water down freehold title rights to land. It is well accepted that with a well-laid-out fire plan it can be clearly communicated by the CFA that if you want to stay and defend your property, you need to be well prepared. It is important obviously to make an early decision as to whether you stay and defend your property or whether you leave. Those who choose to stay obviously need to have done the preparatory work. This is well understood by members in rural communities, and the awareness is certainly growing in those interface communities.

This bill creates a new offence, and I have concerns that it removes the minimum penalties for certain offences. Those relate to proposed section 31(5), which is to be inserted into the Country Fire Authority Act. That provision deals with the power to remove, which is feebly justified by claiming that landowners have interfered with brigades, and it stands the test that there have never been any arrests in relation to this.

I also have grave concerns about the lack of process around replacement of water taken by firefighting crews. My research on this issue has shown that each council has formulated its own process to replace water, and there is no consistent state approach in place to replace water. Often the land-holder is unaware of how to access this service. After contacting a number of councils in fire-prone areas of my electorate of Northern Victoria Region it was clear to me that most landowners do not have their dams refilled.

I would also like to highlight some confusion regarding statements made by the Minister for Police and Emergency Services in the other place, Mr Cameron, which contrast directly with answers to questions asked by me in this house of Minister Jennings about when the CFA and Metropolitan Fire Brigade take water from a person or a well.

I have a lot to speak about on this bill, but unfortunately, because of shortness of time, I am unable to complete my statements tonight. I am very concerned about a number of issues, and on that basis I will be supporting The Nationals reasoned amendment and would urge all members of the house to do the same.

Ms BROAD (Northern Victoria) — I rise to speak in support of the Emergency Services Legislation Amendment Bill and to oppose the reasoned amendment. This legislation aims to update legislative provisions, provide for a more appropriate range of powers for the emergency services and the emergency services commissioner and also to make necessary modifications to the emergency services funding system. It is essential that Victoria's emergency services legislative framework is continuously improved to address the future needs of the community and emergency services agencies. The bill before the house follows ongoing consultations with emergency services agencies that have identified necessary improvements to the existing legislative framework. Those improvements include strengthening current protections for emergency service volunteers, which is very important, and in addition the bill will clarify the powers of the emergency services commissioner to monitor the performance of all emergency service agencies in relation to emergencies, emergency management and emergency activity. These provisions implement an election commitment by Labor to expand the role of the commission to monitor the performance of all agencies to ensure that agencies are continuing to operate to the high standards expected by Victorians.

The Bracks and Brumby governments have worked hard since 1999 to boost funding for emergency services to assist them to continue to effectively protect Victorians and their property. Updating the legislative framework that supports our emergency services will further assist them to effectively protect Victorians and their property.

Finally, in the lead-up to huge challenges in the summer fire season ahead I wish to thank and acknowledge the contributions of some 5500 committed and dedicated State Emergency Service volunteers who operate from 150 units, together with 87 SES staff across metropolitan and regional Victoria, as well as some 59 500 Country Fire Authority volunteers and 500 CFA career firefighters and 800 CFA support workers, together with almost 2000 people, including 1670 trained firefighters employed by the Metropolitan Fire and Emergency Services Board and their respective board members. I wish them well in their endeavours to keep all Victorian families safe in the season ahead. I commend this bill to the house. It will provide all our emergency service agencies with a more effective legislative framework.

House divided on amendment:

Ayes, 19

Atkinson, Mr
Barber, Mr
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 (*Teller*)
O'Donohue, Mr
Pennicuik, Ms
Petrovich, Mrs
Peulich, Mrs
Rich-Phillips, Mr
Vogels, Mr

Noes, 17

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

Amendment agreed to.

Business interrupted pursuant to standing orders.

ADJOURNMENT

The PRESIDENT — Order! The question is:

That the house do now adjourn.

Tourism: Western Metropolitan Region

Mr FINN (Western Metropolitan) — I wish to raise a matter for the Minister for Tourism and Major Events in another place. Following a visit last week to the Wyndham Tourist Association, where I was given a very warm welcome by the president, Glenn Goodfellow — and a good fellow he is by name and by nature — the good people of the city of Wyndham are planning an all-out assault on Melbourne and other parts of Victoria in an attempt to tell the rest of Victoria and indeed Australia exactly what the Wyndham area has to offer with regard to tourism.

When one thinks of Werribee, which the Wyndham municipality is based on, tourism might not necessarily spring to mind immediately, but I am sure that will change. Some of the delights that the Wyndham area has to offer include Werribee Park, which I am sure those of you who have been to will realise is a magnificent mansion and a very impressive building indeed. There is the Werribee Open Range Zoo, which is just a delight.

Mr D. Davis — Remarkable!

Mr FINN — The meerkats, I might say, Mr Davis, are among my favourite animals down there, although the hippos are pretty good too. The Werribee Open

Range Zoo has much to offer somebody looking for a day out. Then there is the Victorian state rose garden, which for those people who are into roses would be an absolute treat. Just down the road a bit is the Royal Australian Air Force museum, and for those who are into planes, that is something to behold. Of course there is also the Point Cook homestead. I should point out to you in particular, President, that the Werribee Park Golf Club would have to be one of the most aesthetically beautiful golf clubs in this country. I have no hesitation in saying that.

Mr D. Davis — That's a big claim.

Mr FINN — It is a big claim, indeed it is, Mr Davis, but I believe it to be true. It is absolutely sensational. I invite you, President, or anybody else who might be interested in playing a round of golf, to head down to the Werribee Park Golf Club, where I am sure you will be accommodated.

Given their location, Werribee and the Wyndham area are a gateway to both Melbourne and Geelong and are ideally situated to take full advantage of the tourism potential they offer. I am asking the minister to accompany me on a tour of the Wyndham area's tourist attractions. I believe it would open his mind to supporting what should become an even bigger asset for Victoria. The Wyndham area has much to offer in the way of tourism. I ask the minister to come with me around the joys of the Wyndham area, and I am sure he too will be sold on it.

Victorian P–12 College of Koorie Education: review

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the Minister for Education in another place. In January 2006 the Victorian P–12 College of Koorie Education was established to bring the four existing Koorie Open Door Education (KODE) schools together as a single multi-campus school. Former education minister Kosky, said at the time that indigenous students deserve an education that recognises the value of Koori heritage and that the school would be focusing on improving educational opportunities for Koori students. It was envisaged as a centre of educational excellence for Koori students with its own set of principles and goals.

The current Minister for Education, Ms Pike, has ordered a review of the schools to assess the Victorian P–12 College of Koorie Education's success in reaching various educational outcomes for indigenous children. I am advised by Minister Pike's office that the recommendations and strategy from the review are yet to go through cabinet subcommittees and cabinet, and this will need to occur before publicly releasing the review's findings or conclusions.

It is not known when the government will reach a decision on the future of the school. Minister Pike's office mentioned that the review found that the educational outcomes for children at the school are lower than those for Koori students in mainstream schools. I believe the minister attended a meeting at the Glenroy campus on 9 November and said that the students have not reached the benchmarks. The campus principals have received a verbal report but not the recommendations. They were given limited time to comment, and the uncertainty of the future of the college is affecting enrolments and programs for next year.

It seems somewhat premature to be conducting a review which may decide the future of the college which has only been in existence for two years. I understand that the Koori campus communities in Mildura, Swan Hill, Morwell and Glenroy are under stress as a result of the review process because there has been insufficient consultation or opportunities for the college to present its case. Neither the committee of management nor the principal have been shown the report or any of the data collected during the review process.

While there is acknowledgement that improvements are necessary, the college needs sufficient time to improve outcomes. In less than two years it has developed a number of successful programs for its students and has made valuable achievements. This needs to be acknowledged and built upon. Closing the college and sending all the Koori students back to mainstream schools is not the answer. The Victorian P–12 College of Koorie Education has the support of its communities who do not want its schools to close and are prepared to fight to keep them open.

My request to the minister is that she maintain the government's commitment to the Victorian P–12 College of Koorie Education model which, as mentioned, has only been in operation for two years and works with the community to ensure the future of the college as a matter of priority.

Wool industry: Belmont research laboratories

Mr THORNLEY (Southern Metropolitan) — My matter is for the Minister for Innovation, and it concerns the CSIRO wool and fibre laboratories in Belmont. Three years ago I was privileged to be asked by the CSIRO to be a member of the review panel

when these laboratories and their future were reviewed. Apparently there were some clever people in the CSIRO who thought that maybe it would be a bright idea to shut down the research and development facility — the only research and development facility in the only industry in the world where we have a 60-plus per cent market share.

This sounded like a pretty dumb idea to me, so I agreed to join the review panel, and sure enough, it was a dumb idea, because it was based on the false premise that the wool industry was a declining industry.

Actually we found out that when you separated the downward trajectory of medium wool from the upward trajectory of superfine wool, the future of the superfine wool industry was in fact very important, very much growing, and very much had a huge future in the suit and high-quality apparel markets in the growing middle classes of Asia.

Unfortunately the medium wool market was on the decline, and therefore if we focused all our research and development efforts on the superfine wool market, we indeed had a continuing bright future in this industry in which we have led the world for 150 years. The panel quite correctly recommended, and it was accepted by the CSIRO, that the facility should stay open and should change its tack towards a stronger focus on fine wool.

What I hear three years later is that parts of the facility are starting to be shut down. Somebody in the federal government is starting to eye the land value of all of that turf in Belmont and thinking that maybe it would be a better idea if we gradually started strangling it. They said, 'We will start by closing the scourer. That will put 50 people out of work. The boutique fibre providers like the alpacas and all of the other boutique fibres will have nowhere to get their scouring done. That will put all of them out of business'. That was a really bright move. What did the local member do?

Honourable members interjecting.

The PRESIDENT — Order! Hansard is clearly struggling to hear the contribution being made by Mr Thornley. I ask the house to take note of my comments in regard to assisting Hansard to do its job.

Mr THORNLEY — I ask the question: what did the local federal member for Corangamite, Mr Stewart McArthur, do? What has he done? Nothing! He has done nothing to protect those workers' jobs. He has done nothing to protect the wool industry. He has done nothing to protect the fibre providers — —

Honourable members interjecting.

The PRESIDENT — Order! Obviously Mr Thornley and the rest of the house have their ears painted on. Ten seconds ago I made the comment that Hansard is struggling. I ask Mr Thornley to stop provoking the house.

Mr THORNLEY — Thank you. I note by contrast that Darren Cheeseman, the Labor candidate, has strongly supported it and that Kim Carr, the shadow minister, has strongly supported it. It is critical that the voters of Corangamite support this facility.

Mr D. Davis — On a point of order, President, a Labor candidate, Mr Cheeseman, who lives in Ballarat, an interloper — —

Honourable members interjecting.

The PRESIDENT — Order! There is no point of order.

Honourable members interjecting.

The PRESIDENT — Order! Mr Davis is skating on very thin ice. He is raising a frivolous point of order. I could remove him. It has been done before — it happened to me — so be warned.

Mr THORNLEY — He is a candidate who works for the Community and Public Sector Union and looks after public sector workers, like those workers in the CPSU in the Belmont laboratories.

The PRESIDENT — Order! Philip Davis, on a point of order. He should be careful.

Mr P. Davis — I thank you for the warning to be careful, President. The point of order I wish to raise is that I am perplexed, and I will be seeking your ruling in a moment — and it will be a very wise ruling indeed, I am confident to say. I fail to understand how it is possible that a member of this place could come into this house on the adjournment and raise issues relating to a person who is not a member of Parliament but who is a candidate at an election.

Debate interrupted.

SUSPENSION OF MEMBER

The PRESIDENT — Order! Mr Davis has clearly failed the test. He knows damned well that that is not a point of order. I have no option but to exercise the standards I would demand of the house and ask him to remove himself from the chamber for, say, 5 minutes.

Mr P. Davis withdrew from chamber.

Debate resumed.

Mr THORNLEY — I ask the Minister for Innovation if he will seek to intercede with the federal government, whoever it might be, and ensure that the Belmont labs are retained.

Honourable members interjecting.

The PRESIDENT — Order! The next one is out, then the next, then the next, then the next — I will clear the whole chamber if I have to. Enough! We want to have a respectful and orderly house. I will have it! Mr Thornley should wrap it up.

Mr THORNLEY — I ask the Minister for Innovation to intercede with whoever is the new federal government to ensure this facility is maintained in its entirety and can support the wool industry going forward.

Mrs Peulich — On a point of order, President, according to your guidelines in relation to adjournments, this clearly would fall outside those guidelines, and I ask that you consider ruling it out.

The PRESIDENT — Order! Due to the fact that I am not quite clear on exactly what Mr Thornley was asking because of the raucous behaviour in the house, I am not prepared to rule it out of order, so it stands.

Whitehorse: East Burwood property

Mr ATKINSON (Eastern Metropolitan) — My matter is for the Minister for Planning, and what I am seeking from the minister is in fact an investigation of the handling of a planning permit by the City of Whitehorse which involved the Kmart property on Burwood Highway, East Burwood. The council caused to have advertised an expansion of that centre in February of this year and indeed that extension included car parking going over an existing area that had been provided as effectively passive space within the land-holding occupied by the store.

Residents obviously objected to this and in fact believe there was an agreement in place that ensured that land would never be occupied by built form. The council did not issue a determination on that planning permit until the last couple of weeks — in fact I think it was the last week of October. The residents in the period between February and October had had no ongoing effective consultation with the City of Whitehorse and were at a loss to understand what matters might have delayed consideration and what matters the council might have taken into account without any reference to or further consultation with the community. Now clearly, as the minister would be well aware and as I am aware, the members of the community have an opportunity to take this matter to the Victorian Civil and Administrative Tribunal on appeal, and I have advised them to do so.

Nonetheless they raised the valid point, I think, of the cause for such a delay given that the advertising procedure was back in February and the determination was not issued until October. There was no communication with them in the interim period. In fact what they believed to be a legal agreement in place affecting the decision that has been made by the council appears to have been overlooked in the determination.

I therefore ask if the minister could have his department discuss with the City of Whitehorse the circumstances of the determination and advise me so that I might convey that information to the residents.

The PRESIDENT — Order! Having investigated the point of order by Mrs Peulich earlier, which I was unable to rule on on the basis that neither the clerks nor I were able to determine whether or not Mr Thornley's adjournment matter fell within the guidelines, I am now informed that it may not have. We are still not clear. On the information that I have, I am prepared to say that I will reserve my right as to whether or not it will be allowed until such time as it is made clear to me from a reading of *Hansard* whether or not it transgresses the guidelines. It appears that he has asked the state minister to ask the federal minister to do something with regard to the CSIRO or some such thing. If that is the case, it will be ruled out. But I need more clarification, so members will just have to bear with me.

Mining: Ballarat accident

Ms PULFORD (Western Victoria) — My adjournment matter is for the Minister for Energy and Resources in the other place, Peter Batchelor. Early on Monday morning Ballarat Goldfields goldmine, a subsidiary of Lihir Gold, experienced a mineshaft collapse. The rockfall caused 27 miners to be trapped underground for almost 5 hours. In this case everyone did get to go home at the end of the day, but each year too many do not. Twenty-two deaths have been reported to WorkSafe this calendar year. Around 28 000 people are seriously hurt at work each year, placing an enormous emotional and financial burden on the community.

In the mining industry governments at all levels, industry and employees share the goal of zero harm.

Mining can be one of the most dangerous occupations. Any mine operator must be able to demonstrate that the mine is as safe as practicable. The mine operator needs to sign off on the fact that it has taken all practicable steps to protect the workforce. The regulator's role is to ensure standards are in place and maintained.

Victoria has achieved a sustained improvement in mine and quarry safety performance over the last decade. The lost time injury frequency rate, which is the number of lost time injuries per million man-hours worked, in Victoria reduced from 14 in 1997–98 to 6 in 2005–06. This is in line with the national average. The fatality frequency rate — that is, the number of fatalities per million man-hours worked — of 0.03 for the last 10 years is well below the national average of 0.07 These statistics are from the Minerals Council of Australia.

The government is committed to continuous improvement in safety performance. Victoria has been a leading player in development and implementation of the new national mine safety framework, which is an effort by all the states to improve safety outcomes across the industry and develop a nationally consistent approach to safety. Eighteen months ago the Department of Primary Industries established a tripartite safety forum comprising industry, the unions and DPI. The government takes a collaborative approach to continually improving mine safety in the state.

An investigation of the incident at Ballarat will take place, and we should not pre-empt the outcome of that inquiry. I am informed that safety plans anticipating the possibility of collapse had been created and contributed to the quick rescue of the 27 miners. Of course the emergency services workers are to be praised for their wonderful efforts in executing the rescue. The lesson from Ballarat is that you do not have to wait until tragedy strikes before taking steps to make your workplace as safe as possible. Thankfully on this occasion there has been a good outcome. Importantly, health and safety regulations enabled the successful rescue of the miners, and this incident serves as a reminder about the importance of workplace safety.

The action I seek is that the minister provides assistance to the company and its staff to ensure best possible safety standards are maintained and to advise me of the outcome of the investigation.

Mr P. Davis — On a point of order, President, I have returned from a short suspension from the service of the house in consequence of an order you have made that I be so suspended; you made that order, having interrupted me taking a point of order but without allowing me to conclude the point of order I was making.

Subsequently, President, you have advised the house that in regard to the member who was making his adjournment statement you are not certain whether it was in fact within the terms of the adjournment debate. I put it to you, President, that your interruption to me taking a point of order and subsequent suspension was inappropriate, and that should you find in fact that the member who it was that I was alluding to at the time was out of order, you should withdraw the suspension that you imposed upon me.

The PRESIDENT — Order! In response to the member's point of order, he makes a valid point. However, I do not necessarily agree with that, and I will wait until I read *Hansard*. That will probably be on the next day of sitting, or it may even be tonight, we shall see, but I still regard my decision to be in order in so far as it is based on what I considered to be a frivolous point of order.

Before I formally respond to the request by Mr Davis I make it clear that if Mr Davis is right, I will be the first to agree and accept that I have made a mistake — I do not admit that right now; but if I have, I will admit it — but I will wait until I see *Hansard*, and I will rule at a later time.

Mr P. Davis — Further on the point of order, President, without trying your patience or the patience of the house, I submit to you that given that I had not been enabled to complete the statement of my point of order, it was inappropriate in the circumstances to either rule on that point of order before you had heard it or indeed to suspend me from the service of the house, because you could not have an informed view about whether it was trivial or otherwise.

The PRESIDENT — Order! I remind the member that debating the point of order is out of order. The member has made his point — and he has made it twice now. I have accepted that the member has an issue with it, and I will get back to him.

Courts: conviction review

Mr O'DONOHUE (Eastern Victoria) — The matter I raise this evening is for the Attorney-General in the other house. The issue I raise relates to a constituent for whom a former Liberal member for South Eastern Province acted during the last Parliament. He is a constituent who wishes to retain his confidentiality but

about whom I am happy to provide details to the Attorney-General directly.

This person has been in dispute with Victoria Police for over a decade. He was stopped by police in 1994 and was asked, 'What do you do?'. His response was, 'I am on WorkCover from the police force'. Ultimately this man was prosecuted for impersonating a police officer, initially at the Magistrates Court, and the conviction was upheld by the County Court. The material information and potential evidence that has come to light since the court proceedings has given weight to a possible consideration for judicial review.

Unfortunately judicial review is not an option that is available to my constituent at this time because the complexity of the issue involved would require senior counsel to draft the appropriate documents, which is beyond the his meagre resources. Moreover, Victoria Legal Aid does not have the resources or capacity to provide or prepare the sort of advice and material my constituent requires.

In previous correspondence between the Attorney-General and the previous member, and with my constituent, the possibility of a petition for mercy has been explored. Whilst it is an option for the constituent, the reality is that this does not remove the conviction. It is a conviction which affects a person's ability to secure employment and leaves a cloud over a person's head. I therefore seek action from the Attorney-General. I ask for his assistance in helping my constituent pursue judicial review for what may be an erroneous conviction.

In doing so I note that the Attorney-General has not had the courtesy to respond to my correspondence of 28 September 2007 or to the numerous phone calls I have made to his department. That has had a terrible impact on my constituent. I urge the Attorney-General to help this individual.

Consumer affairs: internet service providers

Mr ELASMAR (Northern Metropolitan) — I rise tonight to speak about a current situation where some internet service providers are selling a substandard service. I ask the Minister for Consumer Affairs to investigate this business deception. I know the minister is deeply committed to ensuring fair trade practices for all Victorian consumers. Internet service providers sell internet access and while it is true that in Australia our broadband speed is dismally slow, it still has the ability to provide voiceover internet protocol.

The substandard service in question relates to consumers who are being denied the voiceover internet protocol facility and are kept in ignorance about the capacity of the service to disallow cheaper international calls. I think this service is attractive to lower income consumers, but this is not fair. A person who buys such a product should do so in the full knowledge of the worth and the capacity of the service to deliver all normal functions equal to other major internet service providers.

Maroondah: walking school bus program

Mrs KRONBERG (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Health in the other place. The concept of children walking to school by themselves in many of our suburbs and towns would terrify both parents and teachers alike. This is principally because of the increase in lawless behaviour on our streets, stranger danger and gridlock on our roads. As a result children are less fit and active than those of previous generations when walking to school was an important part of growing up. Being driven to school means children cannot develop road sense.

In September 2002 the then Minister for Health, John Thwaites, and the then Minister for Education and Training, Lynne Kosky, announced an expansion of the VicHealth walking school bus program by trebling the number of schools participating, which was then 16.

A simple walking school bus often requires a pool of parents to lead a group of students to and from school. The route often involves active streets. Councils were encouraged to apply to VicHealth for funding for schools to participate in the program. The Maroondah walking school bus program commenced in 2003, and for 2003–04 the council received $30 000 to fund an officer for two days per week and for operational expenses. In 2004 this amount dropped to $20 000. When 2005 came VicHealth hit councils with a change to the funding formula. For 2005–08 VicHealth committed to fund only $9000 per year.

In 2005 Maroondah's walking school bus program ceased operation. In 2006 Maroondah City Council decided to revive the program, providing funding of $48 000, giving life to the program until the end of 2007. VicHealth's current review of the program is regarded by Maroondah City Council as a blatant cost-shifting exercise because the gloss of the government's combined ministerial announcement of 2002 has worn off.

As the obesity epidemic is affecting our children and because general decline in physical activity is a major factor, I now ask the minister to report back to this house with a revised state government funding formula that ensures councils no longer bear the financial brunt of this preventive public health initiative.

Doncaster Gardens Primary School: music room

Mr TEE (Eastern Metropolitan) — My adjournment request is for the Minister of Education in the other place. It relates to the Doncaster Gardens Primary School in my electorate. The school has a long-term vision as to where the school should be in 2020. It includes a vision for a physical environment that will enhance the ability of the students to reach their full potential. I commend the school for its vision.

As part of its vision the school is seeking immediate funding for a dedicated music room. The school has built up an excellent music program which is now in need of a dedicated music room. As we all know, education is the no. 1 priority of this government. I commend the government for that commitment. In delivering that commitment the government has established the $1.9 billion Victorian schools plan, which will see the rebuilding, renovation or extension of some 500 government schools. As part of that commitment there is also the Better Schools Today program, which was announced in the 2007–08 budget. It provides funding for additional schools requiring smaller modernisations and upgrades. I ask that the minister consider this school as part of the allocation of grants from that program.

Roche Mining: industrial action

Mr D. DAVIS (Southern Metropolitan) — My matter tonight concerns the dispute that occurred at the Roche Mining mineral sands separation plant in Hamilton and is for the attention of the Minister for Industrial Relations in the other place. It was a two-and-a-half-day strike involving 288 people in September 2005. It is important because just recently the Federal Magistrates Court ordered the Construction, Forestry, Mining and Energy Union (CFMEU) to pay $35 000 and an official to pay $7000 for engaging in unlawful industrial action. The unlawful industrial action involved abuse of occupational health and safety. This is a serious matter. It concerns the future of that industry in that area and the need for the Minister for Industrial Relations and possibly the Minister for Industry and Trade to ensure that things move smoothly at that important mineral sands separation plant in the Western District of Victoria.

The union claimed the strike was taken over an occupational health and safety issue. In handing down his judgement, the federal magistrate said:

> I accept the submission of the applicant —

that is the Australian Building and Construction Commission —

> that the contraventions were deliberate in nature and in defiance of the law.

He then said:

> There is no basis upon which the justification of the action on the basis of health and safety grounds can be maintained.

Honourable members interjecting.

The PRESIDENT — Order!

Mr D. DAVIS — The Australian building and construction commissioner, John Lloyd, said the judgement was significant and that the magistrates court had found:

> that the CFMEU contravened the BCII act —

the Building and Construction Industry Improvement Act —

> by taking unlawful industrial action.

This is important because the expansion of that site is a significant matter for the Victorian community. It is a significant matter that the Minister for Industry and Trade should take an interest in and on which the Minister for Industrial Relations should be prepared to work solidly with state and federal authorities. It is in this context that I seek specific action from the Minister for Industrial Relations in the other place. I firstly seek that he contact the site and the company, Roche Mining, at that site to understand what has occurred there and intervene if necessary to ensure that such strike action does not occur again. I also believe it would be of assistance for him to contact the federal minister and the federal government — of whichever kind is in power after 24 November — to ensure that at that time — —

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

Schools: Western Victoria Region

Ms TIERNEY (Western Victoria) — I raise a matter for the Minister for Education in the other place, Ms Bronwyn Pike. It is a well known fact that the no. 1 priority for this government is education. One only need look at the 2007–08 budget to have this

demonstrated. We promised to rebuild or modernise every school, invest in new technology for schools and refurbish, replace or build 200 science rooms, and today we are doing that. The current budget provided the framework for stage 1 of the Victorian schools plan. In that we have 43 school modernisations, the Better Schools Today program, 7 new schools, specialist schools, 4 replacement schools, a securing of the future of 6 small rural schools, a regeneration of 24 schools, 3 TAFE expansions, and an upgrade of science and technology wings.

I ask the minister to consider the inclusion of the following schools in my electorate of Western Victoria Region in the Better Schools Today program: Simpson and Skipton primary schools and Derrinallum P–12 College.

Tamboritha Road, Licola: access

Mr P. DAVIS (Eastern Victoria) — I raise a matter for the attention of the Minister for Environment and Climate Change, who I wish was here so he could deal with the matter forthwith.

Mrs Coote interjected.

Mr P. DAVIS — We might be here for another couple of hours if he were here. The Wellington Shire Council has written to me on behalf of the community it represents — and which I concurrently represent — which includes the areas of Heyfield and Licola. The shire has raised the issue of the Tamboritha Road, which is the road that runs north from Licola and through state forests and national park, and gives access to many prized areas for bushwalking and other pursuits that many Victorians enjoy.

However, the shire is much frustrated by the impediment of the damage done to roads, including the Tamboritha Road, by the recent events. In particular the community at Licola has felt the effects of drought, mudslides, bushfires, floods — indeed floods on two occasions already this year. As a consequence there is a significant economic impact upon the community. For example, at Heyfield people in transit to the alpine area stop at the Timberline roadhouse, which provides supplies for activities involving camping, hiking and four-wheel driver expeditions in the high country, as does the store of Ray and Mary Winter at Licola. Virtually no business is being contracted at those premises at the present time because of the restricted access to the high country and the Alpine National Park area.

We have been advised that the Tamboritha Road will be inaccessible for at least another 12 months. This seems to be an extraordinary situation and is quite frankly unacceptable. Given that the high usage of that road for recreational visitation over the summer months is imminent, it needs an improvised solution to gain at least one lane of traffic on part of that road that runs adjacent to the Macalister River so that there can be traffic into the high country. Without that, apart from the economic impact on the local business communities at Heyfield and Licola, there will also be a frustration for those who for many years have visited our alpine region, in particular through that access point at Licola.

Therefore I ask the Minister for the Environment and Climate to use his good offices to work with other ministers in the government, including tourism and regional development, to ensure that that road is reopened at the earliest opportunity.

Bushfires: preparedness

Ms BROAD (Northern Victoria) — My adjournment matter is for the Minister for Environment and Climate Change, Gavin Jennings. The Brumby government recently announced that $3.2 million will be invested in additional firefighting capacity, which is a very timely investment indeed. As a result of this investment 55 new permanent firefighter positions will be created on top of the extra 200 firefighters funded across Victoria since 2003.

I also note that more than 400 seasonal firefighters will be in place by the end of this month, and I welcome the minister's announcement that additional seasonal firefighters will commence during December if conditions dictate. This very welcome announcement by the Brumby government recognises the need to increase the state's capacity to fight fires into the future.

It is to be expected that firefighters are strategically located across Victoria based on an assessment of risk to communities, water catchments and public land. Accordingly the action I seek from the minister is to provide me with further information regarding the distribution of these vital extra funded positions across Victoria, especially in my electorate of Northern Victoria Region.

Responses

Hon. J. M. MADDEN (Minister for Planning) — Mr Finn raised the matter of the Wyndham Tourist Association. I will refer that to the Minister for Tourism and Major Events in the other place.

Sue Pennicuik raised the matter of the Victorian P–12 College of Koorie Education. I will refer that to the Minister for Education in the other place.

Evan Thornley raised the matter of the CSIRO wool and fibre research facility review. I will refer that to the Minister for Innovation in the other place.

Mr Atkinson raised the matter of the City of Whitehorse and a planning permit that has been issued in relation to some land around a specific Kmart site. It relates to some car parking and a community understanding of what land in that location was to be used for. I am happy to ask the good officers of the Department of Planning and Community Development to have conversations with the City of Whitehorse's officers to explain why the consideration was delayed for so long and to give clarity to the logic and reasoning behind that decision. I will be happy to provide the understanding of that information to Mr Atkinson once that is clarified.

Ms Pulford raised the matter of mine safety issues. I will refer that to the Minister for Energy and Resources in the other place.

Edward O'Donohue raised an issue regarding a particular constituent. I will refer that to the Attorney-General in the other place.

Nazih Elasmar raised a matter of internet service providers and associated consumer issues. I will refer that to the Minister for Consumer Affairs in the other place.

Jan Kronberg raised a matter concerning a walking school bus. I will refer that matter to the Minister for Health in the other place.

Brian Tee raised the matter of the Doncaster Gardens Primary School master plan and associated issues. I will refer that to the Minister for Education in the other place.

David Davis raised the matter of the Roche Mining mineral sands plant. I will refer that matter to the Minister for Industrial Relations in the other place.

Gayle Tierney raised the matter of funding for a number of schools in Western Victoria Region — Skipton Primary School, Simpson Primary School and Derrinallum P–12 College. I will refer that to the Minister for Education in the other place.

Philip Davis raised the matter of Tamboritha Road in Licola. I will refer that to the Minister for Environment and Climate Change.

Candy Broad raised a matter to do with firefighting capacity. I will refer that to the Minister for Environment and Climate Change.

The PRESIDENT — Order! This has been an interesting night. We now have the report of the issues raised earlier — and I see people geeing themselves up in great anticipation. Mrs Peulich's point of order was in fact correct, and I uphold it. Mr Thornley's adjournment matter is out of order and is therefore rejected. Whilst Philip Davis's point of order was arguably a little facetious at the start, I should say that I may have been a little guilty of pre-empting the fact that his point of order was frivolous. On that basis I rescind my 5-minute ejection of Mr Davis, and he is in credit for 5 minutes.

The house now stands adjourned.

House adjourned 10.48 p.m. until Tuesday, 4 December.