PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 8 December 2011

(Extract from book 19)

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By authority of the Victorian Government Printer

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The Honourable ALEX CHERNOV, AO, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Mental Health, Minister for Women's Affairs and Minister for Community Services	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mr D. J. Hodgett, MP

Legislative Council committees

Privileges Committee — Ms Darveniza, Mr D. M. Davis, Mr P. R. Davis, Mr Hall, Ms Lovell, Ms Pennicuik and Mr Scheffer.

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

Legislative Council standing committees

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

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

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

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

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

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

** Inquiry into Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011*

 # Participating member

Joint committees

Dispute Resolution Committee — (*Council*): Mr D. Davis, Mr Hall, Mr Lenders, Ms Lovell and Ms Pennicuik. (*Assembly*): Ms Allan, Mr Clark, Ms Hennessy, Mr Holding, Mr McIntosh, Dr Napthine and Mr Walsh.

Drugs and Crime Prevention Committee — (*Council*): Mr Leane, Mr Ramsay and Mr Scheffer. (*Assembly*): Mr Battin and Mr McCurdy.

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

Education and Training Committee — (*Council*): Mr Elasmar and Ms Tierney. (*Assembly*): Mr Crisp, Ms Miller and Mr Southwick.

Electoral Matters Committee — (*Council*): Mr Finn, Mr Somyurek and Mr Tarlamis. (*Assembly*): Ms Ryall and Mrs Victoria.

Environment and Natural Resources Committee — (*Council*): Mr Koch. (*Assembly*): Mr Bull, Ms Duncan, Mr Pandazopoulos and Ms Wreford.

Family and Community Development Committee — (*Council*): Mrs Coote and Ms Crozier. (*Assembly*): Mrs Bauer, Ms Halfpenny, Mr McGuire and Mr Wakeling.

House Committee — (*Council*): The President (*ex officio*) Mr Drum, Mr Eideh, Mr Finn, Ms Hartland, and Mr P. Davis.. (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Ms Campbell, Mrs Fyffe, Ms Graley, Mr Wakeling and Mr Weller.

Law Reform Committee — (*Council*): Mrs Petrovich. (*Assembly*): Mr Carbines, Ms Garrett, Mr Newton-Brown and Mr Northe.

Outer Suburban/Interface Services and Development Committee — (*Council*): Mrs Kronberg and Mr Ondarchie. (*Assembly*): Ms Graley, Ms Hutchins and Ms McLeish.

Public Accounts and Estimates Committee — (*Council*): Mr P. Davis, Mr O'Brien and Mr Pakula. (*Assembly*): Mr Angus, Ms Hennessey, Mr Morris and Mr Scott.

Road Safety Committee — (*Council*): Mr Elsbury. (*Assembly*): Mr Languiller, Mr Perera, Mr Tilley and Mr Thompson.

Rural and Regional Committee — (*Council*): Mr Drum. (*Assembly*): Mr Howard, Mr Katos, Mr Trezise and Mr Weller.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr O'Brien and Mr O'Donohue. (*Assembly*): Ms Campbell, Mr Eren, Mr Gidley, Mr Nardella and Mr Watt.

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: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

Acting Presidents: Ms Crozier, Mr Eideh, Mr Elasmar, Mr Finn, Mr O'Brien, Ms Pennicuik, Mr Ramsay, Mr Tarlamis

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The Hon. D. M. DAVIS

Deputy Leader of the Government:
The Hon. W. A. LOVELL

Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

Leader of The Nationals:
The Hon. P. R. HALL

Deputy Leader of The Nationals:
Mr D. DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Leane, Mr Shaun Leo	Eastern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lenders, Mr John	Southern Metropolitan	ALP
Broad, Ms Candy Celeste	Northern Victoria	ALP	Lovell, Hon. Wendy Ann	Northern Victoria	LP
Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Davis, Hon. David McLean	Southern Metropolitan	LP	Pakula, Hon. Martin Philip	Western Metropolitan	ALP
Davis, Mr Philip Rivers	Eastern Victoria	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Drum, Mr Damian Kevin	Northern Victoria	Nats	Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Elsbury, Mr Andrew Warren	Western Metropolitan	LP	Ramsay, Mr Simon	Western Victoria	LP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Rich-Phillips, Hon. Gordon Kenneth	South Eastern Metropolitan	LP
Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Hall, Hon. Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP

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THURSDAY, 8 DECEMBER 2011

Thursday, 8 December 2011

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.35 a.m. and read the prayer.

LEGISLATIVE COUNCIL: 155TH ANNIVERSARY

The PRESIDENT — It is not quite a bad-hair day, not quite a trip to a fancy dress party, but I think we all lament the passing of tradition, do we not? The reason for my donning this garb this morning is simply to make note that this year, 2011, is the 155th sitting of the Legislative Council. As many members would be aware, the Legislative Council, and indeed the Parliament, first sat in these buildings in 1856 and, whilst we paid significant recognition to the 150th year — and I think that was appropriate — the 155th has to some extent gone without notice this year, so I thought it was important to briefly recognise this particular date.

In fact it was on 21 November 1856 that the Legislative Council first sat in this place, and it was very significant in terms of the formation of the state that we have today. Very clearly and not just in legislative terms — and there were significant achievements in those early days of the Legislative Council — there were three key things that were achieved by the Legislative Council in the lead-up to those sittings in 1856.

The first one was that from 1851 when the first formative Council, if you like, met, they started working on the constitution of Victoria, which is essentially the constitution that we use to this day. The second one was that they started work on the plans for the building of the Parliament and had a significant influence on the buildings that we have today — the precinct and so forth.

The third thing — and perhaps in some ways the most enduring thing and something that has spread right around the world — was that they also adopted the principle of secret ballots. That was the first legislature to look at secret ballots, and that has obviously had a significant impact.

The first Legislative Council meeting in this place had 30 members of Parliament, and I might just reflect that it was a little different to the ones we have today insofar as the first Legislative Council comprised seven squatters, seven merchants, four land-holders — —

An honourable member interjected.

The PRESIDENT — Order! Which one was that? There were also three barristers, three shopkeepers, two newspaper proprietors, two doctors, one miller, an attorney and a financier. Their average age was 42 years. Twenty-three of the members were in their 30s and 40s — not unlike today, I am sure.

Mrs Coote — How many women?

The PRESIDENT — Order! I will not bite! There were no women. The oldest was one of the Fawkner family, who was 59 years of age, and the youngest was John Mercer, who was 28. Eight members were Irish, another eight were Scottish and seven were Englishmen. There were two New South Welshmen and two other members who had been born in Portugal and Cape Colony respectively. Three were of unknown origin. Today that number is probably greater.

The first President of the Legislative Council was James Palmer. He was born in Devon, England, and became a surgeon practising in London. What is particularly interesting about Mr Palmer — who in 1853 was elected to the seat of Dundas and subsequently in 1855 to the seat of Normanby, which is, I believe, the one for which he came into the Parliament — is that he was actually the mayor of Melbourne from 1845 to 1846. He served on the New South Wales Legislative Council as well as the Victorian Legislative Council, which is an achievement that no other member of this place is likely to attain.

Members of Parliament were sworn in on 28 November, which is perhaps a little closer to this date on which I have donned the gown and wig that was last worn in this place by Bruce Chamberlain, President As I say, these are very important awards that I think the community can be proud of in the Parliament up until 2002. Enjoy it, because it will not be on for very long!

PETITIONS

Following petition presented to house:

Wallan-Kilmore bypass: route

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 total inappropriateness of the current VicRoads eastern options for a bypass of Kilmore due to:

1. none of the options are a true bypass;

2. it will have a massive impact on residential areas;

3. it will have a huge impact on environmentally sensitive areas;

4. it will physically divide the community of Kilmore;

5. it will traverse steep and inappropriate terrain; and

6. it will serve no purpose to relieve local traffic problems as it will be too far from new developments.

The petitioners therefore request that the government and VicRoads consider a western bypass of Kilmore in preference to the current eastern through-road options.

By Ms BROAD (Northern Victoria) (130 signatures).

Laid on table.

DRUGS AND CRIME PREVENTION COMMITTEE

Violence and security arrangements in Victorian hospitals

Mr RAMSAY (Western Victoria) presented report, including appendices and an extract from proceedings, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr RAMSAY (Western Victoria) — I move:

That the Council take note of the report.

It gives me great pleasure to present my first report to this Parliament as chair of the Drugs and Crime Prevention Committee. This inquiry had its genesis in a policy statement by the Minister for Police and Emergency Services, Peter Ryan, for a greater security presence in hospitals using protective services officers (PSOs) in response to the ongoing forms of violence, in emergency wards in particular, in Victorian hospitals. I would like to congratulate the minister for responding to this ongoing community concern.

Some in the health industry raised concerns about the use of PSOs in hospitals, so the minister directed the Drugs and Crime Prevention Committee to investigate and recommend to Parliament ways to prevent and reduce the risk of antisocial behaviour and violence in hospitals.

Due to the time frame of the reporting and the Speaker's wish to curb expenditure on overseas trips, for which I am sure he will lead by example, the committee confined its inquiry to within Australia. Public meetings were held in Perth, Sydney, Melbourne, Geelong and Ballarat, and over 43 written submissions were received which have helped provide the detail of the report. I sincerely thank all those people, including witnesses to the inquiry, who have helped the committee with its deliberations.

Of the 39 recommendations the most relevant, given the evidence of hospital clinicians, administrators, academics and security personnel, is overwhelmingly against any proposal to deploy protective services officers in emergency departments and hospitals. However, there has been widespread support for a range of different approaches that prevent and reduce occupational violence in hospitals. Recommendations include violence reduction through environmental design, education and training, law reform and better reporting and recording of occupational violence in hospitals. In addition, the committee requested a universal approach to code grey and code black responses, with flexibility for hospitals to provide their own security personnel, either in-house or contracted but with an accreditation that is specific to the health industry.

There has been a lot of work and commitment to detail with a totally professional approach from the staff of the Drugs and Crime Prevention Committee with this report. On behalf of the committee I particularly thank the team leader, executive officer Sandy Cook; senior research officer, Pete Johnston; and administrative assistant, Danielle Woof. This has not been an easy inquiry, given the sensitivity of the reference — which was about security — and the departments involved. I thank the staff for their patience and professionalism.

I also thank the members of my committee, who have always acted in a good-natured, bipartisan way, intent on providing a report that would deliver security and safety to those health workers at the front line of hospitals. My thanks go to the deputy chair, Johan Scheffer, and Shaun Leane, who are both members of this chamber, and Assembly members Brad Battin, the member for Gembrook, and Tim McCurdy, the member for Murray Valley, for their commitment to deliver this report to Parliament this week.

Mr LEANE (Eastern Metropolitan) — Earlier this year media reports came out that there was a thought bubble inside the costings of the coalition's election campaign to introduce armed protective services officers (PSOs) into hospital emergency departments (EDs). When the Minister for Police and Emergency Services, Peter Ryan, was approached by the media on the Spring Street steps of Parliament House about this thought bubble he stated that he was somewhat aware

of the $21 million in this line of the election costings to introduce armed PSOs into ED wards. To the minister's credit he said he would send it to the committee to look at. He said this money would be utilised, and if it was not utilised for PSOs, it would be utilised to make ED wards safer.

We have had a bit of a problem getting there in the end as far as the minister committing that money. My view is that after this report he should commit that money. There are ways of facilitating ED wards so that they are safer for the staff, patients and visitors. That is in this report, and there was some great evidence to the committee about that. What amazed me was that during evidence from representatives of the Department of Health, the Australian Medical Association, the Australian Nurses Federation and a lot of experts, they said they were consulted about this thought bubble. The minister sent this to the committee to try to polish it or kill it off. I will sanitise the saying: unfortunately there are some things the minister cannot polish.

Mr SCHEFFER (Eastern Victoria) — There is a lot to be said about this report and clearly 2 minutes does not give us enough time. Therefore I simply say that the issue of violence against staff working in health services in hospitals is unacceptable. The committee members and research team have done an excellent job in identifying the key issues and making some 39 recommendations that we hope will make a positive difference.

The coalition's election proposal to allocate $21 million to place 120 gun-carrying protective services officers (PSOs) in emergency departments was a crazy idea that was immediately attacked by the Australian Medical Association and the Australian Nurses Federation because it would make an already volatile situation worse. The committee received 30 written submissions from hospitals, nurses, doctors, the health department, researchers and security experts, and conducted 61 hearings in Victoria, Western Australia and New South Wales. The committee's researchers reviewed 80 documents, including books, articles and policies. Not one witness who spoke to the committee and not one submission the committee received supported the coalition's ill-considered and rash proposal to put armed PSOs (protective services officer) in hospital emergency departments — or anywhere in a hospital precinct.

Most of the recommendations are fine, but I refer members to the extracts from proceedings to see for themselves that the coalition members of the committee rejected a sensible Labor proposal to dedicate Minister Ryan's $21 million commitment to improve hospital security. The extract from proceedings shows that coalition members worked to remove references to the $21 million and to the origin of the coalition's gun-carrying PSO proposal. The extract also shows that coalition members sought to remove footnotes to Grant McArthur's *Herald Sun* article of 29 April because they did not want the final report to document how absurd the coalition's law and order agenda looked when recklessly applied to emergency departments.

Notwithstanding all of this, the final report is a good piece of work and I will have more to say about it next year. In the meantime, I commend the report to the house.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Freedom of Information Act 1982 — Report of the Attorney-General on the operation of the Act, 2010–11.

Gambling Regulation Act 2003 — Report of the Gambling and Lotteries License Review Panel to the Minister in relation to Gaming Machine Entitlements, December 2011.

Members of Parliament (Register of Interests) Act 1978 — Summary of Variations notified between 8 October 2011 and 7 December 2011.

Office of Police Integrity — Report under section 30L of the Surveillance Devices Act 1999, 2010–11.

Parliamentary Committees Act 2003 —

Government Response to the Drugs and Crime Prevention Committee's Report on People Trafficking for Sex Work.

Government Response to the Rural and Regional Committee's Report on the Extent and Nature of Disadvantage and Inequity in Rural and Regional Victoria.

State Services Authority — The State of the Public Sector in Victoria, 2009–10.

Statutory Rules under the following Acts of Parliament:

Control of Weapons Act 1990 — No. 140.

Dangerous Goods Act 1985 — No. 134.

Gambling Regulation Act 2003 — No. 138.

Infringements Act 2006 — No. 135.

Regional Growth Fund Act 2011 — No. 141.

Subordinate Legislation Act 1994 — Nos 137 and 139.

Victorian Civil and Administrative Tribunal Act 1998 — No. 136.

Subordinate Legislation Act 1994 — Documents under section 15 in respect of Statutory Rule Nos 134, 135, 137 and 141.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 7 February 2012.

Mr LENDERS (Southern Metropolitan) — The opposition does not oppose this motion, and we appreciate the government having made the sitting dates for next year available early, but we have a question, and I will speak to the motion in order to address it.

Historically this motion has never been moved in this form. The date and time has been set by the President because that procedure allowed reports of the Auditor-General to be tabled out of session. In speaking, I am inviting the minister or the President to address this matter. It appears to me that what this motion will mean is that reports of the Auditor-General will not be tabled during the summer recess because they would not be subject to parliamentary privilege. What I seek as a way to resolve this is an indication of whether debate on this motion can, depending on the advice of the Clerk, be adjourned until later this day, because if what I have suggested is the case, we would be reducing scrutiny in that the nature of this motion means the Auditor-General would not be able to table reports during the summer break.

Hon. D. M. DAVIS (Minister for Health) — I am informed that this is the same motion that has been put in the Assembly. That is my advice.

The PRESIDENT — Order! I concur with the Leader of the Opposition in that it is my understanding on advice this morning that the motion carried in this way would have the effect of not allowing those reports to be issued, as compared with the previous form of words that were used. My advice is that what the Leader of the Opposition has said is the case.

Mr LENDERS (Southern Metropolitan) — I formally seek to move that the motion be amended so that the house, at its rising, adjourn until a time nominated by the President, which I believe is the form that has been used in previous years. I formally move that amendment.

The PRESIDENT — Order! I ask Mr Pakula to move that amendment inasmuch as Mr Lenders has already spoken.

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

That the words 'Tuesday, 7 February 2012' be omitted with the view of inserting in their place 'a day and hour to be fixed by the President, which time of meeting shall be notified in writing to each member of the Council'.

Hon. D. M. Davis interjected.

The PRESIDENT — Order! I say to Mr Davis that it changes the circumstances of reports becoming available to members, and whilst the words seem fairly simple it is a quite significant change. In my view, although Mr Davis is saying the amendment ought to be circulated, the fact is that it is a fairly straightforward amendment, it is one that is easily understood by members, and it reflects what has been done in the past. The amendment is in order, and as Chair I am prepared to accept it without its having been circulated in writing, particularly given that with the motion that has been put today information is available to the chamber now that has given rise to this amendment that perhaps was not available to the chamber prior to the advice that has just been given. I will accept the amendment. The amendment has been moved. Does Mr Pakula wish to speak to the amendment?

Hon. M. P. PAKULA — Very briefly, President. It is important, as Mr Davis has said previously, that each house is the master of its own circumstances and its own decisions. Frankly, whether this motion has been moved in a similar form in the Legislative Assembly or not is barely relevant, if relevant at all, to the decisions that need to be made by members of this chamber.

Given that the government is now in possession of the information provided by not just the Leader of the Opposition but also the President — having sought advice from the Clerk that the motion, in the form put by the Leader of the Government, would cause reports from the Auditor-General to be unable to be tabled until February — and given that the government has on many occasions proclaimed its commitment to openness, transparency and accountability, it would be very simple for the Leader of the Government to do one of two things. He could accept this amendment in its current form and move that the house adjourn in a way that will allow those reports to be tabled or, alternatively, he could seek to debate this motion later today if the issue for him is that he needs to seek advice from others. The opposition would be satisfied with either course of action.

Mr BARBER (Northern Metropolitan) — On behalf of my Greens colleagues, I indicate that we will support Mr Pakula's amendment.

Mr VINEY (Eastern Victoria) — Firstly, President, I concur with your advice to the house in relation to the appropriate wording of the motion. I invite government members of the Public Accounts and Estimates Committee to support the amendment, because, unless it is agreed to, reports to the Parliament will not be able to be provided within an appropriate time. Government members who are on important committees and who respect the processes of reports being tabled out of session might like to support Mr Pakula's amendment.

Hon. D. M. DAVIS (Minister for Health) — With the support of the opposition, I seek to leave the matter until later in the day in order to have further discussion. It is my information that the Assembly is moving the same motion — if that is to be corrected, I am happy to have it corrected, but that is my information at this time — and that would have the impact the President is indicating. It is a legitimate debate as to whether Auditor-General's reports and other reports ought to be tabled out of session. Some would argue that greater scrutiny is brought to reports by them being tabled when the Parliament is in session when there are opportunities for people to make contributions on them. The opportunity for questions — —

Mr Barber interjected.

Hon. D. M. DAVIS — Yesterday is a good point, Mr Barber. Questions could be directed to ministers today about the report that was tabled yesterday. However, if a report were released mid-January, questions would be some weeks into the future.

Mr Lenders — But you could scrutinise.

Hon. D. M. DAVIS — You could scrutinise it during sitting times too. There is no evidence that there is less scrutiny by tabling in sitting times; in my view there is greater scrutiny. In the spirit of being reasonable, I will seek formal advice as to what the Assembly intends to do, because that is material in the sense that it will have an effect on the matter.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until later this day.

MEMBERS STATEMENTS

City of Darebin: mayoral election

Mr ELASMAR (Northern Metropolitan) — On 5 December, along with several of my parliamentary colleagues, I attended the Darebin Arts and Entertainment Centre to witness the election of the new mayor of Darebin City Council for 2011–12. It was particularly rewarding for me to see Cr Steven Tsitas elected mayor by his fellow councillors, and I am sure he will serve the community of Darebin to the best of his ability. I congratulate Cr Tsitas on being the first Greek-Australian to be elected as mayor of the City of Darebin. I wish to thank Darebin council's CEO and staff for organising the event.

Bishop Robert Rabbat and Bishop John Issam Darwish

Mr ELASMAR — On another matter, I warmly welcome Bishop Robert Rabbat's appointment as the new Melkite bishop for Australia and New Zealand and sadly farewell Bishop John Issam Darwish, who has since returned to Lebanon. I thank Bishop Darwish for all his wonderful work in the Melkite church community in Australia and wish him a happy and successful life in Lebanon.

Finally, as this is the last sitting day of the year, I would like to wish you, President, all my colleagues, staff, the clerks, all the people in my electorate and all Victorians and their families a happy festive season. I look forward to seeing you all in 2012.

Montmorency Secondary College: community sports stadium

Mrs KRONBERG (Eastern Metropolitan) — As a passionate supporter of basketball, I was delighted to join Hugh Delahunty, the Minister for Sport and Recreation, at the opening on Thursday, 1 December, of Montmorency Secondary College's community sports stadium. The stadium is well situated within the catchment for Eltham's booming basketball community. It is not only a long-awaited sports facility for the school but also the new home of the Eltham Wildcats. The Eltham Wildcats are a major force in basketball in Victoria, with over 500 teams made up of boys, girls, men and women of all abilities.

The stadium has dual multipurpose courts and should provide an excellent home for basketball competitions for the Eltham Wildcats and Montmorency Secondary College's teams. The stadium will also serve the school

and the wider community as a performance space and a place of assembly.

I was particularly impressed by the words of welcome from each member of the school's leadership team for 2012 and the hospitality and warmth extended to us by the school. Congratulations to the school principal, Allan Robinson, and his staff. Congratulations to the Eltham Wildcats, who were represented by their very enthusiastic president, David McLellan, and to other key figures who have done so much over a number of years to forge the Eltham Wildcats into the basketball success story we know and admire today.

I would like to wish everybody in this chamber and the people of Victoria all the best for the festive season and, if they are Christians, a happy and holy Christmas.

Manufacturing: government performance

Mr SOMYUREK (South Eastern Metropolitan) — I rise to condemn the Baillieu government for failing to deliver a manufacturing plan despite being in government for more than one year and despite the extraordinary challenges faced by our manufacturing sector. The Baillieu government's dithering has cost the Victorian manufacturing sector dearly, with nearly 10 000 jobs being lost in the Victorian manufacturing sector since the coalition came to power.

Technology: government performance

Mr SOMYUREK — On another matter, the technology sector was underwhelmed recently when the Baillieu government released its long-awaited technology plan entitled Victoria's Technology Plan for the Future. This so-called plan is full of platitudes, motherhood statements and plenty of gloss but delivers very little in substance and resources. The government and the minister must lift their game to maintain Victoria's status as the leading technology state in Australia.

Rail: Springvale level crossing

Mr SOMYUREK — On another matter, I urge the Baillieu government to find a solution to the terrible traffic congestion at the Springvale rail crossing on Springvale Road, particularly during peak hour. I have had numerous complaints from local traders and residents about this issue.

Buses: Keysborough

Mr SOMYUREK — On another matter, I call on the Baillieu government to improve bus services in the suburb of Keysborough, particularly in and around the new estates of Keysborough South off Chapel Road. Thousands of people have moved into these estates in recent years; however, public transport services have not improved sufficiently to service the rate of growth.

Christmas season: safety

Mr ONDARCHIE (Northern Metropolitan) — At this time of year we reflect on the true meaning of Christmas as we celebrate the birth of Jesus Christ. It is a time to reflect, a time to gather and a time to enjoy. However, it is also a time to ensure that we are safe and cautious as we go about our daily business. At this stage we have lost 267 Victorians on our roads this year, and that is 267 people who will not be enjoying Christmas with their family. Tragically, we heard of the passing at 4.30 a.m. today of a young child who was struck by a car yesterday. Our hearts and prayers go out to that family. This is a time when as people travel around in their daily business activities they need to be more cautious and more aware of people thinking outside the norm as they relax and reflect on this holiday period.

Equally, we have lost a number of workers to workplace accidents this year as well. So far this year 21 people have been killed at work, including 11 in the last little while. We remind all Victorians at this time of year as they go about celebrating their Christmas breaks — and as members of this place and the other place are about to embark on their Christmas vacation — that this is a time when our safety, our wellbeing and the care of all other Victorians should be paramount in our minds. I wish everybody a very festive season but also a safe season, and I look forward to their return in 2012.

Legislative Council: legislation committees

Mr BARBER (Northern Metropolitan) — As we come to the end of this year in Parliament it is disappointing to me that despite the Senate-style committee system that was introduced in the previous Parliament, there has been very little work in the area of the upper house legislation committees.

On a number of occasions the Greens have moved that bills be referred to those committees for proper scrutiny offline, involving a subcommittee of the Parliament and not taking up the time of the chamber as a whole. In all those cases the bills were complex with high public impact and often attracted great public interest. They included two bills relating to protective services officers, a number of bills that were justice related and sentencing related, and of course the double jeopardy bill. The one bill that the government was prepared to

send off to a legislation committee was the Greens bill in relation to container deposit legislation, which we support.

Over Christmas we may want to think about a procedure whereby all bills — or all those deemed to have any complexity or controversy — be referred to those legislation committees, giving MPs something extra to do with their Wednesday nights.

National Jockeys Trust: funding

Hon. M. P. PAKULA (Western Metropolitan) — I rise to once again make a contribution regarding the National Jockeys Trust. Since this issue received wide public exposure during the Spring Racing Carnival, the Minister for Racing has made a number of announcements. He has announced $350 000 for the Greyhound Adoption Program at Seymour. He has announced almost $700 000 to enable six country harness racing tracks to each run one meeting per year. He has announced almost $l million towards the expansion of the desalination facility at Flemington Racecourse. He has also announced $6.8 million over four years for prize money increases under the Victorian owners and breeders incentive scheme gold scheme. That is nearly $9 million worth of funds committed in a month or two, and there is still not a cracker for the jockeys.

Mrs Petrovich — Very good for the industry.

Hon. M. P. PAKULA — I agree with Mrs Petrovich that it is very good for the industry, and the projects I have mentioned are all worthy projects, but are they more worthy than supporting the families of jockeys who are killed or injured in racing accidents? Racing Victoria Limited has done its bit to commit to reinvest jockeys' fines into the trust, but that only provides a modest recurrent payment. What the trust needs is seed funding, and what it is seeking from this government is about $1 million as a one-off payment, and let me repeat: the government has committed almost $9 million to other projects in the last two months alone. What the jockeys are asking for is not too much to ask, there is no industry without the jockeys, and it is time the minister stepped up.

Rail: Clunes station

Mr O'BRIEN (Western Victoria) — Last Saturday, 3 December, I had the honour of attending the reopening of the Clunes railway station on behalf of the Deputy Premier, Peter Ryan. I had the pleasure of riding the rails with my colleague Minister Mulder, the Minister for Public Transport, with three carriages filled with families, including part of my own family and that of my very capable electorate officer, Richard Troeth; rail buffs; tourists and other local residents.

This occasion had its origins in the middle of last year when passenger rail services returned to Maryborough and Creswick. Clunes has established itself as a thriving arts centre in the region, with about 15 000 visitors flocking to the town each May for the annual Back to Booktown event. It is great to see the rail return to Clunes. It will be a destination point for the Maryborough line, as Talbot will be in 2013.

South-western Victoria: groundwater atlas

Mr O'BRIEN — On the day prior I had the great pleasure of launching the groundwater atlas at the Frawley potato farm at Bungaree on behalf of the Minister for Water, Mr Walsh. Groundwater is an important asset that has been spoken about many times in this chamber. It is a very important asset to the south-west of Victoria. The groundwater atlas will map south-western Victoria's extensive network of underground aquifers to better understand and manage these resources.

I congratulate Clinton Rodda, chief executive officer of Southern Rural Water, Graham Hawke, general manager, Penny Winbanks, project manager, and all the other staff on what is a significant milestone in the management of regional groundwater. I also congratulate the Victorian Farmers Federation and the individuals who have long advocated for this resource, including Basil Ryan and Doug Chant, and I encourage all government authorities and Victorians to make use of this atlas.

Ebdale Community Hub and Learning Centre

Mr TARLAMIS (South Eastern Metropolitan) — Last month I was honoured to attend the official opening of the Ebdale Community Hub and Learning Centre by Her Excellency Quentin Bryce, Governor-General of the Commonwealth of Australia. I say from the outset that Frankston City Council should be commended for the role it played in advancing this project. The centre has recently undergone extensive renovation and will house a number of community services and organisations under an integrated care model.

The tenants of the centre are GordonCare children's access program, the Frankston Toy Library, the Frankston Youth Resource Centre, a maternal and child health centre, the Frankston family day care playgroup, the Wallara day service and St Johns Ambulance. This

means that the services can share precious financial resources in addition to providing the Frankston community with a one-stop shop where locals can access coordinated programs and support and where people can meet and share their experiences and enjoy the many benefits of community engagement. It also enables the centre to more effectively tailor programs and provide early intervention and support when necessary, and it is a model that I believe should be encouraged. I look forward to seeing the results of the centre's important work and wish it well with future endeavours.

Christmas felicitations

Mr TARLAMIS — On another matter, I would like to thank all those who have provided me with guidance and advice in my first year as a member of Parliament. I take this opportunity to wish the President, all members, all staff and those in my electorate and Victoria a safe and happy holiday period, and I look forward to working with them next year.

Lancefield Motorcycle Run: fundraiser

Mrs PETROVICH (Northern Victoria) — On Saturday, 26 November, I was honoured to be part of a fundraising venture on behalf of two lovely kids who are both eight years old. One child suffers from the rare Charcot-Marie-Tooth disease and the other from Duchenne muscular dystrophy. Both are serious, debilitating and degenerative disorders, one affecting nerves and both affecting muscles. I have known one of these children, Amber, and her mum, Shelley, since she was just a little one. Amber lost her dad, Brad Jepsen, on 14 July last year. Brad was only 51 but had devoted 27 years to the Country Fire Authority in Gisborne and was so well respected that eight brigades re-elected him group officer unopposed only weeks before he passed away.

For several years the Lancefield Motorcycle Run group has had a run throughout the region to raise funds for special children. This year its members made the effort to raise money for these two children, and they are doing another event. The second and bigger event is on Sunday, 19 February 2012. The bikes will travel to the Royal Hotel in Seymour, the Flowerdale Hotel and the Rattlers Hotel at Wallan East with the aim of raising around $20 000. Anyone who does not ride can still participate because it is a great day, and I am sure the organisers would be happy to take a donation.

The first event was well attended, despite the weather. The Petroviches donned their leathers and rode to Romsey, and I am proud to say that my husband Serge won best British bike with his Trumphy. I extend my thanks and congratulations to all involved, especially Peter, Kristine, Colin and others for organising the events.

Economy: government performance

Mr SCHEFFER (Eastern Victoria) — I was delighted to read that on Monday this week Australia was a step closer to linking its new carbon pricing mechanism to the European Union's emissions trading scheme. As members will know, the EU is the largest existing carbon trading market in the world and Australia's biggest investment and trading partner, and it is a great thing that this country is now able to participate in international action that will further develop carbon markets. Now that Australia has carbon price laws, the national government can focus on linking Australia's scheme to the international carbon markets and other international schemes so that we can have a positive impact on the environment and benefit economically from the new efficiencies resulting from the introduction of carbon pricing.

This is an important step, and it is a tribute to the federal Labor government that we see this arrangement with the EU under way so soon after the passage of the clean energy legislation. This high-level work is an essential component in the internationalisation of carbon trading, and there will be benefits for regions all over Australia and within Victoria and its regions.

But today's news that Victoria is now the worst economic performer in Australia can be sheeted home to the Baillieu government's disastrous first year. On this side we have urged the government not to slash infrastructure investment in education, health and renewable energy. The Baillieu government must face facts and reinvest in emerging low carbon emission industries if the state is to be restored as a national leader in employment and investment as it was during the Labor administration.

David Jones

Hon. P. R. HALL (Minister for Higher Education and Skills) — This morning I want to offer my condolences to the friends and family of David Jones, the son of Fletcher Jones. David passed away on Tuesday, two days ago. David had a long and distinguished life and he maintained a commitment to community service throughout his life. His career included 39 years with Fletcher Jones and Staff, of which he was managing director from 1979 to 1991.

David also played a major role in the wool industry and served on several boards connected with that industry. But in particular he had a lifelong commitment to education, and in that regard I particularly want to acknowledge that he was a member of the State Training Board from 1998 to 2001 and president of the South West Institute of TAFE from 2000 to 2003 and again in 2006. He was a member of the Deakin University council from 1999 to 2005 and deputy chancellor of that university from 2004 to 2005. David was also a board member of the International Fibre Centre from 2001 until his death on Tuesday.

David Jones made a strong contribution to community life in south-western Victoria, but in particular my interest is in his service to education. I am grateful for it, and again extend my condolences to his family and friends on his passing just this week.

Dandenong: Little India precinct

Mr TEE (Eastern Metropolitan) — I wish to draw to the attention of the house the impact that the Premier's neglect of the Little India community in Dandenong is having on our international reputation. Mr Baillieu's inaction has been well reported overseas, including in the *Economic Times*, *The Pioneer*, the *Times of India*, *Newspolitan* and *Pakistan Matters*. The failure to support this community extends beyond the lives of the traders in the Little India precinct. The failure to support this community is sending waves of concern throughout Melbourne's ethnic communities. This is now damaging our international reputation. It is damaging our tourism. It is damaging our business. It is damaging investment.

I urge the government to stop dithering and to take some action now before it is too late. I urge the government to take up the suggestion of getting a mediator to start working through these issues. They are not that difficult to resolve, but they need a common-sense approach from the government, which has to stop dithering and start delivering before it is too late and before this community is brought to its knees.

Dandenong: Little India precinct

Hon. D. M. DAVIS (Minister for Health) — I am concerned by the comments of Mr Tee in his members statement. They fail to sheet home the responsibility for the problems with that area of land and that development. The problems were left by the previous government and the previous planning minister, who did not — —

Mr Tee — Mediate. Get a mediator.

Hon. D. M. DAVIS — The Minister for Planning, Mr Guy, has made it very clear that he is prepared to work with people. He has had meetings, and he has taken a number of steps to clean up the mess left by the former Premier, John Brumby, and repair the damage that was done to Victoria's situation by John Brumby when in government, by the Leader of the Opposition, Daniel Andrews, who was a minister in that government, by Mr Pakula, who was also a minister, and by others, who did not lead and ensure a proper situation. Bad planning and bad arrangements have had to be cleaned up. The compulsory acquisition of land occurred under the previous government. The previous government made those decisions. Mr Guy has been left with a mess that has to be cleaned up, and he is taking steps under these arrangements to clean up the mess left by John Brumby and the previous government.

ROAD SAFETY AMENDMENT (DRINKING WHILE DRIVING) BILL 2011

Second reading

Debate resumed from 6 December; motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. M. P. PAKULA (Western Metropolitan) — I rise to indicate that it is not the opposition's intention to oppose this bill. It is not our intention to oppose it, and we certainly hope we will not need to, but it is also right to say that through some work done by Mr Barber, and I am not going to steal his thunder, it appears that it might be the case — and I would urge the Leader of the Government to pay attention while I make this point — that in an unintended way this bill might in fact outlaw someone having a drink on the way to their car.

I had a briefing with members of the Attorney-General's staff on Monday, and they indicated to me that it was clearly not the government's intention to bar anyone other than the driver of the car or a person instructing a learner driver from drinking. But certainly the information that has been provided this morning appears to make a compelling case that there is at least the possibility that this bill might go further than the government intends it to go. That might require the government to have a bit of a think about whether an amendment needs to be made to the bill sometime today. I will let Mr Barber go to the detail of that during his contribution to the debate, but if he is right — and I must say it seems that he might be — it might be a symptom of the very rushed way in which this bill was put together in the absence of consultation.

I did not see the bill until Monday. The shadow minister for the TAC and road safety and member for Monbulk in the other place, Mr Merlino, did not see the bill until I saw it. And now on Thursday, three days later, this bill is about to complete its passage through the Legislative Council, so it must be extremely important. It must be the bill that provides the next quantum leap in road safety for it to be treated so expeditiously, for it to be given passage that the IBAC — Independent Broad-based Anti-corruption Commission — bill and the FOI bills have not been given and none of the sentencing laws have been given.

This bill is of such consequence, is so important and provides such a massive improvement in road safety that it has to be given passage through Parliament at a speed that no other bill has achieved. As I say, the government is going to need to answer very clearly whether the haste, the rush, that attended the drafting of this bill has now caused it to bring before the Parliament a bill which has the intention of outlawing drinking while driving but which may in fact have the effect of outlawing drinking while on the way to your vehicle. It seems that might be the case.

I do not know if you picked it up, Acting President, but I was being somewhat facetious when I talked about the importance of this bill and how it represents a quantum leap, because of course it is nothing of the sort. It is a mirage. It is cover for a government that has done nothing for road safety in a year. The government is attempting to use the bill to cloak its inactivity in the lead-up to the 2011 Christmas break, and it does really little more than that.

If the bill were as important as its speedy passage seems to suggest it is, you would have thought the government might have consulted with the Transport Accident Commission (TAC) on its drafting. You would have thought it might have consulted with the Monash University Accident Research Centre (MUARC) on its drafting. You would have thought that perhaps the bill might have been allowed to go through a Scrutiny of Acts and Regulations Committee (SARC) process like every other bill that goes through the Parliament. You would have thought that maybe the parliamentary Road Safety Committee might have had a say. And maybe if one or all of those organisations had been consulted, then the drafting error that appears to be contained in the bill might have been avoided.

None of that consultation occurred. The advisers to the Attorney-General made it clear in our briefing on Monday that they had had no time to brief the TAC and no time to consult with MUARC. Of course given the abbreviated time lines, they would not have had the opportunity to put the bill through a SARC process, which would have certainly shown up this query that is being raised today, because that is what the SARC process does. We might have had a bill which would have enjoyed a proper process and a proper passage through the Parliament.

What has the government actually done in the area of road safety as distinct from this all-show, no-go piece of legislation that has been brought forward? The first thing it did was to reverse the decision to start up the road safety experience centre, which we now know could have been funded quite comfortably out of the TAC reserves. The centre would have provided invaluable experience to young drivers as they went about learning how to drive, understanding road conditions and acquiring proper experience. That is gone. But never mind, because instead we had a competition for a new slogan for numberplates. I mean you do not need a road safety experience centre when you have a slogan competition. Why would you want a real investment in road safety when you have something that is just so compelling and is going to do so much to prevent accidents on our roads?

In terms of Arrive Alive, after a year we have nothing more than a holding pattern. We have an update which basically says, 'We will come back to you in 2012 with something that has a bit of grunt to it, something with a few teeth'. In terms of speed cameras, we all know the form of the Liberal Party and The Nationals when it comes to trying to demolish community support for speed cameras. They did it for a decade in opposition. They talked about them as being nothing but revenue-raising tools, they always queried their accuracy, they always queried their placement, they never accepted that they were there to save lives and they did everything they could to reduce public confidence in speed cameras.

And what do they do when they come to office? They bring in a road safety camera commissioner who will not save one life but who might have the effect of further diminishing public confidence in speed cameras. Then they go about publicising the location of speed cameras, completely contrary to the Auditor-General's advice and completely contrary to common sense, which tells you that if you know where the speed cameras are, you know where the speed cameras are not. So despite the fact that the Auditor-General demolished the notion that speed cameras were there for revenue raising and despite the fact that he raised quite serious concerns about whether you should be telling people where they are, the government has gone ahead and continued to do that anyway.

With that really disreputable record on road safety over 12 months, the government then rushes a bill through both houses in one week that does what? What it does is it provides penalties of between 2 and 10 penalty units if you consume intoxicating liquor while driving a motor vehicle or while you are in charge of a motor vehicle — and I think that definition of what being in charge of a motor vehicle means might become very important as this debate continues — and it also says you cannot consume intoxicating liquor while you are accompanying a learner driver.

Hon. D. M. Davis — Which you agree with, I think.

Hon. M. P. PAKULA — Which we agree with, and I was about to say that I think that second part about being an accompanying licensed driver is totally appropriate. I think if you are teaching someone how to drive, you need to be concentrating on that and that alone.

In regard to the other part of the bill I have to say the enforcement method that was described by the Attorney-General's advisers struck me as being somewhat problematic. The first thing we asked was, 'How will it be proved up?', and we were told, 'It will be by direct observation.' What does that mean? It means that the police officer needs to see you putting the can or the bottle to your lips and drinking while you are driving. I would have thought that is easier said than done.

The first thing is you have generally got a police car heading in one direction and a motorist going in the other direction and they pass each other for a nanosecond, and in that time not only does the police officer have to see you drinking but they have to be able to identify what vessel you are drinking from and what is in it. They can pull you over and test the contents, but of course by that time the driver will no longer have the offending vessel in their hand, unless they are particularly unwise, so the officer is going to need to be able to demonstrate that the driver was in fact drinking. But the other thing is at 60 kilometres an hour — and if you have a car going in the other direction, I think the effect is multiplied — the officer has to be able to identify whether a dark-looking can is a can of Coke Zero or a can of Jim Beam or a can of anything else, and again I would have thought that is going to be a very difficult thing for an officer to identify.

I have no doubt that what is in fact going to occur is that a lot of people are going to get pulled over for drinking a can of Coke. That is what is going to happen, because the police have really got no hope in that split second of being able to identify exactly what kind of drink the driver is consuming. Maybe there will be a bit of trial and error; maybe there will be a few people getting reasonably annoyed for being pulled over for drinking a non-alcoholic beverage.

The other point that was made was that this measure is important as an example to children. Kids might be in the back seat, and they should not see Mum or Dad drinking while they are driving. I remind the house that last year or the year before we passed a bill about smoking in the car. We did not outlaw smoking in the car; we outlawed smoking in the car while there is a child in the car. If that is the real intent of this — that we want to set an example for children — we could have avoided the issue that Mr Leane talked about during the week of a tradesman on his way home alone picking up a traveller, and the legislation could have been confined to a circumstance where there are in fact minors in the car.

The other point that is worth making in regard to the seriousness of this offence is that if this bill is really as serious and if this problem is really as serious as would be suggested by the fact that the bill has had to be rushed through both houses of Parliament in one week — three days after it went to cabinet and was seen by the opposition, with no scrutiny process whatsoever — you would think it might be possible to lose your licence for it. But the advice we have from the government, and what is clear from the legislation itself, is that you can be picked up doing this day in, day out all year and never lose your licence. It is not a demerit point offence. You can be fined once a week for 52 weeks for the same offence and never lose your licence. That would seem to undercut the suggestion that this is so important that it needs to be rushed through Parliament in one week.

I think it is probably also worth noting in the house that we became so concerned this year about the lack of action from the government on the road safety situation that we released our own comprehensive policy document, *Below 200 by 2020*, that outlined a range of initiatives, including reinstituting support for the road safety experience centre and a range of other things.

I think it is pretty disappointing that the best the government can come up with in response to this issue after one year in government is a bill like this — a bill which has been poorly drafted, which has been rushed through the Parliament in one week and which as a consequence of that rush appears to have unintended consequences to outlaw a practice which is so serious that you cannot lose your licence for it no matter how many times you do it! I think that one fact alone

underlines just how cynical the government is in trying to give itself the veneer, the cloak, of doing something in terms of road safety.

As I indicated at the outset of my remarks, the ultimate decision on whether or not we support this bill will strongly depend on the advice the government provides about whether or not the concerns that have been raised in the house today are well founded or not and whether in fact it is the case that due to its shoddy drafting and rushed nature this bill has the unintended consequence of making an offender of someone walking to their vehicle with a can of beer in their hand.

Mr BARBER (Northern Metropolitan) — As previous speakers in this and other road safety debates have noted, there has been a long-term and consistent approach to road safety in the state of Victoria over a very long time. The public's expectation is that deaths and injuries associated with the transport system will continue to decline in absolute numbers, even though in relative terms car ownership and the amount of driving will continue to increase.

For that reason, over many decades — for as long as I can remember — we have had a road safety policy that has been scientific and evidence based, that has attracted high levels of public support and understanding, that has had a consistency to it which has continued over many changes of government and political parties, that has been message tested before it has been put out there to the public at large and that has been consistent in its public messaging as well as its objectives. It has also been multipartisan. This bill does not appear to be in that category.

As Mr Pakula quite rightly pointed out, in that other important area of speed enforcement and speed cameras the coalition has got form in attempting to undermine it while never quite coming out and saying what it is that it will do. Hence the rapid switcheroo we have seen from the government in some areas, not only in its rhetoric but also in its management of speed cameras since it arrived in government.

Today we are talking about alcohol. That inevitably brings us to the issue of driving associated with both entertainment and late-night activities. The fact is that public transport is much safer than driving by any measure. In fact when we look at accidents that occur associated with public transport per hour or kilometre of exposure we can see that travelling by train, for example, is six times safer than travelling the same distance or for the same amount of time, roughly speaking, by car. If the public's expectation is that there will be a continuing decrease in the absolute numbers of the road toll, then the way we are going to achieve that, in my view, is by a rapid increase in public transport provision, particularly associated with entertainment activities and precincts in relation to late-night activities.

When it comes to the provisions of this bill we have to ask: exactly what is it that the government believes it is going to achieve and on the basis of what approach to road safety? The second-reading speech simply says that it is inconsistent with the road safety message to the community regarding drinking and driving that a driver can lawfully consume alcohol while driving a vehicle in Victoria. The road safety message to the community that has been driven home over a very long period is that there is a .05 blood alcohol level that drivers should not exceed. That is why we have great big police buses with giant .05 numbers on the side of them. If we are not delivering that message through this bill, what message are we delivering?

I think there are two possibilities. One is that the government is suggesting, although not yet legislating for, the proposition that we should have a lower than .05 blood alcohol level or possibly even, as I think is now the case in some other countries, a .00 blood alcohol level.

There is no doubt that as soon as you have had your first drink, including a drink that you might have while you are driving, you experience some degree of impairment. You might go home, as you may do at the end of tonight, pop open a bottle of wine and have a glass with dinner. Instantly you will feel slightly more relaxed. That is because the effect of alcohol is to suppress the activity of your cerebral cortex and make you feel better in that way. That is the reason that consuming alcohol, while impairing your abilities, actually increases your confidence, as many have found out over the years. It is a contradiction. It could be confidence in relation to any endeavour. It is the sort of thing that makes you think that it is a brilliant idea to dance on top of a police car on New Year's Eve, but in fact it is a very bad idea to do so.

There is thus an argument for reducing the blood alcohol content limit from .05 to .00, as some jurisdictions have done. In relation to P-platers and learner drivers it is .00. That may be the direction the government is heading. It may be looking at the degree of impairment you experience when you consume alcohol and signalling that it is heading towards a .00 approach.

The alternative is that the government believes you are distracted when drinking whilst driving because you are

consuming alcohol. After all, we have seen other legislation brought before the house that prevents you from operating a mobile phone while driving. In the mobile phone example there is a strong evidence base to show that people are considerably distracted while using their mobile phones. We have also seen tragic accidents where people have been killed and the clear reason has been driver distraction involving a mobile phone. If the government is using that as its policy logic — that this is about the distraction of consuming alcohol while driving — it should note that it is equally true that consuming coffee while driving, or carrying out a range of other activities, could impair your ability to drive. I have personal acquaintances who have been hit by cars because the driver was driving one-handed while drinking a coffee. That is a real proposition.

However, whichever of the two evidence bases the government is using, you would have expected some of that logic to have been brought forward and presented, rather than having the bill appear in the way it has. We now famously know a statement made by a journalist led to a thought bubble by the Premier, a political commitment was made and then some poor sod had to sit down and work out what the boss meant and how to turn it into law. That, as I said, is an extremely poor approach to policy-making. When it is done in the area of road safety it is extraordinarily serious.

I turn to the provisions of the bill and the difficulties the Greens have with the way the bill has been drafted. I have to say I was able to get this information from a 15-minute phone call with a legal practitioner who specialises in this area. I am sure he does not want to be named, but the Premier needs someone like him working for him to knock down the crazy ideas the Premier might have. It is 'the fish John West rejects' principle at play here. You might have 100 good-sounding ideas a week, but your policy advisers will talk you out of 99 of them, and the one you bring forward will be a political gem.

The way the legislation will work — and the way we have been constantly told it will work over the last couple of weeks, before anybody saw a copy of the bill — is that it will be an offence to consume intoxicating liquor while driving. Everybody I have spoken to has assumed that means driving a vehicle or operating a vehicle — driving it down the road or at least being in control of the vehicle. It has been interesting to talk to members and others about their view of the law in relation to being in control of a vehicle. There is a kind of urban mythology that if you are in the front seat of your car, you have the radio or the heater on or something like that but you are not going anywhere and you have a .05 blood alcohol reading, you could be charged for that.

When I jumped on the internet and looked at some of the blogs and discussion groups where this is talked about I saw some people say that if you want to crash out in the back seat of your car to sleep it off, you should put your car keys underneath the car, because if you do not have your car keys in your pocket, you are not in charge of the vehicle and therefore you cannot be done for being over .05. There is a lot of confusion amongst the public about this area of law; unfortunately we will get more confusion as a result of the bill. It is possible that the government itself was also confused in the drafting of the bill. Alternatively, we might find that its intention was for the bill to work in the way I allege it will work.

It all comes down to the definition of driving in the legislation. New section 49B(2), inserted into the principal act by clause 4 of the bill, says:

> For the purposes of subsection (1) —

that is, the offence of consuming intoxicating liquor while driving —

> a person is not taken to be in charge of a motor vehicle unless that person is a person to whom section 3AA(1)(a), (b) or (c) applies.

That is referring to section 3AA of the principal act, the Road Safety Act 1986. We need to look at the principal act to see that section 3AA, headed 'Circumstances in which person is to be taken to be in charge of a motor vehicle', says:

> (1) Without limiting the circumstances in which a person is in charge of a motor vehicle, the following persons are to be taken to be in charge of a motor vehicle for the purposes of this Act —
>
> (a) a person who is attempting to start or drive the motor vehicle;
>
> (b) a person with respect to whom there are reasonable grounds for the belief that he or she intends to start or drive the motor vehicle;
>
> (c) a commercial driving instructor while the person whom he or she is teaching to drive …

et cetera, and:

> (d) an accompanying licensed driver …

It is only (a), (b) and (c) that will be picked up by the bill.

There are two possibilities. One is that you are driving the motor vehicle; the other is that you are in charge of

the motor vehicle. There are a number of ways to be in charge, and one of the ways is if there are reasonable grounds for the belief that a person intends to start or drive the motor vehicle. It is not about the actions you might be taking, it is not about the proximity to the vehicle; it is actually about your intention — about a mental state. If you intend to drive that vehicle, then you are in charge of that vehicle and you will be caught out by this provision.

When thinking about a.05 blood alcohol reading or drunkenness, this is quite an appropriate provision. In my view if some guy is staggering around a car park as drunk as a skunk with his keys in his hand and heading for his car, with every intention of getting in that car and driving, then he has formed the intention of committing the illegal act — and that is the same thing. You should not have to wait until the guy has actually turned on the ignition and left the car park to apprehend him and get him for drink driving. In this case it is all about consuming alcohol — not even holding a stubby in your hand or putting it between your legs or in the cup holder, but actually consuming it: the act of drinking it.

The bill says that once you have formed the intention to drive your car, you should not be drinking. We will have to explore with the minister in committee exactly how that intention can be formed, how the courts have interpreted that, and how other jurisdictions have looked at his proposed law, because it seems to be pretty different to the popular understanding of the bill that has developed in the last couple of weeks. We do not yet know whether it is the government's intention that it work this way, whether it has just made a mistake in the drafting or whether perhaps I have made a mistake with my understanding. I am happy to have that explained to me.

For that reason it is disappointing and concerning that the government has wanted to rush through this legislation in the way it has and that a draft version of the bill has been available only in the week in which we are sitting. When it is legislation to correct past administrative problems with high consequences and it is a matter needing urgent action, we are always prepared to consider the progress of a bill, but in this case even on a casual analysis of the bill there seems to be a problem that we are going to have to spend some time discussing in the committee stage.

Mr ELSBURY (Western Metropolitan) — It is my pleasure to rise to speak to the Road Safety Amendment (Drinking while Driving) Bill 2011. I do not believe for a moment that anyone in this Parliament would ever want to devalue the road safety messages of this state. To date in this year alone we have faced 267 deaths on our roads. Families have been shattered. Loved ones have been lost. Workmates are no longer there to have a laugh, and team mates will not be padding up or getting first serve this summer. Two hundred and sixty seven is not a number; it is lives.

We spend a great deal of money on advertising and education campaigns every year telling drivers to slow down, adapt their driving to the conditions, make sure their car is safe to drive, and of course that 'If you drink and drive you're a bloody idiot'. This final message is one that I will emphasise for the next few moments.

According to the Transport Accident Commission in 2009, 42 drivers and motorcyclists had a blood alcohol content of over .05 per cent when they were killed. Of those, 79 per cent were male, 67 per cent were in a single-vehicle accident, and 48 per cent were under the age of 30. They had all doubtless heard the message and ignored it. An inconsistency with the drink-driving message remains, and that is surrounding the ability of someone to drink liquor while operating a vehicle. Currently, without committing any infringement, a driver can consume a stubby or a can of pre-mixed drink while driving. This flies in the face of the anti-drink-driving message. It says, 'Don't get behind the wheel drunk but have one on the way'.

I can honestly say that I have never had a traveller — a drink — while in control of a car. It has never crossed my mind that it was a clever thing to do because as someone in charge of a vehicle it is incumbent upon me to keep my wits and drive to the best of my ability. Some people may be out in the public domain saying that tradies enjoy a coldie after a day's work and the traveller is their reward, but I am fairly sure that a tradesman is capable of the self-control needed to either have one down at the pub or wait until they get home. I cannot think of an instance where urgency would dictate the absolute necessity to down an ale immediately.

To be honest, I thought it was already an offence to drive while drinking alcohol. In my opinion, drinking alcohol while driving flies in the face of the road safety message. This is the exact sort of inconsistency in the law which needs to be dealt with without hesitation, especially in the lead-up to the Christmas and New Year holiday period.

This legislation will introduce two new offences under the Road Safety Act 1986: consuming intoxicating liquor while driving a motor vehicle and consuming intoxicating liquor while accompanying a learner driver.

On the first point, I think I have made it fairly clear that on the issue of driving while drinking there seems to be an inconsistency in a legal framework which bans driving with a blood alcohol level of .05 per cent. To be pumping a depressant drug into the body when it needs to be alert seems self-defeating. It is also possible to enter a car with less than the .05 per cent blood alcohol limit and in the process of drinking while driving breach the acceptable threshold — a situation which is illegal now but which is not assisted by allowing alcohol to be ingested while driving.

On the second point, what kind of message do we convey to young drivers if we provide them with the experience they need while sipping a jar? We tell them not to drink and drive, but in reality the instructor can crack open a can for a slurp. To me it is a poor example to be setting. Add to this the need of the instructor to be alert while assisting a learner driver, and the equation which allows an alcoholic drink to enter the process does not add up.

The proposed legislation states that intoxicating liquor cannot be consumed while driving. This is in reference to beer, spirits and wine. There are of course other drinks — like lemon, lime and bitters and ginger beer — which contain trace amounts of alcohol that do not fall under the intoxicating category.

Mr Eren, the member for Lara in the other place, raised the issue of chocolates which contain alcohol. Chocolates with an alcohol-based filling are also not covered. The *Oxford Dictionary* defines 'intoxicate' as 'to drink or excite beyond self-control' — an issue I think the opposition has at times. The definition of 'liquor' is 'an alcoholic drink or other liquid'. What we are concentrating on is the liquor which can tip people from being legitimately sober to drunk.

Victoria is normally a leader in road safety measures, but we are not going it alone on this measure, as other states already have in place a provision for not drinking while driving. Rule 298-1 of the New South Wales Road Rules 2008 states:

> A driver must not consume alcohol while driving.

Queensland, probably considered the most ocker of states, has in place the Transport Operations (Road Use Management — Road Rules) Regulations 1999, of which section 300A states:

> The driver of a vehicle must not drink liquor while driving the vehicle.

Tasmania really goes into the issue in its Road Safety Alcohol and Drugs Act 1970, with section 7 stating:

> (1) No person shall drive a motor vehicle while … consuming intoxicating liquor.
>
> (2) No person shall drive a motor vehicle while any person in the vehicle is, to his knowledge, consuming intoxicating liquor.
>
> (3) No person shall, in a motor vehicle that is in motion, consume any intoxicating liquor.
>
> (3A) Subsections (2) and (3) do not apply to a person in a public passenger vehicle as defined in the Passenger Transport Act 1997 if there is a liquor permit in force under Division 3 of Part 2 of the Liquor Licensing Act 1990 in respect of that public passenger vehicle.
>
> (4) A person who contravenes any provision of this section is guilty of an offence.

Mr Barber interjected.

Mr ELSBURY — The laws that are proposed in this bill today do not go as far as Tasmania's, Mr Barber. The issue foreshadowed by Mr Pakula and then articulated by Mr Barber regarding a person walking towards a vehicle relates to the acts of an intoxicated person who intends to drive a motor vehicle, and, as Mr Barber said, it only makes sense to stop someone from trying to enter a vehicle and drive away if they are intoxicated. This does not relate to drinking while walking towards a vehicle. We will seek to close an anomaly in the laws of this state which allows drinking alcohol while driving when every effort in the community and the laws surrounding alcohol consumption are working towards a 'Don't drink and drive' goal.

As the only member of this house who is on the Road Safety Committee, I have no hesitation in supporting this bill as it supports the ongoing road safety messages that this and many previous governments have promoted for many decades. I support this bill.

Mr LEANE (Eastern Metropolitan) — I would like to reiterate, as Mr Pakula has stated, that the opposition does not oppose this bill, but I would like to question whether this is the biggest, most urgent road safety initiative, as the government is flagging and beating the drum about, that can be managed at this point. I agree 100 per cent with Mr Elsbury's sentiment regarding the tragic loss of human life as a result of people driving over the blood alcohol limit. An even more evil act is when these people driving over the legal limit kill innocent people along the way. The opposition in no way condones anyone drinking over the legal blood alcohol limit, and I do not condone that myself.

In the debate in the other house there was an attempt to draw some analogies around someone who drove without a licence whilst completely intoxicated. This

bill is about people physically drinking from a receptacle containing alcohol whilst driving. The point that I was making during the week was if the government is saying this was a loophole all along and that this should not have happened in the past 11 years under Labor's watch, then people, including myself, who have admitted that they have stopped at a bottle shop on the way home from work or from cricket — as Simon O'Donnell from MTR (Melbourne Talk Radio) said — or from wherever, bought one stubby and drank it on the way home on a hot day after a long day of work could be labelled irresponsible. It seems to me that saying it is a loophole has just labelled as irresponsible tens of thousands of people who have done just that in the past 11 years.

Mr Elsbury — It has not been an offence.

Mr LEANE — Mr Elsbury says it has not been an offence, but then why is it a loophole? There is such an urgent, hurried rush to fix a loophole with this bit of legislation that it may have actually caused a loophole, as Mr Barber has just said. We are now saying it was not a loophole, that it has never been an offence. That is exactly right. It has never been an offence. The statements I have made during the week are in defence of men and women who had no intention of drinking to excess and no intention of being irresponsible to themselves, their passengers or other drivers but just had one cold stubby on a very hot day on the way home.

I was up-front. I worked on fixing traffic lights for half a dozen years, and when I was at essential services I would sometimes have to work in the heat for 10 hours, and there were a few times when I pulled into a bottle shop, bought a stubby and drank it on the way home. I am more than comfortable to admit that, and I am sure there are people in both chambers who have had occasion in previous lives to maybe do the same, whether it be, as Simon O'Donnell said on MTR, after playing cricket or whatever. The government needs to be clear as to whether those people have been irresponsible, because if the government is saying this is a loophole, then every one of them would be labelled irresponsible by the government.

Mr Elsbury — I expected better.

Mr LEANE — You say you expected better from me, but I am just being honest about the real world. We can all live here on 'Planet Spring Street' and pretend that certain practices do not happen and that only really irresponsible people have done this, but that is not the case. As I said, the problem we have here is if this is an urgent bill, and as I said, we are not opposing it, and if it helps, then well done to the government. But in rushing in an urgent bill and stating that it is to fix a loophole, the government has introduced a bill that looks like it will cause another loophole. This urgency in trying to fly the flag and show that this government is doing something in the area of road safety is mere window-dressing.

Labor has had a proud record on consultation in regard to road safety in the time it has been in government. In regard to consultation with specialist groups in forming policy, it consulted with the Monash University Accident Research Centre, the Transport Accident Commission and all sorts of specialist groups. I am encouraged that the road toll has been on the decline, and I hope that it will never increase again. I am sure the government will genuinely endeavour to try to maintain that decline, but in regard to this particular piece of legislation, as an urgent bill and a cure-all, the government needs to do better.

The government had the opportunity to fund the road safety experience centre, but that was the baby of John Brumby, the former Premier, so the government did not want to fund it. I would urge the government to look into the area of early driver education; I have said this before. There is a non-government organisation in Kilsyth that has a 5-kilometre road with a set of traffic lights and a level crossing. Year 10 students frequent that school before they get their L-plates. They spend a lot of time in a classroom talking about road safety, then they spend a couple of hours driving around with an instructor and getting advice from the instructor on how to drive a car, to steer and to brake. I would urge the government to look at this school. This is the low-hanging fruit.

The thing about road safety is that it is about better roads, better cars and better drivers. There is low-hanging fruit that is much easier to attain than rushing out and saying to the tens of thousands of people who have over the last decade stopped and got that one cold beer, driven home and drunk it that doing so made them a villain. As I said, we are very interested in Mr Barber's concerns around the implications of the bill and will be listening intently in committee stage as to where it is going to go.

Motion agreed to.

Read second time.

Committed.

Committee

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Before we proceed I ask that by leave Mr Elsbury share the table with me.

Leave granted.

Clause 1

Mr BARBER (Northern Metropolitan) — I would like to ask a question of the minister. Is it the government's intention or move to bring us towards a.00 per cent blood alcohol level for the state of Victoria?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — We have a bill before the chamber, the Road Safety Amendment (Drinking while Driving) Bill 2011, and we are very pleased to present it. I would be happy to take questions related to this particular bill.

Mr BARBER (Northern Metropolitan) — My question relates directly to the mechanics of the bill. If the government is not willing to address the rationale for the bill, I would like to ask whether it believes that people having consumed some alcohol are experiencing some level of impairment with relation to their driving, and is that the reason that this provision has been constructed in the way it has?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. It is fair to say that the Attorney-General made it clear in the second-reading debate that an important aspect of these offences was to send a clear and strong road safety message. Clearly there has been a strong focus in road safety initiatives in Victoria on encouraging drivers not to drink and drive. The offences for drink driving are strict. The legislation before the chamber is to deal with the offence of consuming intoxicating liquor while driving. It is a straightforward amendment to the Road Safety Act 1986, and it should be seen as such.

Mr LENDERS (Southern Metropolitan) — I would like to pursue the same line that Mr Barber has, because I think it is a particularly pertinent line. We are dealing with the purposes of the bill, and I understand the minister's description of the technical nature of what is proposed in the latter clauses. I would be happy to stand corrected, but every bit of drink-driving legislation that I can recall having gone through this place or having been addressed in the state of Victoria since the early 1970s when the first legislation of this kind came in has always been based around an architecture of an acceptable limit.

Mr Barber's point about the purpose of this bill is that it is effectively a total prohibition on alcohol, whereas every other piece of legislation has been a cap on the amount of alcohol consumed. I put it to the minister that it is absolutely relevant to ask, 'Does this purpose extend to a policy objective of zero alcohol on Victorian roads?', because that would make it different from every other piece of alcohol-related road safety legislation that I can recall. The specific question is: is the purpose of this bill to place a total prohibition on alcohol just in these circumstances or is the policy framework broader?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question, although it is ridiculous because, in regard to this notion that there is a prohibition, he fails to remember that there is a prohibition on learners, bus drivers, truck drivers and those who are instructing learners to drive. This is a notion that all of a sudden we are going to bring in a prohibition when this law has been applied in every other state where they still have .05 laws. I take offence at the fact that Mr Lenders has implied that we are going to zero tolerance when already specific drivers in this state are prohibited from having any alcohol at all in their system while driving. On the notion of Mr Lenders that this will be future government policy, I think most Victorians would take offence at the inference he has made and would reject it outright.

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! As I have explained to the minister before, the committee of the whole is an opportunity for members to ask questions. It would be better if people avoided provocation and comments such as the minister's opening remarks in response to the question.

Mr LENDERS (Southern Metropolitan) — I want to explore the discussion on this a bit further. I note the minister's intemperate language and the minister's abuse in response to a question. I put this to the minister: the opposition has facilitated this bill going through both houses this week. I will not make any adverse comments on why, 12 months into a term, the government suddenly considers it so important to put this bill through so urgently — that is, to put it through the Parliament in three days. There has been no opportunity, as there usually is, for the bill to lie over for two weeks so that people can inform themselves, talk to stakeholders and do all those other things. What

we have here is the government coming in and with sheer arrogance saying, 'This needs to be done'.

On clause 1 of the bill, which goes to the purpose of the bill, Mr Barber asked whether the purpose of this bill is to bring alcohol levels in the state to zero. It is a legitimate question, particularly in the context of a parliamentary session where the government in good faith has said, 'It is urgent that we get it through'. The opposition has had the audacity — the audacity! — to ask the minister a question. It has then been lectured about stupidity and all the rest of it and told how arrogant it is to dare ask the minister a question.

I put it to you, Deputy President, that it is a legitimate question. The minister's answer, which was that there are other pieces of legislation that provide for zero tolerance, was actually an appropriate response, and I accept the minister's answer. However, I will not in a debate let it pass that this arrogant government thinks it can come in week after week and ask both houses to drop all scrutiny and ram legislation through, and if anyone has the audacity to ask a question — to which, I repeat, the minister gave an appropriate answer — then we get a lecture about how we dare ask questions. We might as well just fold up the whole show and join the Ted Baillieu cheer squad and say, 'Fantastic leader, speak that we may be enriched!'. That might happen in the Liberal party room, but it will not happen in the Parliament of Victoria. We will continue to ask questions and we will not be intimidated by an increasingly arrogant and secretive government. I conclude my remarks on clause 1.

Mr BARBER (Northern Metropolitan) — The part of my question that I think the minister avoided was whether having any blood alcohol content or anything on the way to .05 creates impairment in a driver. I thought it was more or less settled science that one or two drinks, although they might not put you above .05, would nevertheless impair your ability to drive. That is the reason, I understand, that we have the learner driver prohibition, the commercial truck driver prohibition and all the other prohibitions that were just mentioned. The reason it is important is that the government, in answer, said that the bill was about sending a message. I got that from the second-reading speech and all the other commentary outside the chamber — that it is about sending a message. What I want to know is: what is that message?

Almost nobody is ever going to read this legislation. I have already illustrated from my own potted survey that most people do not understand anything about this area of the law except that they are not allowed to have a blood alcohol content above .05. There is the urban mythology that if you crash out in the back of your car and sleep it off, you could get done for being in control of a vehicle while over .05. If we are sending a message, it is very important to know what that message is. Is the message that, having consumed some alcohol, you are impaired from driving and therefore should not drive? Is the message that by consuming alcohol while driving you are distracted in the same way as in the use of a mobile phone, or is the government trying to send a message that we are moving steadily towards a .00 blood alcohol content for all drivers? If the minister cannot tell me that this is settled science — that there is some degree of impairment in relation to the consumption of alcohol — then I will accept that.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I again remind the house that the primary purpose of this bill is to implement an announcement by the Premier that Victoria would act to close the loophole in the current law that allows drivers to consume alcohol while they are behind the wheel, provided that they are below the specified blood alcohol limit.

Mr BARBER (Northern Metropolitan) — Until I am told something different, I will put that someone having consumed a stubby of beer does experience a degree of impairment and that that could be one reason why the government wants to bring in this legislation. An unintended consequence of the way this legislation might work is that someone who now understands they cannot drive while drinking might decide to skull their stubby before they get in the car. It will not be a traveller anymore; it will be, 'I'll have a quick drink because I know that when I get in my car I won't be able to drink anymore'.

Hon. M. P. Pakula — The 6 o'clock swill is back!

Mr BARBER — It could be something like that, anywhere between .00 and .05 at least. There could be an unintended consequence of this legislation in that people might now load up with alcohol before they get into the car.

Mrs Peulich interjected.

Mr BARBER — Not unless they are over .05. If the legislation's intended effect is to stop people from having blood alcohol levels between .00 and .05, it will probably not work, because people will now drink before they get into the car. How many people does the government believe are likely to be picked up under this new offence if the legislation passes? If the government does not have an estimate of that, can it tell

me how many people in states where this so-called loophole does not exist have been picked up for this offence over recent years?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I remind everyone that as we head into the 2011–12 Christmas-New Year holiday season we expect our police to be active on the roads in an effort to curb the road toll. The government's announcement of this legislation reinforces the road safety message prior to the commencement of the Christmas-New Year holiday period. Regarding how many will be apprehended should this legislation pass and then be enacted, you would hope there would be none, as you would hope that no persons would be picked up for exceeding the prescribed blood alcohol limit.

It would be remiss of this Parliament and the people of Victoria to allow this loophole to continue. The Premier made it clear that this is a loophole in the current law that allows drivers to consume alcohol while behind the wheel, and we do not move away from that. That is the reason for this legislation. I also point to some of the interjections about the 6 o'clock swill being back. They are inappropriate in the circumstances, as we are heading to the holiday season. We expect members of Parliament to be respectful of the issues the police will confront over the Christmas-New Year holiday season.

Mr LEANE (Eastern Metropolitan) — Taking into account the minister's answer to the previous question regarding this being the government's vehicle to get out a road safety message before the Christmas period, what funding provisions does the government have to raise this awareness with TV and newspaper advertisements? Taking into account the valid point Mr Barber made about it being only us who will read the bill, if this is a concerted trigger to get a road safety message out this Christmas, what is the size of the funding allocation to get the message out so that all Victorians understand this legislation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. Obviously the message is a matter that Victoria Police will deal with. In addition, it has been extensively reported by the *Herald Sun*, the *Age*, other papers, the ABC and a range of other media outlets. As we know, the media is crucial in terms of the holiday season message, and we would expect it to be supportive of this legislation should it be passed by this chamber.

Mr LEANE (Eastern Metropolitan) — I want to make a comment about the minister's answer and ask a separate question arising from that. I would have thought the government would be prepared to put its money where its mouth is. If this were all about putting out a message, I would have thought there would be some sort of contingency — as Mr Barber said, it is only us who will read this bill — to make sure there are TV ads, newspaper ads and other ways to advertise this new and urgent road safety message. We understand that the Transport Accident Commission (TAC) and the Monash University Accident Research Centre were not consulted, so the question I ask the minister is: from where did the government draw expert road safety advice about this being the best way to introduce a new road safety measure?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Continuing on from the previous question, obviously a campaign will be rolled out in due course, but that will be determined by the appropriate mechanisms of media releases et cetera through the police, the TAC and others. I also make the point that these provisions are already in place in New South Wales and Queensland, and I put on record a media interview from Channel 9 in which a New South Wales police officer said that in New South Wales drinking alcohol behind the wheel is now illegal and that the state is now looking to record its lowest road toll on record. The officer said it has had a positive effect on roads in New South Wales. It is fair to say that the outcomes are beneficial.

Mr BARBER (Northern Metropolitan) — I return to my earlier question. Mr Dalla-Riva said he hoped there would be no offences in Victoria, just as we would all hope there would be no drink-driving offences in Victoria. The fact is that there are hundreds of drink-driving offences and hundreds of detections whenever police are out there. If the government has no estimate of the likely number of offences that will occur in Victoria, can the government tell us the number of actual similar offences that have occurred in recent years in New South Wales, Queensland and Tasmania under the laws the minister has referred to?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I did not think we would have that figure, but we actually do have figures for New South Wales from 1 January this year to mid-November. There were 205 infringements in New South Wales for the same offence.

Mr BARBER (Northern Metropolitan) — I thank the minister for that answer because it is quite enlightening in terms of the debate that we are having. I want to come back to the offence and what the government believes it will prevent by introducing this

offence. I alluded to the issue of driver distraction. We have had some high-profile campaigns and new laws in Victoria designed to limit the amount of distraction that a driver faces. A significant proportion of accidents are detected as being due to driver distraction. There is the ban on mobile phones. There are the ads I have seen on TV with the car going down the country road with all the young people mucking around in the back seat and the next thing you know, the car has gone off the road.

Has the government obtained any evidence or sought to obtain any evidence that the act of drinking — that is, of putting the alcohol up to your lips — is causing driver distraction that is leading to accidents in the same way that putting a mobile phone up to your ear and talking to someone causes accidents? Is that the basis on which the government is bringing forward the legislation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I have sought advice. The amendment in the bill is not about the consumption of liquid; it is that a person must not consume intoxicating liquor — that is the specific offence — while the person is driving a motor vehicle or is in charge of a motor vehicle.

Mr BARBER (Northern Metropolitan) — I still have not heard the rationale for why this measure is intended to work the way it is nor have I seen the evidence base that leads into it. Those are very important issues when it comes to the mechanics of the bill. I will be ready to move on to a later clause in a moment.

I want to ask one final question in this area. Mr Dalla-Riva's second, Mr Elsbury, in his contribution referred to the Tasmanian legislation, which goes one step further. Not only does the Tasmanian legislation say a person cannot drive a motor vehicle while consuming intoxicating liquor, it also says that no person shall drive a motor vehicle while any person in the vehicle to the driver's knowledge is consuming intoxicating liquor — that is, it is an offence to drive a vehicle while someone else is drinking in the car. It is also an offence for the passenger to drink while being driven.

From the contribution of Mr Elsbury, is the government telling us that it is headed down this path? Are we going to get these latter two clauses in relation to passengers added to the legislation at some future date, or is the government saying that this is where it stops — it stops with drivers and we are not going to have further loopholes referencing our legislation against Tasmania's?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Just talking to Mr Elsbury, my understanding is that what he said was in relation to what drink-driving laws were in other states. When I referenced the identical laws I quoted those in New South Wales and Queensland because I am aware that Tasmania's laws are slightly different. The intention of the government is not to head in the Tasmanian direction but to be in line with New South Wales and Queensland.

Mr BARBER (Northern Metropolitan) — To be clear, whatever it is that the government believes is unsafe about drivers consuming alcohol while driving, it is not worried about passengers consuming alcohol in a moving car?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — My own personal opinion is one thing, but the amendment in the bill before the house says:

> A person must not consume intoxicating liquor while the person is driving a motor vehicle or is in charge of a motor vehicle.

In those circumstances, that new section being inserted will not apply to passengers.

Mr LEANE (Eastern Metropolitan) — I ask the minister: in introducing this new provision into the act what was the rationale of the government for making this offence punishable by a fine rather than anything further, considering the road safety message the government is saying it wants to convey? Is it a fact that someone could be caught by the police once a week for a year, fined under this provision every week and never actually lose their licence?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The number of penalty units imposed for committing the offence will be 10 penalty units. The advice I have is that currently that is a $224 fine. If Mr Leane is contending that somebody could get an infringement fine for this offence every day, then I suggest, firstly, that it would be a very expensive way to be silly in their approach because they would be continually repeating the offence, and secondly, that $224 times five would make it extremely expensive for anyone by the end of the week.

Hon. M. P. PAKULA (Western Metropolitan) — With respect, the minister did not answer the question. Let me put it simply: is it not a fact that regardless of how often a person is fined, whether that is all in one

week or over a year, they cannot lose their licence for this offence?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Ultimately the process could lead to the offender losing either their car or their licence.

Hon. M. P. PAKULA (Western Metropolitan) — If that is the case, the minister has just provided the Parliament with different advice than was provided by the departmental officers in the briefing held for the opposition on Monday. The officers were adamant in that process that there was no circumstance in which a driver could lose their licence. Given that the minister has now in the committee stage provided the Parliament with new advice — that is, that ultimately the driver could lose their car or licence — can the minister explain the circumstances in which that could occur?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — For anyone who fails to pay infringement notices ultimately it would be a matter for the court to determine. The court could determine to either suspend their licence or take their motor vehicle. Whilst I know what Mr Pakula is trying to do in drawing a long bow, for anyone who is in receipt of an infringement notice there is the possibility that a court at some point could either suspend their licence or take their car. It needs to be taken in the context of infringement notices not specific to this offence. Mr Pakula asked whether an offender could lose their licence. Ultimately they could, if they do not pay the fines. I am just asking: is Mr Pakula advocating that they do not pay the fines? I think Mr Leane indicated that he would prefer that they do not pay the fines.

Hon. M. P. PAKULA (Western Metropolitan) — It is completely inappropriate for the minister to verbal a member in order to get himself out of a spot.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — No, I am not.

Hon. M. P. PAKULA (Western Metropolitan) — The minister is verballing a member. So let us just be clear: do I understand correctly that if an offender does not pay the fine or any number of fines, ultimately they could lose their licence, but if they pay the fines, then there is no circumstance in which they can lose their licence for this offence?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Yes. Mr Pakula asked the question in terms of losing their licence, and I have answered it in terms of the process. Mr Pakula asked that question, and that is why I went to that answer.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4

Mr BARBER (Northern Metropolitan) — The offence that has been created is related to the consumption of intoxicating liquor. As the minister was a former police detective, would he be able to tell us what steps the police would have to take in order to prove that someone had consumed intoxicating liquor?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am happy that Mr Barber has referred to my previous occupation, but I will answer this in terms of the government. The drink-driving offences in section 49 of the act also apply to a person who is not only driving but in charge of a motor vehicle, usually someone attempting to commence driving or obviously about to attempt driving. Consistent with the scheme of the act, the offence of driving while consuming alcohol will also apply to a person consuming alcohol while attempting to start a vehicle.

Proposed section 49B(2) in the bill relates to the issue you are referring to. It has the effect that this offence will apply when a person can be taken to be in charge of a vehicle. So this offence will apply: where the offender is driving a vehicle, where the offender is attempting to start or drive a vehicle and where there are reasonable grounds for the belief that the offender intends to start or drive a vehicle. Whether or not a person walking to a vehicle can be taken to be in charge of the vehicle is a question of fact in each case. The police member must not only suspect that the person intends to start or drive the vehicle, the police member must have reason to believe that — that is, they must be persuaded of the truth of the fact that the person intends to drive.

Mr BARBER (Northern Metropolitan) — I thank the minister for that, but the minister jumped ahead and answered the question he thought I was going to ask rather than listening to the one that I did ask. What I wanted to know was: what does this legislation direct the authorities to say they must do in order to prove that someone is consuming intoxicating liquor? I will give the minister a hint: they have to prove the person is consuming it and they have to prove it is intoxicating liquor. So I am asking the minister: what steps will they have to go through in order to make out this offence? The minister said that so far this year 200 people have been charged with this offence in New South Wales.

What burden will it put on the police authorities, firstly, to prove you consumed the alcohol, and secondly, to prove it was alcohol?

The DEPUTY PRESIDENT — Order! I do not expect the minister will be able to answer the question in the 5 seconds left before business is interrupted for question time, so I invite the minister to respond to the question when we resume.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Kindergarten inclusion support services: eligibility criteria

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Children and Early Childhood Development. Has the minister instructed her department to develop new kindergarten inclusion support services (KISS) protocols for children with complex medical needs that will centralise decision making in head office?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — As the member knows, coming into the last election we promised an additional $10 million to allow additional numbers of children to access kindergarten inclusion support services. We did so by broadening the criteria to allow some other children access, and we are working on that now.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — This week a Lancefield family has been advised by the Department of Education and Early Childhood Development's Loddon Mallee office that their daughter is unlikely to start kindergarten next year because of the delay in finalising the new protocols that the minister has requested. I understand the process will involve all decisions now being made by the central office of the department rather than the regional offices. How many children with complex medical needs will miss out on starting kinder next year because the minister is tightening the eligibility criteria?

The PRESIDENT — Order! That question goes a little further than a supplementary, but on this occasion I will allow it.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — In fact we are not tightening any criteria because we are broadening the criteria and we are allowing an additional 246 children access to a KISS place. If the member has an individual case and she would like to forward the details to me, I would be happy to review that family's case to see if there is anything that can be done to assist them.

Health: public sector awards

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Health, who is also the Minister for Ageing, the Honourable David Davis, and I ask: can the minister inform the house of how the Baillieu government is recognising excellence in the public health-care sector?

Hon. D. M. DAVIS (Minister for Health) — I am pleased to respond to Ms Crozier's question, and I know that she is committed to the public health-care sector and supporting those who have made great contributions. I was pleased to attend the 2011 Victorian Public Healthcare Awards about two weeks ago. They are a very important set of awards that recognise the contribution of Victorians who are working in our public health-care sector and who have made extraordinary contributions and shown great dedication to our system.

Awards were put forward in more than 20 categories. Alfred Health won the metropolitan health service of the year, and Barwon Health won the regional health service of the year. That was a remarkable turnaround in the performance of Barwon Health from just a couple of years ago. It has taken some time for that turnaround to occur, but all Victorians, especially those in the Geelong and south-western region and the Bellarine Peninsula, would be pleased to see Barwon Health's remarkable efforts rewarded. Orbost Regional Health won the rural health service of the year, and that is a well-deserved award.

Mr Lenders — You won't even visit it, and you won't answer my adjournment matter asking you to visit it.

Hon. D. M. DAVIS — I have met with people from Orbost, I have to say. Doutta Galla Community Health Service won primary health service of the year. Emma O'Brien, who runs the music therapy program at Melbourne Health, won the Premier's award for enabling person and family-centred care, and the Centre for Palliative Care at St Vincent's Hospital won the Premier's award for translating evidence into practice. As I say, these are very important awards that I think the community can be proud of.

Particularly important was the new award category which recognises health lifetime achievements. It recognises people who have contributed to the public health system in Victoria over many years. The inaugural award winners were Professor Graham Brown, Ann Cook, Professor Francis Dudley, Professor Don Esmore and Dr Jennifer Johns. All have made outstanding achievements, had outstanding careers and committed very strongly to supporting the public health-care system. It is inspiring to see the level of commitment of people to our public health-care system. I was particularly pleased to present those new health lifetime achievement awards to those individuals. All Victorians can be proud. The recognition of people is a remarkable and important matter.

Employment: manufacturing and agriculture

Mr SOMYUREK (South Eastern Metropolitan) — My question is directed to the Minister for Employment and Industrial Relations, the Honourable Richard Dalla-Riva. Before the last election the current Premier described manufacturing and agriculture as the key drivers of the Victorian economy and promised that a coalition government would do all it could to support these sectors. Can the minister inform the house whether full-time employment in the manufacturing and agriculture sectors has gone up or gone down over the past year?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. The coalition has been very supportive of the manufacturing sector, and our election commitment was to ensure that we had a detailed examination and review of what was necessary for manufacturing well into the future. We have not taken the approach of the former government, which was to see extensive job losses in the manufacturing sector. We have heard time and again in this chamber about the importance of the manufacturing sector and the importance of the jobs it generates.

I am glad Mr Somyurek has asked the question, because I was just looking at the Bendigo *Advertiser* yesterday. It spoke about employment and the growth of jobs in manufacturing. It said about Bendigo's multifaceted economy:

> … the manufacturing and construction sectors had stayed strong during turbulent times.

In fact Bendigo's jobless rate dropped. It has the lowest unemployment rate of any regional city after a fall of almost 2 per cent. What we are seeing is the resilience of manufacturing in this state.

But today's *Australian Financial Review* also spoke about the resilience of the manufacturing sector. Its article starts off:

> Manufacturing did its bit for growth in the September quarter …

What we are seeing is a turnaround in the manufacturing sector. What we see from those opposite is the manufacture only of doom and gloom. In the 10 years that the former government was in office it let the ball drop, and that is not how we saw the future of manufacturing.

Earlier this week members heard the government's announcement about Olam Orchards Australia. We have had a whole series of announcements in terms of the manufacturing sector. We have had announcement upon announcement — for example, we announced the biggest automotive investment in two decades here; that was Nexteer Australia. That was a $126 million investment with 250 jobs for Victoria. We also see that Kraft is employing more staff. Danone's new dairy processing plant is providing 50 new jobs. We recently saw an announcement by the Honourable Gordon Rich-Phillips about an ICT company development which will mean 100 new jobs in Victoria.

We are about trying to ensure that there is resilience in the manufacturing sector. We are about ensuring that the manufacturing sector becomes more productive, more competitive, more global in outlook and more innovative. We have had a review undertaken by the Victorian Competition and Efficiency Commission, as we have explained. Unlike the sham that occurred under the previous government, which took 700 days to release a statement that went nowhere, we have conducted the most extensive and detailed investigation undertaken by any government in this country into the challenges facing manufacturing. I have said before that not only have we been ahead of the pack but we now see the federal — —

Mr Somyurek — On a point of order, President, just to assist the minister, I did ask a simple question. I concede that there was a bit of a preamble in it, but in the 17 seconds remaining for him to reply, could the minister answer the question: has the number gone up or down?

The PRESIDENT — Order! As members would be aware, I am not in a position to direct ministers on how they answer questions. Mr Dalla-Riva does have another 17 seconds. Mr Somyurek suggests by his point of order that the answer he has sought will not require all of those 17 seconds to deliver, so the minister has time up his sleeve.

Honourable members interjecting.

The PRESIDENT — Order! Mr Somyurek also has the luxury of being able to ask a supplementary question.

Hon. R. A. DALLA-RIVA — We are very supportive of the manufacturing sector, unlike those opposite, who are only interested in manufacturing doom and gloom.

Supplementary question

Mr SOMYUREK (South Eastern Metropolitan) — During the course of the minister's answer Mr Drum made a comment about never asking a question that you do not know the answer to. In fact I do know the answer to this question. The Australian Bureau of Statistics data shows that full-time employment in these sectors has fallen by a massive 21 300 jobs combined over the last 12 months. Given that he has no plans for the manufacturing sector and the agriculture sector, is the minister responsible and indeed is he accountable for the loss of 21 300 jobs in the last year?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I note that the figure of 21 300 was referenced. I guess that is a national figure that Mr Somyurek is talking about.

Hon. M. P. Pakula — No, Victoria.

Hon. R. A. DALLA-RIVA — Victoria, is it? That is nice to know. It is nice to know the member is interested only in Victoria in terms of doom and gloom. We are obviously looking forward. We have a significant challenge — —

Honourable members interjecting.

The PRESIDENT — Order! I am having difficulty hearing the minister's response. I am most interested in that response, as I am sure are members. We will have a lot less noise from the members on the benches to my left.

Hon. R. A. DALLA-RIVA — We are facing difficult times in the manufacturing sector. We are trying to make sure that we have a sustainable manufacturing sector well into the future. But if you are talking about jobs and employment, since the Victorian coalition came to office 9400 new jobs have been generated in Victoria. We are actually ahead. Whilst those opposite may wish to downplay the manufacturing sector, we are actually — —

The PRESIDENT — Time!

Victorian Institute of Teaching: council appointments

Mr P. DAVIS (Eastern Victoria) — I direct a question without notice to the Minister responsible for the Teaching Profession.

Hon. M. P. Pakula — Why don't you whisper it to him?

Mr P. DAVIS — I would like the house to hear the question. Can the minister inform the house of recent changes to the governing arrangements of Victoria's teaching regulatory authority?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — I thank my colleague Mr Davis for that question. The Victorian Institute of Teaching (VIT) is a body well known to people in this house. It was constituted in 2002. On 29 November last week we saw the fourth Victorian institute council commencing its term. The shape of that council has changed as a result of legislation that went through the Parliament in 2010. There has been a reduction in the council size from 20 down to 12. That change to reduce those numbers had the bipartisan support of the Parliament.

Those 12 people comprising the Victorian Institute of Teaching council consist of 6 who are elected representatives of various bodies within the teaching profession, and I can announce to the house that the 6 people who were elected from various groups to form the new council were Leonie Sheehy, Mary-Anne Pontikis, Allen McAuliffe, Ian Johnston, Louise Heggen and Michael Butler. In addition, a further 5 people were appointed on the nomination of various bodies, and the people who are filling those roles are Anne Sarros, Debra Punton, Judy Petch, Gail McHardy and Professor Stephen Dinham. Finally, the 12th person is the chair of the council, and I have decided to appoint Don Paproth. Don has had 43 years practising as a teacher, as a principal and as an officer of the department and has served education in Victoria extremely well, and I am sure his appointment will be well received by all.

I particularly want to pay credit to the outgoing chair of the VIT council, Susan Halliday, who has been chair since 2002 and has done a fine job in steering this organisation through from its inauguration to where it stands today, and I publicly acknowledge the significant contribution she has made to the Victorian Institute of Teaching.

Members will also be aware that the Auditor-General submitted a report on the Victorian Institute of Teaching to the Parliament just yesterday, and in general terms the Auditor-General reflected positively on VIT and the function it is performing. I will quickly quote from the audit summary, where the Auditor-General said:

> The community can be confident that teachers in Victorian schools are appropriately qualified, suitable to teach and competent in the English language.

He goes on to make some generally positive remarks about the role VIT has played. He makes some important recommendations too for areas of improvement that are needed. One of those recommendations appears on page viii of his report. It states:

> VIT has recognised that only around a quarter of teachers have a positive attitude to it, and that it needs to foster an improved appreciation of the regulatory role.

I have to say that I concur with that view, and indeed I met with the VIT council at its first meeting and that fact was discussed. The council acknowledged that it needs to build good relationships again with the teaching profession and look towards a greater degree of customer service provided to them.

VIT has proved to the Auditor-General that it is a very good regulator of the system, and we should have confidence in the role it has as a regulator, but it needs to improve its customer service focus, and that is well understood by the new council. I congratulate those who have been appointed and wish them well in their task.

Community sector: wages

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Employment and Industrial Relations. There are reports this morning that officers of and counsel for the state government are down at Fair Work Australia arguing against the joint submission of the commonwealth and the ASU (Australian Services Union) in the pay equity case and are in fact arguing against the pay equity case. Are those reports correct and, if so, exactly what are his representatives arguing in favour of?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question because this is an important issue. As we said before the last election and maintain now, the government values the work done by the community sector workers, predominantly women, and we acknowledge that they are often doing incredibly physical and demanding work.

We have always stood by our election commitment to provide $200 million towards the outcome of the case. We have always stood by that; we have made that very clear, as did Mr Brumby. The only difference of course was that we had money on the table as opposed to Mr Brumby, who had none.

I remind those opposite that the commonwealth and the ASU have made a joint submission to Fair Work Australia. We are aware of that. As we have said, we were disappointed that we were not consulted as the statement appears to be inconsistent with the earlier commonwealth submission around the contribution and the Queensland rates, and that is outlined in our assessment.

We have been studying the details to assess the financial impact of this agreement — and it has been reported in the *Australian Financial Review* today — and the commonwealth has indicated that it will contribute a fair share.

Hon. M. P. Pakula — Two billion dollars.

Hon. R. A. DALLA-RIVA — That is right, Mr Pakula; $2 billion — but we need to know whether that will be a full and continuing share. The details seem to be very vague, and the Victorian government has called on the commonwealth to provide an assurance that 'fair share' means full and continuing funding. We are committed to working with Fair Work Australia to reach a final determination and, as Mr Pakula indicated, it is currently before Fair Work Australia.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — Let me note for the record the minister's determination not to answer the question as to what his officials are arguing before Fair Work Australia today. Let me as a supplementary — —

Hon. D. M. Davis — On a point of order, President, this is question time. The member has an opportunity to ask a question, not go on with a diatribe, a rant and a lot of carry-on, which is not a question.

The PRESIDENT — Order! I am sure the member will proceed to his question.

Hon. M. P. PAKULA — During his substantive answer the minister said that before the election the coalition promised $200 million — —

Hon. D. M. Davis — What is the question?

Hon. M. P. PAKULA — I am coming to it. That is the same amount Premier Brumby promised. In fact Premier Brumby promised to fully fund the outcome, and the coalition promised to do the same, so my question — —

Hon. D. M. Davis — On a point of order, President, the member has not learnt. He needs to understand that this is question time and an opportunity to ask a question, not go on a rant. We had another 20 seconds of rant rather than the member asking a question.

Hon. M. P. PAKULA — On the point of order, I was actually providing crucial context to the question and, as I indicated before, responding directly to a comment made by the minister in his answer to the substantive question.

Hon. D. M. Davis — Further on the point of order, President, the member is not entitled to respond to a question. He is entitled to seek further information at question time but not to order a response.

The PRESIDENT — Order! This must be the last sitting day.

Mr Viney — On the point of order, President, clearly the Leader of the Government has no idea about the procedures and rules implemented by President Gould, President Smith and you in relation to supplementary questions, which make it clear that the preamble to a question must refer to the minister's answer or to the previous question. Mr Pakula was clearly referring to the minister's answer. He is therefore entitled to use however many seconds of the 1 minute allowed to ask the question that he requires, provided he asks his question before the minute is complete. He still has 17 seconds to go, despite the interruptions from the Leader of the Government.

The PRESIDENT — Order! In posing his supplementary question Mr Pakula gave me some concern as I felt he was moving towards debating the matter rather than providing a context for his supplementary question, which is to be asked within the next 17 seconds. As to whether this was, as the Leader of the Government described, a 'rant' — which is not the word I would have used — is perhaps a matter of perception by individual members in the context of this contribution.

There is no doubt that a member is entitled to provide some context for supplementary questions. There is absolutely no doubt that that context might rely on some information or clarification of the answer that has been given. In fact it is good to have a supplementary question that actually draws on what the previous answer was because it indicates that it is a genuine supplementary question and not a pre-written request.

From that perspective I think that Mr Pakula's position, in using most of the time he has available to him in which to frame his supplementary question, is okay except that, as I said, I did feel that towards the end Mr Pakula was entering the field of debating his point rather than providing a context. Mr Pakula now has just 17 seconds in which to put his question, and I am sure he will do that.

Hon. M. P. PAKULA — I will put this very simply: does the government maintain the commitment it made to fully fund the outcome of the Fair Work Australia pay equity proceedings?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I have said before, and as Mr Pakula would understand as he previously held this role, we value the work that has been done. We expect that community sector workers will be supported by this government. We have stood by our election commitment of $200 million towards the outcome of this case. We know of the backroom deal that was done between the commonwealth and the ASU. We were disappointed that we were not consulted. The matter is presently before Fair Work Australia.

Ordered that answers given by Hon. R. A. Dalla-Riva be considered next day on motion of Mr VINEY (Eastern Victoria).

Housing: affordability

Mr ONDARCHIE (Northern Metropolitan) — Merry Christmas! My question today is for the Minister for Planning, and I ask the minister if he could advise the house of what action the Baillieu government is taking to address housing affordability across Melbourne in 2012.

Hon. M. J. GUY (Minister for Planning) — Christmas cheer to the chamber. It is a pleasure to be asked the final question in 2011 by Mr Ondarchie, my colleague in Northern Metropolitan Region, and to advise the chamber of the very strong start the Baillieu government has made to tackling housing affordability and about some action the government is taking to ensure that housing affordability is at the forefront of this government's agenda in 2012 and that we are tackling that issue head on.

This government has taken action in the last few days to bring forward more land on exhibition than any other government in Victoria's history via seven precinct structure plans. The Botanic Ridge, Diggers Rest, Lockerbie, Lockerbie North, Merrifield West, Rockbank North and Toolern Park precinct structure plans have been put on exhibition by the Growth Areas Authority. There is also some other action I will follow up on a bit later regarding urban renewal.

This is just part of the Baillieu government's actions going forward to tackle the housing affordability crisis that it inherited. It is just some of the work that we are doing to ensure that Melbourne retains an affordability advantage and that enough supply exists in the Melbourne metropolitan market to pick up some of that demand that remains strong due to our population growth.

It is worthwhile noting that the Baillieu government's planning policies are broadly supported not just by industry and councils in the outer growth areas but also by the former Premier, John Brumby. As people on this side of the chamber, indeed the whole chamber, would know, it is important that Victoria has a planning policy that is broadly supported. We thank Mr Brumby for his support of the Baillieu government's planning initiatives in 2011 and going forward into 2012. But it is not just growth areas where this government is tackling affordability. As you would know, President, this year we have brought forward the establishment of the new urban renewal authority for Victoria, Places Victoria.

Honourable members interjecting.

Hon. M. J. GUY — I take up the opposition interjections on the name Places Victoria, because I noted that on the Labor Party's website there is a press release referring to the urban renewal authority as 'Better Places'. You would think that better places might be on their minds, given that Mr Thornley, who used to be in this chamber, went to work — —

An honourable member — Who is that?

Hon. M. J. GUY — Who is that? He went to work for Better Place. Who would get wrong the name of the premier urban renewal authority in Victoria? There is only one urban renewal authority in the state. Who would get that wrong? No-one else but the shadow Minister for Planning. The man who wants to run planning in Victoria cannot even get something as simple as the name of the urban renewal authority right.

Honourable members interjecting.

Hon. M. J. GUY — But it is not the only one, and I pick up the opposition's interjections. When it comes to land supply, which I have just talked about, I have received a number of freedom of information requests from Mr Tee with cheques addressed to me. I understand Mr Tee wants to submit an FOI application, but he might understand that the process is to submit the cheque to the department. He might want to give a cheque to me as the minister or to my office, but he might want to get that right as well and send it to the department. I simply say in relation to housing affordability that we are acting on housing affordability in growth areas. We are acting in urban renewal. I thank the opposition for a year of negativity. Its former Premier agrees with us. Places Victoria, the new urban renewal authority, is a name that the opposition in 2012 might want to learn.

Bushfires: fuel reduction

Mr LENDERS (Southern Metropolitan) — My question without notice is to Mr Davis, the Minister for Health, in his capacity as the minister representing the Minister for Environment and Climate Change. I congratulate the Baillieu-Ryan government on bushfire awareness week and congratulate the government on funding 225 000 hectares of burn-off, and I ask the minister: is it on track to deliver this commitment for this fire season?

Hon. D. M. DAVIS (Minister for Health) — I am happy to take on notice the details of that question. I am very aware that the government has taken significant steps to undertake more preparation for the bushfire season and to do fuel reduction, but as to the precise numbers and details, I will take those details on notice for Minister Smith.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I thank the minister for his answer. I am surprised that a senior member of cabinet, after bushfire awareness week, is not aware, as the Department of Sustainability and Environment website would show, that the burn-back target was 14 per cent at the start of the fire season; that has been the achievement target. Given the total failure of coming even remotely near the target — 30 000 hectares does not equal 225 000 hectares — what assurance can the minister give to the people of Victoria that this government has taken full action to have full preparedness in this state for a bushfire season with record fuel?

Hon. D. M. DAVIS (Minister for Health) — The government is very aware of the need to have proper

preparation for the bushfire season, and it has certainly been very active in trying to meet targets and to get preparation of all types in place. As for the precise details, I am happy to come back to Mr Lenders with greater detail of that from Minister Smith.

Housing: homelessness action plan

Mr DRUM (Northern Victoria) — My question is to the Minister for Housing, who is also the Minister for Children and Early Childhood Development, Wendy Lovell. I ask: can the minister advise the house of any further updates to the Victorian homelessness action plan?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for his question and his ongoing interest in the welfare of vulnerable Victorians and particularly in the implementation of the Victorian homelessness action plan, which I released on 5 October. I have been pleased with the positive feedback we have had from the peak bodies. There has also been a lot of interest from the sector in our action plan.

In October departmental staff ran a briefing session on the action plan for the family violence sector. They also ran five engagement forums across the state. Around 280 people attended those forums, from sectors including family and youth services, homelessness, health, mental health and drug and alcohol services. Since the forums many mainstream organisations have asked to meet with departmental staff to discuss how they can support the government's new directions on homelessness.

I am excited about the sector's response to the plan, including its response to our $25 million innovation action projects. I have made a call for submissions for the first stage of the innovation action projects. The response has been overwhelming, with the department receiving 150 requests for funding specifications in the first three days.

An information session was held on Tuesday regarding the funding specifications for the sector, with over 200 people attending that session. The closing date for submissions is 2 February 2012. I am excited about this opportunity to trial integrated ways to avoid homelessness and make sure that vulnerable Victorians receive the right kinds of support.

In addition to the work the department has been doing, the recently announced chair of the ministerial advisory council, Dr Kay Patterson, has also been busy with her own round of engagements, speaking directly to the sector about reform. The first meeting of the ministerial advisory council on homelessness is to take place next week.

Teachers: remuneration

Mr LENDERS (Southern Metropolitan) — My question without notice is to the Minister responsible for the Teaching Profession, Mr Hall. One of the coalition's most solemn election promises prior to the 2010 election was that Victorian teachers would be the highest paid in Australia. After one year, on this last day of the parliamentary sitting, my question is simple: are they?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — The answer to that question is that currently they are not, as Mr Lenders will know, because they are working under an EBA (enterprise bargaining agreement) struck with the previous government. The current EBA expires on 31 December of this year. Therefore, in response to the question, under the agreement negotiated with the previous government Victorian teachers are currently not the highest paid teachers in Australia.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I thank Mr Hall for his answer, which was a very good answer, but I have a supplementary question for Mr Hall. I know that when I talk about EBAs he always says, 'I can't comment on an EBA'. Before the election he promised that teachers would be the highest paid in Australia. An EBA will be negotiated, but he promised — he committed solemnly — that teachers would be the highest paid in Australia; so I ask the minister: after his EBA is concluded will his solemn promise be honoured, that teachers will be the highest paid in Australia? Will his solemn promise be honoured?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — Mr Lenders invites me to give an answer with a level of detail which would be unlawful for me to give.

Hon. M. P. Pakula — Unlawful! Will you keep your promise or not?

Hon. P. R. HALL — As Mr Pakula would know, perhaps more than anybody in this chamber, under the federal Fair Work Act 2009 I am not at liberty to speak publicly about the detail of the negotiations as part of the EBA process. I suggest when we come back in February next year and after those EBA negotiations

have been brought to a conclusion, we will all know the answer to Mr Lenders's question.

Vocational education and training: providers

Mr FINN (Western Metropolitan) — My question is also to the Minister for Higher Education and Skills and Minister responsible for the Teaching Profession, and I ask: can the minister inform the house on the action he has taken against training providers offering financial incentives to students enrolling in state government-funded programs?

Mr Lenders interjected.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Mr Finn for his question. In respect of the interjection about answering questions, I thought it just went on the record that I provided a very good answer to the previous question, and the Leader of the Opposition has indicated that as well. I am happy to answer questions.

Mr Finn raises a very important issue reflecting on a question which I answered in this chamber two weeks ago when the house last sat. In that particular instance I informed the house of a training provider which was offering financial incentives to those who enrolled in training programs. Those incentives were either personal or went to the clubs or organisations of which those people may have been members or friends.

I can advise the house that my department is currently looking into the practices of a further five training organisations. Some of them involve providing financial incentive kickbacks to those who enrol; others have provided misleading information. But I can assure the house that each of those organisations has been thoroughly investigated by Skills Victoria. Where there has been a reason to also speak to the Victorian Registration and Qualifications Authority or the Australian Skills Quality Authority, investigations regarding the registration of those bodies are also taking place.

In some instances payments have been suspended, and in some instances full audits have been done on those organisations. As I said two weeks ago in this chamber, I am happy to pay for training in this state, and I am happy to pay for record levels of training in this state — $1.2 billion rising to $1.3 billion next year — but I am not happy to see that money being returned by way of financial incentives to others. I am happy for the state to make those payments to contribute to sound training with worthwhile outcomes, but, as I said, not as donations to others. This is a matter which my department and I will continue to pursue. We will place a high priority on it and ensure that the record investments in training currently being made by the Baillieu government are pursued with good, positive public outcomes.

RULINGS BY THE CHAIR

Electoral Matters Committee: terms of reference

The PRESIDENT — Order! I wish to give some advice to the house in the form of a ruling in respect of one of Mr Barber's queries from yesterday. As an aside, I might advise that I have arranged for the drafting of a letter to the Auditor-General, which I will be signing later this afternoon, in respect of one of the points of order that was raised yesterday. The one I wish to turn to now is in regard to the Electoral Matters Committee inquiry into the conduct of the 2010 Victorian state election and certain matters related thereto raised yesterday by Mr Barber in a point of order.

I have reviewed the terms of reference of the committee, I have sought advice from Mr Finn as the chair of the committee and I have sought advice from the clerks in respect of related matters to the point of order raised and the information that has been made available to me.

First and foremost let me say that the committee is a committee facilitated by the Legislative Assembly. Whilst it reports to both houses, it draws its terms of reference from the Legislative Assembly, notwithstanding that the chair of that committee is a member of this house. In that respect I do not believe that I have an opportunity to intervene in the affairs of the committee in any circumstance. I would also suggest that, as a general rule, the presiding officers of the Parliament, both the Speaker and the President, would not intervene in the proceedings of the committees.

The committees draw their powers from the respective houses of Parliament. They are then charged with references by those respective houses of Parliament and it is for those committees to discharge their duties and responsibilities under those references and to report back to the houses. It is not for the presiding officers to tell them how they should go about discharging those duties. The power resides with the committees in that respect.

It would of course perhaps be possible for this house, if it were concerned about a committee that drew a

reference and was facilitated in its workings by the other house, to pass a substantive motion that might convey to the Legislative Assembly a concern of this house. However, that would have to be by substantive motion, and I am not sure that the matters Mr Barber alluded to yesterday warrant that action in any event, but clearly the house is in a position to make certain judgements and convey its views to the other house.

In regard to the specific matters I might say by way of my perspective on this matter that it may or may not be helpful to Mr Barber to know that I am aware that the reference given to the Electoral Matters Committee by the Legislative Assembly was quite broad. It referred to the conduct of the last state elections and to any matters that might have had a bearing on that election. In the context of the committee's consideration of that reference and matters that have been reported in the media, from a personal point of view it would seem to me to be within the terms of reference for the committee to actually take the step of inquiring into the media's access to or use of electors' details, and I think that was appropriate. Indeed, the committee voted that way. It was not the decision of just the Chair; it was a decision of the committee. It could be argued that that was a matter that would seem to be supportable under the terms of reference that were provided to the committee.

The other matter that Mr Barber raised was whether a committee's actions could constitute a breach of privilege and be referred to the Privileges Committee. In my view it is a matter solely for the house to refer a matter to the Privileges Committee, but on face value nothing raised by Mr Barber yesterday seems to constitute a breach of privilege. A committee may enter into the field of powers and immunities if it were to decide to use its coercive powers, such as the issuing of summonses, which would in turn be more or less of an issue if a witness failed to comply with a summons. Again this is largely a matter for each of the houses to resolve, and not one in which I would form a view and seek to engage the Privileges Committee.

In regard to the panel of chairs that was discussed by Mr Barber yesterday, the panel is usually used for discussing matters affecting most of or all the committees, and the principle of this issue rather than the specifics could well be raised before that panel. In fact we had a meeting yesterday of some of the chairs. If there were aspects of the committees' functions that Mr Barber believed needed further clarification or consideration, then it would be my intention that that panel should meet at least twice a year to consider those pertinent matters.

I think that probably resolves the matters that were raised by Mr Barber.

ROAD SAFETY AMENDMENT (DRINKING WHILE DRIVING) BILL 2011

Committee

Resumed; further discussion of clause 4.

The DEPUTY PRESIDENT — Order! Minister Dalla-Riva was about to answer a question in relation to clause 4. It was a question from Mr Barber, I believe. If the minister would like Mr Barber to ask the question again, I am happy to have him do that. I certainly do not remember Mr Barber's question, but I invite the minister to answer it!

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advisers are trying to remember it as well. The issue was about the behaviours or the — —

Hon. M. P. Pakula — How do you make out that someone has been drinking alcohol?

Hon. R. A. DALLA-RIVA — Yes, that is right. I thank Mr Pakula. As I indicated before, there have to be reasonable grounds for the belief that the offender intends to start or drive a vehicle. If a person walking to a vehicle can be taken to be in charge of the vehicle, it is a question in each case of — —

Hon. M. P. Pakula interjected.

Hon. R. A. DALLA-RIVA — It will be determined case by case, as Mr Pakula would know. The police officer must not only suspect that the person intends to start or drive a vehicle, they must have reason to believe, or in other words they must be persuaded by the truth of the fact, that the person intends to drive. That is the advice I have received.

Hon. M. P. PAKULA (Western Metropolitan) — That was not the question. The minister is anticipating another question. What Mr Barber was trying to get from the minister was, I believe, an answer to this question: if the offence is that a person was drinking intoxicating liquor while they were driving — we are not yet talking about the walking bit; that is coming later — how can a police officer prove or make out the case that that person was drinking intoxicating liquor while they were driving? What do they have to show to prove that a person was doing that?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is correct that the offence requires police officers to witness the driver consuming the beverage and recognise the beverage to be alcohol. My understanding is that the Attorney-General has responded to this. The same point could be made about whether police officers have an opportunity to observe people not wearing seatbelts. Police will use their knowledge and common sense to determine whether what the driver is drinking is an alcoholic beverage. The driver has the opportunity at the time to demonstrate that he or she is not drinking alcohol. In the event that the driver claims that a passenger was consuming a drink, a police officer may proceed to prosecute the offence if he or she is certain of his or her observations. As the matter will be prosecuted by a traffic infringement notice, the driver can argue this before a magistrate if he or she so wishes.

Mr BARBER (Northern Metropolitan) — That last bit is quite telling, because what will happen is they will just pin a notice to you and it will be up to you to prove otherwise. In order to prove that someone has consumed intoxicating liquor the police officer would have to observe them consuming something — that is, putting it up to their lips — and then they would have to prove that it was intoxicating liquor. I do not know what you are indicating there, Deputy President — that perhaps they will pump someone's stomach afterwards?

In reality, for the police officer to prove their case they would have to prove that it was intoxicating liquor. They would have to take the liquid into evidence and then have it forensically tested to prove that it contained alcohol. I do not believe simply turning up with a stubby is going to be enough: 'Exhibit A — I soaked the label off a VB. Here it is, Your Honour' is not going to be enough for the police. To prove the offence they would have to take the alcohol, turn it into evidence through the chain of custody and have it forensically tested.

In the United States they talk about an open container: it is an offence to have an open container of alcohol in your car. That is easy enough; all you need to show is that it is a container of alcohol and that it is open. However, this provision has been framed in a different way. Does the minister concur that in order to prove that it is intoxicating liquor the police would need to, first of all, hold onto the liquid, and secondly, have it forensically examined?

The DEPUTY PRESIDENT — Order! Thank you, Mr Barber. I was trying to suggest that maybe it was more than just putting it to your lips — that to consume it you had to swallow it.

Mr LENDERS (Southern Metropolitan) — On much the same lines as evidence and definition, my genuine question to the minister is: under this definition of intoxicating liquor, given that a.001 blood alcohol content clearly shows that an amount of alcohol has been consumed, do cough medicine, mouthwash and liqueur chocolates qualify under clause 4 of this bill?

Hon. D. M. Davis — Are you serious?

Mr LENDERS — I am serious.

The DEPUTY PRESIDENT — Order! Given that this is a complex area and given that the minister has a number of things he would like to say in response and given the time, this is an appropriate time to break for lunch. I will resume the chair at 2.00 p.m.

Sitting suspended 1.00 p.m. until 2.02 p.m.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — We had two false starts: we went into question time and then we went to lunch. The bill provides that it is an offence for a person to consume intoxicating liquor while driving. The term 'intoxicating liquor' is not defined in the act and must be interpreted in accordance with its ordinary meaning. The Oxford dictionary defines 'intoxicate' as 'to make drunk or excite beyond self-control'. The definition of 'liquor' is 'an alcoholic drink or other liquid'. Consequently the offence relates primarily to the drinking of an alcoholic beverage and does not apply to the eating of a substance that may contain alcohol.

Mr BARBER (Northern Metropolitan) — I will move on to the definitions, which I know the minister is eager to do. There are two ways for someone to be fined under new section 49B(1) and (2): one is if they are driving a motor vehicle and the other is if they are in charge of a motor vehicle. Does the minister agree that if someone is in charge of a motor vehicle, the definition this bill refers to means they are not driving the motor vehicle?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. The definition of being in charge of a vehicle is from the definition introduced by the Labor government in 2001. The wording is not new and is not changed by the bill. The definition in the Road Safety Act 1986 introduced by Labor in 2001 clarifies that a person is in charge of a vehicle in a situation where they are about to attempt to start or

drive a vehicle. This has similar coverage to that in the laws relating to the right of police to require a person to undergo a breath test. The wording ensures that police can charge a person if it is clear they are about to attempt to start or drive the car while continuing to drink. Claims that the law would apply to someone walking towards the car or intending to drive later on are just plain wrong.

Hon. M. P. Pakula — I have read this statement too.

Hon. R. A. DALLA-RIVA — I am putting it into *Hansard*, Mr Pakula. It is important that Labor and the Greens back this legislation, which is about sending a clear message that drinking and driving do not mix and about helping to make our roads safer for Christmas and beyond.

Mr BARBER (Northern Metropolitan) — The minister is just plain wrong. I read the media statement that was put out over lunchtime. The minister said it applies if a person is 'about to attempt' to drive a vehicle. That is not what the law says; that is not what the definition in the Road Safety Act 1986 says. It says it applies if there are 'reasonable grounds for the belief that he or she intends to start or drive the motor vehicle'. That is what the definition in the principal act says. It is about intention and a state of mind, and that is fine. It is not that the definition has changed, and no-one is suggesting that the definition has changed.

The minister is using the definition in a new or novel way in relation to someone who is drinking alcohol. All I want to hear from the minister is that the two definitions mean that one relates to driving and one relates to not driving. We can have a conversation about what not driving might encompass in relation to intention. Are there circumstances in which people who are not driving cars and are doing something other than driving a car can be fined for drinking an intoxicating liquor?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. I have sought some clearer details, and the advice I have is that it relates to a person who is driving and a person who is about to drive. As I indicated before, the advice I have is whether a person who is walking to a vehicle can be taken to be in charge of the vehicle is a question of the facts in each case. A member of the police force must not only suspect that the person intends to start or drive the vehicle; they must have reason to believe it — that is, to be persuaded by the facts that the person intends to drive.

Mr BARBER (Northern Metropolitan) — If they intend to drive, that means they are not actually driving — right?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that it is a person who is about to drive.

Mr BARBER (Northern Metropolitan) — This was all about stopping people who are driving from drinking while driving, so why does the government want to stop people from drinking when they are about to drive or when they intend to drive?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that it is exactly the same as the matter for drink driving.

Mr BARBER (Northern Metropolitan) — I understand that, and I support that. If a guy is .05 and he is about to get in his car and turn the ignition, I am not suggesting that the police should wait until he is out on the road before they arrest him. But this was about sending a message, remember? This was about how people should not be driving down the road drinking from a container of alcohol.

If I am walking across the car park drinking from a can of Victoria Bitter — and there are only two types of beer I drink, Acting President, VB and free — and a police officer says, 'Where are you going?', and I say, 'I am getting in my car and I am going home', I have just established that I have formed the intention to drive. It is beyond any shadow of a doubt and by my own admission. I have told the police officer that I am intending to drive. I am not driving. I might take that can, finish it and throw it in the back seat. I do not offend the thing that the government has said it wants to legislate against, but the minister is saying because I am thinking about driving — because I have formed an intention to drive — I cannot drink. I cannot drink when not driving. That seems to be totally against the stated purpose of this bill.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I think we are at cross-purposes here because the advice I have, which I have put on the record and I will put on the record again, is that in terms of whether a person walking to a vehicle can be taken to be in charge of the vehicle is a question of the facts in each case. A police officer must not only suspect that the person intends to start or drive the vehicle. In Mr Barber's case of the VB can, the police officer must have a reason to believe the person intends to start or drive the vehicle with the intoxicating

liquor — that is, the police officer must be persuaded that the fact of the matter is that the person intends to drive. If Mr Barber with his one can of VB is intending to drive with that VB in his lap to consume — —

Mr Barber — No.

Hon. R. A. DALLA-RIVA — Then you have not committed an offence. Mr Barber has just answered his question — no, he did not intend to do it.

Mr BARBER (Northern Metropolitan) — What the minister is saying is nonsense. It is not about whether I intend to drink while driving; it is whether I intend to drive. In the principal act this is at section 3AA(1)(b), which states:

> a person with respect to whom there are reasonable grounds for the belief that he or she intends to start or drive the motor vehicle …

It does not say 'to drink and drive'. It is quite simple: if I am drinking and I have formed the intention to drive — I have not yet driven, and I cannot be driving, otherwise I would come under the other definition of being in charge of a vehicle — then I am not driving; I am just drinking. The government wants to make it illegal for someone to drink whilst having formed the momentary intention to drive at some later occasion.

Hon. M. P. PAKULA (Western Metropolitan) — In support of Mr Barber's proposition, if we take the two provisions together, it seems clear that Mr Barber's interpretation is correct and the Attorney-General's media statement — which is not an interpretive guide; it is just a media statement — is wrong. The bill says very clearly that a person must not consume intoxicating liquor when in charge of a motor vehicle. We then need to go to the current act and look at what 'in charge of a motor vehicle' means. 'In charge' means that there are reasonable grounds for the belief that the person intends to start or drive the vehicle. If someone is drinking at the same time as they have formed the intention to drive, they have offended the proposed black-letter law in this bill.

Mr Dalla-Riva, Mr Clark and others might try to persuade us that is not the way that Victoria Police or others will interpret or seek to enforce this law, but the facts are the facts and what the bill says is what the bill says. It says that if you form the intention to drive and you are drinking, you offend the bill. I make the point again that any type of review process, whether it be the Scrutiny of Acts and Regulations Committee, the Road Safety Committee or otherwise, would have picked this up and would have, in all likelihood, omitted reference to section 3AA(1)(b). It would have omitted '(b)', because what the government said in the second-reading debate and in the departmental briefing was that the sole intention of this bill was to prevent drinking while you are driving or while you are instructing a learner.

We asked over and over again during the briefing — we actually made the point — 'What if you are sitting in the driver's seat having a beer before you start the car?', and we were told, 'That will not be covered'. Clearly under this bill it will be covered. So that the act, once the bill is passed, can reflect what the government said its intention was, the bill ought to be amended by a very simple change, which is the omission of '(b)' in line 22.

Mr Barber — And the brackets either side of that.

Hon. M. P. PAKULA — Yes, I have got them too. The omission of the 'b' and the brackets will make it clear that it will only apply to what the government said it would apply to, which is someone drinking intoxicating liquor while they are driving a car or while they are supervising a learner driver.

Reference to (a) and (c) will be retained. Paragraphs (a) and (c) of subsection 3AA(1) in the current act talk about a person attempting to start or drive a motor vehicle and a commercial driving instructor, and the accompanying licensed driver is picked up in new section 49C. But (b) relates to a person who is not attempting to start a car, not attempting to drive a car, not actually driving a car and not instructing someone in driving a car. It is none of those things that (b) covers; what (b) covers is someone else, and it has to be that person who is approaching the vehicle or is about to enter the vehicle with the intention of driving the car and is finishing off a drink.

That is not what the government said this bill was about. It can be easily resolved by omitting '(b)', and I move:

> Clause 4, line 22, omit ", (b)".

Not really. As I said, the purpose of the amendment is to remove all doubt and simply to ensure that this bill does exactly what the government said it was going to do — in the briefings, in its media commentary before today and in the second-reading address by Mr Elsbury on behalf of the government — which was that it would in effect outlaw the act of drinking while driving. That is what the amendment would do. It limits the offence to drinking while driving, not drinking while intending to drive, which is what the bill does, perhaps unintentionally, but it does that nevertheless.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I wish I could say that I understand Mr Pakula's amendment, but I think Victorians would be somewhat disappointed that before heading into a Christmas break the opposition would move an amendment that would loosen up the definition of what this bill intends to do.

I want to make it clear, and I have said this before, that there is some suggestion that the mere consuming of alcohol before entering a motor vehicle will by default be the offence committed. It will not, because we made it clear that the wording ensures that the police can charge a person if it is clear that they are about to attempt to start or drive a car while continuing to drink.

As I indicated before, the driver commits an offence when a police member has reasonable grounds to believe that the person intends to start or drive a vehicle. I note that in clause 4 at page 2 of the bill — and I think it is important to read it — it states that the person will not be taken to be in charge of a motor vehicle for the purposes of new section 49B unless the person is attempting to start or drive a vehicle, or there are reasonable grounds to believe that he or she will attempt to start or drive a motor vehicle or they are a commercial driving instructor teaching the person in charge of the vehicle to drive.

For the record, what we are seeing is an opposition that is trying to water down the opportunities for a stronger restriction on alcohol consumption in a motor vehicle, and we will not be supporting this amendment. We have made it very clear that we are closing the loophole, and that is what this bill intends to do.

Mr BARBER (Northern Metropolitan) — I am begging the minister: help me to help you! If it is a matter of getting further and better advice — I know it is Christmas and people have one foot out the door and it is all about the politics now — it is a simple matter of law. If it is in order, Deputy President, I will move that we report progress so that the government can go away and have a last look at this and at Mr Pakula's amendment, which is extraordinarily simple. We can move on to some other legislation which is pressing — there are a number of bills we all want to deal with, some of which require a little bit of scrutiny as well — and the government can come back and give us its final answer or, as Mr Pakula said, sort it out. If it is in order for me to move that while the question of Mr Pakula's amendment is also before the Chair, we will see if we can report progress and have a bit of a cooling-off period.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Is Mr Barber moving that progress be reported?

Mr BARBER — Yes. I move:

That progress be reported.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Here we are with proposed legislation that we need to pass before the Christmas and New Year period, and the opposition — —

Hon. M. P. Pakula — We will sit until 10.00 p.m.

Hon. R. A. DALLA-RIVA — Mr Pakula says we will sit until 10.00 p.m., and obviously we can. I indicated before that as an ex-policeman I cannot for the life of me believe that by moving amendments to do what members wish could happen the opposition is proposing to water down the message that we as a government and the Parliament want to send. We have been very clear: the definitions in the Road Safety Act 1986 were introduced by Labor.

It is interesting that for political purposes, and I hate saying that, we now have a situation where the opposition, in concert with the Greens, is trying to confuse the message to the community by suggesting that a person in charge of a vehicle is somehow mixed up with somebody having a drink on a lawn before they get into the car. We have made it very clear, and I have outlined the government's position on this matter again and again. This is the law that currently applies to drink-driving offences under the definitions the former Labor government introduced in 2001. There is similar coverage in the laws relating to the right of police to require a person to undergo a breath test.

Hon. M. P. Pakula — Are you dense?

Hon. R. A. DALLA-RIVA — Mr Pakula asks, 'Are you dense?'. I am trying to — —

Hon. M. P. Pakula interjected.

Hon. R. A. DALLA-RIVA — We have a community that is calling for responsible drink-driving laws in this state, and we have an opposition that wants to make political mileage at a time when people would be expecting — —

Hon. M. P. Pakula interjected.

Hon. R. A. DALLA-RIVA — I hope the interjections I keep on getting from Mr Pakula are recorded in *Hansard*, because they will demonstrate the

lack of understanding of this particular piece of legislation before the chamber.

Mr Leane interjected.

Hon. R. A. DALLA-RIVA — Mr Leane, of all people, interjects. He should be the last person to interject. This is an amendment — —

Mr Leane interjected.

Hon. R. A. DALLA-RIVA — Mr Leane is still interjecting.

Hon. M. P. Pakula — Speak up.

Hon. R. A. DALLA-RIVA — Yes, Mr Leane will need to speak up if he wants to get his interjection into *Hansard*, because it is important for the record and for the Neil Mitchell program, or whatever program you want to go on, what you think about — —

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I ask the minister to direct his comments through the Chair.

Hon. R. A. DALLA-RIVA — Thank you. This is an issue of which people should be aware.

Hon. M. P. Pakula — Don't worry, they will be.

Hon. R. A. DALLA-RIVA — Mr Pakula says, 'And so they will be'. I hope they are. I hope they are made aware that Mr Pakula, the media spokesman for the Labor Party, is quite happy to allow people to go out and drink and drive in the community. That is the message he is sending. We are saying we are very strong in our approach. If you disagree, we will disagree. I disagree. All I say is we are standing up for closing what we see as a loophole in the legislation. That was made very clear at the end of November. The Premier made a commitment to the people of Victoria that he would close that loophole. It was widely reported in the *Herald Sun*, the *Age* — all the media outlets. It was no secret that we were moving to introduce this legislation before Victorians go onto the roads in the very dangerous Christmas and New Year period. As a government we do not resile from this, and I am pleased to stand here as a minister in this government supporting this legislation. On that basis, we do not believe we need to report progress, and we will also be opposing the amendment.

Hon. M. P. PAKULA (Western Metropolitan) — Let me deal with all the various spurious elements of that ridiculous diatribe by the minister. The first thing he said was, 'This is just the same as the previous Labor government's decision'. That is the point. The point is what the government is trying to do is apply exactly the same rules to having a drink as you would apply to being intoxicated. Of course it is appropriate that if you are in charge of a vehicle or intending to drive a vehicle while intoxicated, that that is an offence. Of course that is appropriate.

What the government is now trying to do — and I do not think it is trying to do it intentionally; it has done it in the rush to get this bill into the Parliament — is create an offence of intending to drive a vehicle while not being intoxicated but having a drink. Let us be clear: if the amendment I have moved is carried, it will still be an offence to drive while drunk, it will still be an offence to attempt to drive while drunk, it will still be an offence to intend to drive while drunk, it will still be an offence under the provisions of this legislation to drive while drinking and it will still be an offence to drink while instructing.

All those things that the government said this legislation is designed to do will be covered. The legislation will be exactly as the government claimed it would be before today. It is only today, when the government's error has been pointed out, that it has said, 'It was actually our intention all along to stop you having a drink while you are on your way to your vehicle, intending to drive'.

I say again: on Monday we specifically asked the advisers of the Attorney-General if that would be an offence, and the answer was no, that the only offence would be if you were drinking while driving. In fact, they specifically rejected the Tasmanian model of an offence of drinking while being in the passenger seat. On numerous occasions they specifically made it clear and they made it clear in the media before today that the offence was that of drinking while driving. We think the government has produced a piece of legislation that it did not intend to produce. We think it can be resolved easily by removing '(b)' from the reference to section 3AA(1) in proposed section 49B(2) as inserted by clause 4. In the circumstances I support Mr Barber's motion that we report progress so that the government can get this right.

Mr ELSBURY (Western Metropolitan) — I was listening to the debate as I was sitting at the table with the minister. I thought that with Mr Pakula's logic on this particular issue I could go and have a quiet one at home tonight and because I intend to drive tomorrow morning I will somehow be breaking the law. That is not the case. The argument that is being put by the opposition on this particular issue is illogical. It just does not follow. I have to say I cannot follow the logic

that Mr Pakula is using. It just does not make sense. It is almost an insanity.

Committee divided on motion to report progress:

Ayes, 19

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

Noes, 21

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

Motion negatived.

Mr BARBER (Northern Metropolitan) — I said this was going to happen, and I said it on the day we found that the government had control of both houses. I said the quality of the drafting would plummet and the government would ram legislation through anyway because it knows it controls the upper house and it can always fix it later if it has to. It is exactly what happened with the Howard government.

The DEPUTY PRESIDENT — Order! I cannot hear Mr Barber's contribution. We are debating a fairly important provision; I would like to be able to understand where the debate is going.

Mr BARBER — It has only been exacerbated by the fact that the policy decision was rushed and the legislation was attempted to be rushed through both houses. While we are putting things on the record for the readers of *Hansard*, it should be noted that every time we have asked a question today it has led to a 1 or 2-minute confab between the minister and the advisers over in the corner there. The text of this debate may read continuously, but in fact there have been long pauses while Mr Pakula and I have been sitting here waiting for an answer to our question. When the answers come they are about as useful as what you would expect from Dexter the dating robot from *Perfect Match*! In future we might move that Mr Mulder comes here to explain his own legislation.

Hon. M. P. Pakula — Or Mr Clark.

Mr BARBER — No, I am sorry. I checked the general order before I came in here. The Road Safety Act 1986, with the exception of one small subsection not related here, is the responsibility of the Minister for Roads, Mr Mulder. It is the Attorney-General, who I do not think would have ever let something like this slip past him, who has been called upon to explain it, unfortunately for him. It is a very simple amendment.

There are two definitions and two ways you could be fined under the law. One is if you are driving a car and the other is if you are in control of a car, notably here having formed the intention to drive it. Intention is a state of mind. Mr Elsbury is quite right about that. It does go to what behaviours you may be exhibiting that a police officer could observe that indicate, reasonably, that you have formed an intention to drive. You are not driving, and that is our whole point; the government wants to fine someone for drinking while not driving.

Of course there is an argument about how immediate that intention has to be able to be turned into action, but I do not think the example I put forward is particularly unreasonable. It is of someone walking across a car park towards their car, keys in their hand, drinking from a stubby and not over .05, so they are legally entitled to drive that car, as they should be. This was never intended to be a law against driving while below .05. This was intended to be a law about drinking while driving, but the government has extended it to include circumstances where you will quite clearly not be driving and I do not understand why. In any case, I will support Mr Pakula's amendment.

Amendment negatived; clause agreed to; clauses 5 and 6 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

TRANSPORT LEGISLATION AMENDMENT (MARINE SAFETY AND OTHER AMENDMENTS) BILL 2011

Second reading

Debate resumed from 24 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — The opposition does not oppose this legislation, but during the debate we will raise a number of reservations about the bill. We know people in the industry have some reservations as well, and they have expressed concern, particularly the Boating Industry Association of Victoria (BIAV), about the scope and content of these regulations.

We all welcome better safety on our waterways, but it is important that the government strike an appropriate balance between safety and the impact on the industry. Grave concern has been expressed by the Boating Industry Association of Victoria about the consultation process on the marine safety regulations. It has corresponded with the member for Tarneit in the other place in a letter dated 18 November this year, and as part of that correspondence it said:

> The consultation process for the proposed Marine Safety Regulations 2011 left a lot to be desired and resulted in the Boating Industry Association of Victoria writing to the minister to ask that consultation be suspended.

It goes on to point out that when the consultation was occurring, the regulatory impact statement had not yet been released and in fact was only released some 10 days after the consultation process started. That was a very unfortunate situation, particularly given the history of the Minister for Ports. When he was in opposition the now Minister for Ports described the former Minister for Roads and Ports and the government as operating 'in an arrogant way and a way that is not conducive to fair and reasonable community consultation'.

Now we have a situation where the Boating Industry Association of Victoria is saying that because of the shoddy consultation process in which the Minister for Ports engaged what may occur is anarchy on the water. That is a direct result of what it says has been a deficient process.

Mr Barber interjected.

Hon. M. P. PAKULA — I am not sure why Mr Barber is laughing. I suspect he is wondering what 'anarchy on the water' might look like. It might be like a Kevin Costner movie.

Mr Barber — Maybe *Waterworld*.

Hon. M. P. PAKULA — Yes, it might be like a Kevin Costner movie. The government has to make sure that there is ongoing and real consultation with the BIAV and other organisations to ensure that the regulatory burden stemming from this bill and from the proposed marine safety regulations does not place an undue impost on the industry.

There are also reservations about some of the hoon boating provisions. We welcome the fact that extensions to the impact on marine wildlife are being made, but in terms of the revenue that comes from the wider application of the hoon boating provisions it ought to be the case that that revenue is reinvested in facilities and safety for the boating industry rather than just being sucked into consolidated revenue. That is certainly the case with road camera safety fines, and it ought to be the case with these hoon boating provisions.

There is also a bit of uncertainty. The government has indicated that it is conducting a broader review of the hoon boating extension options, but it has only indicated that. It has not made it clear, and it has not officially declared that to be the case. In terms of undertaking that broader review, it is imperative that the government consult with the relevant industry stakeholders at all points in the process to ensure that the correct balance is struck and that there is a reduction in uncertainty wherever possible.

Having said those things, it is probably important for me to now go through some of the key elements of the bill. As I have indicated, it extends the hoon boating scheme. I note with interest that when the term 'hoon boating' was first devised by the previous government the current Minister for Ports thought it was an inappropriate term and said so. I think his description at the time was that it ought to be described as 'dangerous boating', not 'hoon boating'. How an election changes things, Acting President!

Mrs Coote — What did you say?

Hon. M. P. PAKULA — Perhaps if Mrs Coote was reading less and listening more, she would have heard what I said.

Mrs Coote interjected.

Hon. M. P. PAKULA — To recap for Mrs Coote's benefit, I said that when Dr Napthine was in opposition he did not like the term 'hoon boating'; he liked the term 'dangerous boating'. Now that he is in government he is quite enamoured of the term 'hoon boating'. That is all I said. Relax.

In 2009 the former Brumby government introduced a scheme into the Marine Act 1988 to combat hoon boating and antisocial behaviour on the waterways of the state. Under that regime marine hoon behaviour was limited to dangerous behaviour. Back in 2009 we introduced sanctions that were available to water police and to certain other authorised officers that included ordering-off provisions. The provisions gave officers the right to order people off the water for 24 hours and prohibit the use of a vessel for 48 hours. Within those provisions there is scope for seizure, impoundment and forfeiture. This came from the 2009 scheme which came into force on 1 September 2011.

Clause 22 of the current bill extends the hoon boating scheme, I believe quite correctly, to include the intentional or actual pursuit of marine wildlife, whether it be dolphins or birds, by linking in wildlife offences legislation with the hoon boating scheme. I think that is quite appropriate, and the opposition supports it.

Part 2 of the bill amends the Marine Safety Act 2010 in advance of the commencement of the act. There are a number of amendments, but some of the more significant ones include ensuring that operators of hire-and-drive vessels are covered by the same statutory duty of care as the operators of recreational vessels. There are changes that allow Victoria to recognise marine licences and marine certificates which are issued by international authorities and recognised by the commonwealth. It introduces some amending procedures for the renewal of marine licences and permissions. It also repeals the Victorian channel access regime. There are also some clarifications of marine pollution responsibilities and cost recovery provisions in part 3 of the bill.

Having gone through the substance of the bill, I will return to the opposition's concerns and reservations about it. On 28 July this year the government released a draft of the marine safety regulations for consultation. It is true to say that industry has expressed concerns about both the scope and content of those regulations. As I said at the outset, increased safety on our waterways is important, but it is also important that the government strike an appropriate balance between regulation and the interests of the industry. Safety on the waterways is paramount, but it needs to be maintained in a way where the impost on the industry is kept to a minimum.

According to the Boating Industry Association of Victoria, the regulatory impact statement that was released during that consultation process 'reinforced the sum of all industry fears'. That is not a wishy-washy statement by the BIAV; it is a significant statement that any fears it had about this are being reinforced rather than allayed by the process. The industry would say that it is currently dealing with the toughest operating environment in living memory; it would say, and has said, that the outlook for the industry as a whole is grim.

Boating is a pursuit that is extraordinarily popular amongst Victorians. Something like 1 in 30 Victorians owns a boat. There are over 165 000 registered recreational vessels in Victoria and something like 330 000 recreational vessel licence-holders. It is an absolutely legitimate and enjoyable form of recreation for tens of thousands of Victorians. It is good fun for most, it has health benefits and it provides financial benefits to the state. The government needs to demonstrate what impact on industry will follow from the proposed regulations and what the cost burden of the regulations on the domestic consumer will be, because the boating industry would say that those people are the most important drivers of industry growth.

Combined with that, it is extremely important that the government ensure that any increase in penalties or infringements that will be prescribed under the bill is proportionate to the safety needs on our waters. Dr Napthine, the Minister for Ports, put out a statement today in which he effectively denounced the claims made in the *Weekly Times* yesterday — the headline on one article was 'Overboard', another was 'Anxious anglers wait with bated breath'. The newspaper published tables of all the extraordinary proposed increases in penalties and fines that have caused the industry to be extremely concerned. David Heyes, the president of the Boating Industry Association of Victoria, is quoted as saying about the Minister for Ports:

> 'He … will have anarchy on his hands' …
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> 'The coalition made an election commitment to make Victoria a leader in recreational boating, but all they've done is propose all these new penalties and delay investing in new ramps and other infrastructure'.

Dr Napthine can put out whatever statements he wants, he can shoot the messenger — metaphorically of course — if that is what he wants to do, but at the end of the day if the perception of the industry is as outlined in the *Weekly Times* yesterday, then I suggest he has a serious problem on his hands with recreational boaters in Victoria.

To go back to the issue of consultation once again, in his second-reading speech the Minister for Ports tried to assure the other place that the consultation process had been exhaustive and that there had been adequate time

for a full discussion of the changes and to get things right, but, as I have already indicated, that is not the view of the industry. The industry's view is that the consultation process was manifestly inadequate. To use its words, it 'left a lot to be desired'. While it is true that the government eventually extended the consultation period, the real concern is that some week and a half elapsed between the commencement of that consultation period and the release of the regulatory impact statement. When Dr Napthine was in opposition he talked a lot about the arrogance of the former government's consultation process, yet as a minister he has engaged in a consultation process that industry players did not consider to be in any way adequate.

Finally, let me flesh out the comments I made about the reservations about the hoon boating provisions. It is essential that the government commit that any increased fine revenue from the extension of the hoon boating provisions will be invested in safety and facilities for the boating industry. That is only right and proper. To be consistent, if the government is bringing forward a piece of legislation that is supposedly about safety on our waterways and is extending the provisions and penalties that can apply if you act in an unsafe way on the waterways, it should invest those funds in safety on our waterways, as it does in the road safety area.

Having said all that, the opposition does not oppose the bill. As I said, we are concerned about the consultation process and the regulations. We want to ensure that the government invests that fine revenue in marine safety. With those words, we commend the bill to the house.

Mr BARBER (Northern Metropolitan) — The Greens will support this bill. We are fully aware of the concerns that have been raised by recreational boaters, having followed that issue quite closely. In addition to the matters raised by Mr Pakula, there are a number of other important measures which are reasons the bill needs support.

There is the matter of offences against marine mammals to ensure that harassing seals, dolphins and whales becomes an offence. There is a provision in the bill which I do not think Mr Pakula addressed. It relates to the monitoring of spills and pollution. The effect of this provision is to make the Department of Transport solely responsible for the response in this area, including the planning, preparation and maintenance of clean-up facilities. If the policy logic here is that the transport safety regulator, who currently plays a role, should not be directly involved in the response because his role will be to regulate and ensure that others do their job, then we can accept it on that basis. It now becomes the responsibility of the Department of Transport to respond to spills. Provision is also made for the department to, if you like, outsource the pointy end of the response. We understand that that is already the case and that there is a company with a dedicated role of responding to pollution spills.

However, there is also an interesting provision in the bill which no-one seems to be trumpeting and which Mr Pakula skipped over quite quickly. Noting that this legislation is the Transport Legislation Amendment (Marine Safety and Other Amendments) Bill 2011, Madam Acting President, you might think it is all about safety. But in fact at around clause 50 we find an economic reform. It relates to the prices and charges that are put forward by those ports and to who monitors them and who can do what in response to price increases by the ports. This was the subject of a very detailed review by the Essential Services Commission (ESC) in 2009. It went through several stages where submissions were received from each interested party. Finally, there was a government response to the recommendations of the ESC in which the government — this new government — accepted all but one of its recommendations. The relevant recommendation was recommendation 5, which states:

> The commission recommends that the Victorian channels access regime with application to the shared channels used by ships visiting both the ports of Geelong and Melbourne is necessary in order to ensure competition or competitive tension in upstream and/or downstream markets. The commission's assessment is that the Victorian channels access regime likely satisfies all of the requirements of the CPA and so is capable of certification as an effective state-based access regime in its current form. The commission recommends the shared channels be declared.

The government did not support that recommendation. What this means in simple terms is that while the ESC may be able to engage in a price and monitoring role over these charges, it will not be able to arbitrate or mediate. Under the current regime it can; it is a mediator of last resort, if you like. I do not understand why the government is not supporting this recommendation because seemingly everybody else, except for the ports, does. Users of the ports seem to understand that if not a total monopoly, the ports have a strong enough monopoly to have pricing power and therefore require some degree of regulation. But presumably in some red-tape-cutting exercise the government decided to throw out an important area of economic regulation to ensure competitive behaviour.

The port of Melbourne and the port of Portland wrote submissions opposing the continuation of this last-resort function, but others had different things to say about the monopolistic nature of the ports. Shipping Australia Ltd said in its submission to the original

review that it supported the current, what it referred to as light-handed regulatory regime — and it is light handed in the sense that it is not like the ESC is mediating every day; it is more the threat of its involvement that ensures monopolistic players do not try their hand. In its response to the draft report, Shipping Australia noted how the Essential Services Commission set out its reasoning for its preliminary finding, which it says was:

> that the Port of Melbourne Corporation retains the potential to exercise substantial market power with respect to the provision of port services for containerised trade. Shipping Australia maintains its view expressed in its original submission and at the public hearing that the corporation is only subject to competitive pressures at the margins of its activities, important though that level of competition is, but fully supports the reasoning by the commission that gave rise to the preliminary finding the corporation does have the potential to exercise substantial market power.

Likewise, the Geelong Channel User Group talked about various charges. I know, Madam Acting President, that you would want me to refer to the channel deepening project, a billion-dollar project, the cost of which is now being recovered by implementing charges across all users of the port regardless of whether they are using ships that are deep enough to take advantage of the deeper water. When it comes to Geelong channel users, they come in through a deep part of the channel, then turn left and use a shallow part of the channel, so clearly they are not getting any purported benefit. The Acting President and I argued this out extensively through various debates and in an inquiry of which I think Mr Rich-Phillips was part of. It was quite clear that the government was never going to recover $1 billion of investment from just the small number of ships that might use a deeper channel; the effect would have been to chase them away. So it has to recover it across all ships, regardless of their depth.

The Geelong Channel Users Group said:

> Attempts by channel users in the port of Geelong to obtain an explanation from POMC have been unsuccessful to date. As a result we would ask that the Essential Services Commission review the unilateral decision made by POMC with a view to reversing the decision to increase charges based on 'summer draft' and revert to the practice of raising charges based on the actual draft of the vessels bound to and from the port of Geelong.

The Australian Peak Shippers Association said:

> ASPA's concern has always been that revenue gained from port charges/operations is significantly over and above the cost of operating the port. This is due in the main by the Victorian government control of the port and the fact that the government takes out of the port on an annual basis a dividend which is a tax on exports earned from excessive wharfage charges.

It also said:

> POM revenue from these terminals is by way of leasing agreements and for POM to charge wharfage on top of … revenue is 'double dipping' …
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> …
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> Again with POM market power there has been no incentive to succeed.

That is in relation to what it calls the oligopoly of stevedores. I just wonder whether a government now desperate for all the cash it can get, so desperate it is slugging public transport users and anybody else — recreational boaters, apparently, with additional fines — will not be sucking out those dividends, as in other areas of the cost of living, such as water. Water bills are sucking money into water entities, which then may be called upon to pay a dividend.

Last but not least, another group that I normally do not see eye to eye with on many things — although admittedly I do on some things — is the Alcoa World Alumina Australia group, which says that regulators should ensure that:

> …all critical infrastructure owned by private monopoly providers (including port-related activities) are provided at reasonable rates to ensure that Australia remains competitive in the international markets … It would be naive to expect that commercial port operators would not take advantage of an unregulated market to artificially inflate rates to a level just under the next best alternative.

It goes on to state that Alcoa has some experience with 'monopolistic service/infrastructure providers' and notes that the 'light-handed approach':

> …is already a relaxation from the previously prescriptive regime and has resulted in Alcoa having received claims for price increases from Victorian ports that were far in excess of any reasonable escalation mechanisms.

I will not spend much longer on this issue as I can see Mr O'Brien over there is ready to bust a move and no doubt he is going to tell me why I am wrong, but I just have one simple question. Who is it that supports this particular measure regarding the relaxation of pricing oversight, apart from the ports themselves and the government that is pushing it forward? I will need to bring the bill briefly into committee because unless someone can convince me otherwise we will be voting against those later clauses that relate to the removal of the ESC oversight and mediation function.

Mr O'BRIEN (Western Victoria) — It is with pleasure that I rise to speak on the Transport Legislation Amendment (Marine Safety and Other Amendments) Bill 2011. The main purposes of the bill are to facilitate safe marine operations, extend the hoon boating scheme

to apply to certain marine wildlife offences, improve port management settings and bring enforcement of marine and port environment offences into the overarching transport and safety infringement notice network. The background of the bill has been touched on by some of the other speakers. Briefly, the Marine Safety Act 2010 was passed by the Parliament in September of that year but, as was the view of the coalition, which was in opposition at the time, the legislation was rushed through the Parliament by the previous Labor government, and this government is now moving to fix these problems. Various changes have been made to the act in order to make the legislation work, and this enables the Baillieu-Ryan coalition government to correct some of the former government's mistakes.

I note that the opposition is not opposing the bill and that many of the concerns expressed by Mr Pakula in his speech related to proposed regulations and not to the bill. Those concerns have been comprehensively answered in a statement from the Minister for Ports dated 7 December, but for the record I will respond by quoting some of that statement:

> The Victorian coalition government is not making any changes to the cost of recreational boating licences, nor are we altering the testing procedures for obtaining a licence.
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> The report is based upon allegations first made in early September and they are just as false today as they were three months ago.
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> In August, the Department of Transport released an options paper canvassing a range of different scenarios that may be considered for future boat licence testing procedures including retaining the current system. The newspaper report has selectively focused on one particular proposal despite a previous statement clearly stating 'there is no secret plan to change …

I would encourage others to see the full statement and read the rest of it, but this is not a government that engages in sham consultation processes; this is a government that engages in genuine consultation. We have had and will continue to have genuine consultation with users of our important marine environment, both inland and in our bays. In that regard aspects of the bill have been positively received by a number of port users — I know Mr Pakula praised it, and I think the Greens praise it.

In my wonderful region of Western Victoria I read in the *Geelong Advertiser* dated 31 October, 2011, in an article headed 'Hoons on water face wildlife penalties', that the president of the Geelong Sustainability Group, David Campbell, welcomed the amendment but also called for greater community awareness about existing regulations.

This is a good opportunity for me to say on behalf of the government how important it is that we have safety not only on the roads but also on our waterways as we participate in the many summer activities in which Victorians engage. We welcome the water that is back in many of our western Victorian inland waterways. I think of Lake Linlithgow, Lake Kennedy, Lake Lonsdale and Lake Bolac and all those wonderful places where people can waterski, and also of the marine life in the bay which people can enjoy.

The background to this bill relates to an incident of wildlife being harassed, which we condemn. In the article Mr Campbell goes on to say:

> Whilst it is important to protect wildlife from hoons, it is also important to educate the general public about no-go zones for marine animals, as well-meaning sightseers in boats or on land can cause distress for wildlife … There's already no-go zones of several hundred metres for whales and dolphins that I'm not sure everyone's aware of currently.

The article also states:

> Mr Campbell said visitors should inform themselves of rules about their presence around marine animals before travelling to beaches and waterways.

We endorse those comments. There is genuine consultation involved in consideration of the new regulations, and I should say there have been a number of community consultations — in fact, in my electorate consultations were held from August through to September. On 30 August there were two consultation sessions in Portland; on 31 August there were two sessions in Warrnambool and on 1 September there were two sessions in Geelong. Further decisions will be made by the very capable Minister for Ports and his department during the consultation submissions which will provide opportunities to have an appropriate balance in the regulations between safety needs and economic activity in relation to the impost upon businesses. In regard to getting the balance right, the minister has also made a decision to double the normal consultation period from 28 days to 60 days and to accept submissions until the end of October.

In relation to other aspects of the bill, some of the changes that need to be made include ensuring that the operators of hire-and-drive vessels are covered by the same statutory duty of care as operators of recreational vessels, which is currently not the case under the Marine Safety Act 2010; and allowing Victoria to recognise certificates that are recognised by the commonwealth to reduce the regulatory burden on industry. The former government missed this opportunity to reduce the regulatory burden on interstate operators and to facilitate better renewal

procedures for marine licensing and permissions. This is a serious concern with the current provisions in the Marine Safety Act 2010, which the government is correcting.

There are other changes that are made in the bill, and these recognise that the best regulatory and safety outcomes must take into account the practical realities involved in effective regulation. The bill also extends the scope of the hoon boating scheme, so that boating sanctions also apply to a broader range of antisocial offences. The government is concerned about the irresponsible actions of a very small number of people who may actively chase wildlife. The sanctions of embargo, impoundment and forfeiture will be available when hoon boaters actively pursue marine wildlife. These important changes respond to concerns that some recreational boaters deliberately targeted dolphins and other marine wildlife during last year's boating season. The other changes that have been discussed include the repeal of the unused Victorian channels access regime, thereby reducing red tape.

I should say as a matter of record and background that my father and my brothers are involved in OMC International, a maritime engineering firm. They have had a long and extensive involvement in marine safety issues in Victoria, and they still have contracts with the government. That involves under-keel clearance and the management of vessels in our ports, including our wonderful bay. On behalf of that firm I was involved in the first environment effects statement process in relation to the channel deepening project.

There is a matter on which I also wish to comment in relation to the activity of our pilots and marine operators. As a 14-year-old I had work experience getting on and off pilot boats and onto ships at Portland. That is not an easy activity to undertake. As a small tugboat pulls up next to a very large vessel, one has to engage in the very precarious procedure of climbing by rope onto a major ship — or one had to at that time; some of the practices may have changed. Our pilots do an excellent job, as do all of our port officials in keeping our marine environment safe.

The other changes include the repeal of the unused Victorian channels access regime, thereby reducing red tape and refining the regulatory role of the Essential Services Commission (ESC); this is in line with that organisation's recommendations. Responding to Mr Barber's question about the changes related to the Essential Services Commission, a third of those recommendations — that Victoria retain and give effect to the Victorian access channel regime — was not adopted.

The shared channel at the entrance to Port Phillip Bay serves both the ports of Melbourne and Geelong, as stated by Mr Barber, and the Port of Melbourne Corporation is in theory able to exercise a substantial market power over the shared channel. However, PMC is state controlled and the Department of Treasury and Finance does not consider that an access regime is required to ensure compliance by PMC with any pricing determination the ESC may make. In addition, the regime has never been used and is unnecessary. It is a prescriptive regulation, and in the opinion of the government it should not be retained. Therefore the bill seeks to repeal this unnecessary regime, and if there is a referral of a pricing issue about the shared channel to the ESC, then the bill will ensure that the PMC is required to advise the minister of the referral, the ESC-reviewed outcome and how the PMC intends to respond to the ESC's price monitoring review.

The other matter that was raised by Mr Pakula relates to the issue of the distribution of revenue. He suggested that returned fines should be returned to the sector. The government needs to place on record that it is not pursuing infringements to gather increased revenue. Infringements are to act as a deterrent in relation to this very important issue of marine safety, not only to the boat users but also to wildlife, and I wish to put that on record. However, the government is hoping the fines will act as an effective deterrent and persuade the small minority of Victorian boaters who do not comply with the law to change their behaviour so that they will act more safely. It should also be noted that a great majority of Victorian boaters do comply with the law, and as a result very little revenue will be generated; it is estimated to be approximately only $400 000 per annum. The government spends much more on marine safety than it receives from fines under the existing situation, and it will continue to do so under this proposed regime.

The bill has noble objectives. I compliment my colleague Mr Bull, the member for Gippsland East in the other place, for his excellent description of the bill and for his administration of his lovely area in the far east of the state. I join others in commending the minister for bringing this bill to the house, and with those final words, I wish members a merry Christmas and a safe New Year.

Mr EIDEH (Western Metropolitan) — I rise to speak on the Transport Legislation Amendment (Marine Safety and Other Amendments) Bill 2011. Marine safety is something which, as a Parliament, we have not given enough time to over the years, and yet with the growing number of people taking to the water in a host of exciting water activities, such as boating,

kayaking, diving, windsurfing, fishing, paragliding and much more, this bill is a timely addition to a legislative program that we should all have considered some time ago. Both sides of politics have enacted relevant legislation in office, but it is overdue that we do much more.

I must confess that I do not have a reputation as a scuba diver or a driver of personal watercraft, and nor can I sail a Heron or Tornado class boat, but that does not mean that I do not go down to the beach, to rivers and to lakes and that I do not understand the very important place that water life has for Victorians. In particular I well understand the need for safety. However, is this new bill going too far? Certainly the Boating Industry Association of Victoria has expressed its misgivings and reservations over what it regards as a very poor consultation process, and yet this is a key body involved in boating and it should have been the first to be consulted, not the last.

I am very proud of the leadership of the former Brumby government in creating the hoon boating laws, which were the first in the nation. I was also proud of the law we introduced regarding the dangerous operation of a vessel in a manner that may lead to death, just as I was proud of the $40 million-plus that we spent on boating safety, facilities and educational programs. The bill before us builds on what was established in Labor's 11 years of office, and it shows that this government knows how to follow good leadership.

This bill ensures that operators of hire vessels are covered by exactly the same statutory duty of care as operators of recreational vessels. It also allows Victoria to recognise marine licences and certificates issued by international authorities that are recognised by the commonwealth. I hope that I am correct in assuming that it will equally recognise qualifications provided to personnel of the Royal Australian Navy, since its safety standards would be amongst the highest possible and its training is far more involved than anything we could ever legislate for in the recreational industry.

I hope the minister can advise the house of how much of the revenue that will be generated from these enhanced measures will be returned to even greater safety programs, to additional educational programs and to ensuring that people use the water more safely. I must state that it worries me whenever I go to the beach and I see people on personal watercraft, windsurfers or boats far too close to people simply swimming.

There is also increasing water traffic on our rivers, and I commend people such as Captain Peter Sommerville, who operates the *Blackbird* on the Maribyrnong River within my electorate. Peter is a strong believer in water safety and is a role model for others, and while Port Phillip Bay is becoming busier, I believe, as do those representing councils along the Maribyrnong, that boating activities including water taxis would benefit that river environment. If all boat operators were of the calibre and professionalism of Peter Sommerville, then I believe we would have a very high degree of safety on that river.

As we cannot guarantee the safety of everyone on the water, we must create tougher legislation, and Labor is proud of its efforts in this very area. I could refer to the $700 million put into our state's economy every year by the boating industry, the 3000 or so direct jobs and 7000-plus indirect jobs that it generates and the 170 000 recreational boats registered in our state. I would like to refer to the boat builders also, but their skills are being cut off at the knees by severe cuts to TAFE funding by this government.

This bill is about safety. This bill is also about protecting marine animals. Our attention is drawn primarily to the bay dolphins that have been known to swim up the Maribyrnong on a number of occasions over the years. I support this bill, as does the opposition, but the questions I have raised need to be answered. The government needs to state clearly where it will spend the extra revenue that it raises in this area and commit to greater dialogue with the Boating Industry Association of Victoria.

Mrs COOTE (Southern Metropolitan) — I have great pleasure in talking on the Transport Legislation Amendment (Marine Safety and Other Matters) Bill 2011, and at the outset I would like to thank my colleague David O'Brien, who put the government side very eloquently and outlined a number of the issues, including making a clarification about the Minister for Ports, Minister Napthine, and the article from the *Weekly Times* in which he was misrepresented. It is on the record; it is there. As he said, we do not have sham consultations.

I was also pleased to listen to Mr Pakula's contribution and to hear of a number of the elements of this bill with which he actively agrees. I am going to talk on hoon boating in a moment, but I want to acknowledge that the Labor Party put some very good regulations in place on what were then called personal watercraft. I would like to come back to that in a moment.

First of all I want to touch upon two aspects of this bill. The Marine Safety Amendment Act 2010 was passed last year prior to the election, and several minor holes have been discovered in the legislation. Part of this bill

amends the Marine Safety Act 2010 to ensure that it operates in the manner in which it was intended. With the passage of this bill these clarifications will be in place before the commencement of the act. The clarifications include ensuring that international certificates are recognised in Victoria; ensuring that operators of recreational hire-and-drive vessels are subject to the same statutory duty of care as masters and operators of all recreational vessels; enabling the licensing authority to disclose information to people about themselves and ensuring consistency of application for the regulatory framework of infringement notice schemes across the transport portfolio by providing for a marine safety infringement notice scheme.

The bill will allow for international certificates to be recognised, and there are presently duties of care prescribed by the Marine Safety Act 2010 for the operators of recreational vessels. However, hire-and-drive vessels are not defined as recreational vessels in the act, and therefore the duty of care does not apply to people hiring out these vessels. This bill will close that loophole by including hire-and-drive vessels in the duty of care provisions. The Marine Safety Act 2010 prohibits the disclosure of information that is personal or has commercial sensitivity. Most of us would agree that these are sensible additions to deal with and to clarify issues with because, as we all know, you do not want to get to questions about the rules and regulations and find that there are grey areas that have not been identified. It is very timely of the government and the minister to tidy up those issues with this bill.

The other issues dealt with in this bill are the marine pollution responsibilities and cost recovery. The aspects of the bill that deal with this separate the regulatory and operational activities relating to marine pollution. Like the changes that I spoke about before, which are virtually mechanical changes to this bill, this too is an important aspect. Prior to the Transport Integration Act 2010 marine pollution was the responsibility of the director of marine safety. Following the Transport Integration Act 2010 these responsibilities were transferred to the independent regulator, the director of transport safety in Victoria. This bill returns the operational functions to the secretary of the Department of Transport, with clean-up operations undertaken by the security and emergency management division. Presently this division has been delegated this responsibility, so this bill will place in legislation what is already current practice.

There is another important aspect of this bill, which relates to the recovery of costs in preventing marine pollution. We only have to look across the Tasman to New Zealand to see the huge problems that were caused recently by a container ship that grounded. Clearly we hope that does not happen here in Victoria, but we want to make quite certain that if ever there were some type of major catastrophe, we could deal with it and all the loopholes would be properly covered, and that is what this bill ensures.

The recovery of costs in preventing marine pollution, which is what focuses people's minds more than anything else, can be explained by way of example. If a tanker runs aground and there is a risk of an oil spill, the Department of Transport will act immediately to put infrastructure in place to contains an oil spill, because by the time the spill is occurring it may already be too late to contain it. Once the infrastructure is in place, if there is subsequently no spill, there is a legal loophole currently relating to the recovery of costs of the infrastructure employed. Insurers have previously argued that they will not pay costs in these instances. This bill clarifies and fixes that particular issue. This bill will ensure that even if no spill occurs, the Department of Transport can recover the costs of preventing the spill.

My constituents and those of Ms Crozier, who is here in the chamber this afternoon, are very concerned about this, because in Southern Metropolitan Region there are three lower house seats — Albert Park, Brighton and Sandringham — that border on Port Phillip Bay. I have to say that the constituents who live in those electorates are very aware of the good fortune they have in living close to such a beautiful location, but they are also aware of how tentative and fragile this location is. They are particularly proprietary about making quite certain that it is protected, now and into the future. They are also very aware of safety issues, which brings me to the point of this bill that I am particularly passionate about — that is, the issue of hoon boating.

As I said at the outset, in his contribution Mr Pakula spoke about what the former Labor government did. When they first came into being, personal watercraft — jet skis or whatever else you wish to call them — seemed like great new toys. However, there have been some tragic accidents. I note that Ms Broad is in the chamber, and I remember her speaking eloquently on this issue when she was a minister. I think she brought in some of the regulations dealing with it. At the time, it was imperative. They were new watercraft, and some tragic incidents happened. It was pleasing to see regulations and laws brought in to deal with that at the time, but they are being enhanced by this bill.

The misuse of personal watercraft has been a concern of mine for a long time. On 28 November 2000, while debating the Marine (Amendment) Bill 2000, I said:

> Personal watercraft are very fast and their operators think it is very smart and clever to get away from the police. It is imperative not only that offenders are apprehended and their licences checked, but also that the regulations and rules introduced by the bill are implemented so that the message gets out to the boating community that unacceptable behaviour will not be condoned.

That was in 2000. On 20 November 2003, while debating the Road Safety (Amendment) Bill 2003, I said:

> Finally, I mention a point that has not been brought up at all in this debate. The bill deals with an amendment to the Marine Act. It is most important for all of us who represent electorates that are around or on the water that we have safety on our waters and beaches. Personal watercraft are a relatively recent invention, and indeed it is worrying at times to note the speed at which they travel and how close they come to the shore. If you couple that with alcohol, it is a very dangerous cocktail. Therefore I am pleased to see this addition in the bill. I hope it can be adequately policed.

I believe that because those regulations were put into place there is a greater awareness of the danger of personal watercraft. It is incumbent that we speak of it again during debate on this bill; it is timely to revisit it. After all, it is 11 years since it first came up.

A lot of these issues were readdressed in 2009 when powers were given to the water police and certain authorised officers to deal with marine hoon behaviour, including the ability to order a person off the water for 24 hours and prohibit the use of a vessel for up to 48 hours. However, hoon behaviour was defined narrowly to limit it to dangerous behaviour on waterways. On 1 September police powers were expanded to include the seizure, impoundment and forfeiture of a vessel. There is nothing that gets attention quite like a vessel being taken away. We have seen it with the excellent hoon management the Baillieu government has brought in for cars on roads. If people continue to drive cars in a hoon fashion, the cars are crushed. That is a huge incentive for those hoons not to repeat the bad behaviour which resulted in their cars being impounded in the first place. This will now also happen with personal watercraft on our waterways.

While these powers help to make our waterways safe from dangerous hoon behaviour, the Department of Justice and the Department of Sustainability and Environment have indicated that a small minority of recreational boat users deliberately and persistently target marine wildlife such as dolphins. This week we have talked about puppy farms. There has been a lot of collaboration between all parties in this place when talking about pets and animals, and there has been a huge amount of cooperation.

It is horrifying to think there are people who actively taunt our precious marine life. It is interesting to note something that happened in Queensland. The *Courier-Mail* reported that on Boxing Day last year on the Gold Coast a teenager on a jet ski deliberately ran down a black swan. In that instance the teenager was charged with animal cruelty, was given 180 hours of community service and had to pay more than $11 000 in medical expenses to the animal hospital that treated the swan. If it had happened in Victoria, he would also have been charged with animal cruelty. However, he would not have met the definition of hoon boating and the police would not have been able to order him off the water or confiscate his jet ski.

Cowards like this who deliberately target defenceless animals should forfeit their right to enjoy Victoria's waterways, and this bill helps to achieve that goal. It specifically links hoon boating to wildlife legislation and gives police and authorised officers from the Department of Sustainability and Environment the ability to enforce hoon boating sanctions in these instances. I have great pleasure in supporting the bill, and I commend it to the house. Overall it reduces regulation of our ports, ensures that Victoria will be able to recover the costs of preventing marine pollution and will crack down on hoon behaviour on our waterways.

I, like Mr O'Brien, would like to thank everybody in the chamber for a very successful year and for the help they have given me personally. I wish everybody in here a very happy and safe holiday period.

Ms BROAD (Northern Victoria) — I wish to make some brief remarks about the Transport Legislation Amendment (Marine Safety and Other Amendments) Bill 2011. The bill seeks to promote marine safety, which is a laudable objective, including by ensuring that operators of hire-and-drive vessels are covered by the same statutory duty of care as operators of recreational vessels. I declare that I am an enthusiastic user of hire-and-drive vessels, and I believe this extension of the statutory duty of care of operators of recreational vessels to operators of hire-and-drive vessels is timely. It was an important reform when the former Labor government brought in drivers licences for operators of recreational vessels, and it is now timely that operators of hire-and-drive vessels be covered by the same statutory duty of care. Anyone who has been out on the water and had experience of some operators of hire-and-drive vessels who lack the knowledge they should have before getting behind the

wheel of a hire-and-drive vessel — it can cause consternation for everybody in the vicinity — will enthusiastically support this extension.

At the time that drivers licences for operators of recreational vessels were brought in, there was an extensive consultation with the boating community and a vociferous debate about what should be done with the revenue that would be raised as a result of the introduction of drivers licences for operators of recreational vessels. At the time, as the minister responsible for those consultations and for bringing forward the legislation, I had the pleasure of conducting those consultations and having some healthy debate with Treasury about what should happen to the revenue. I note that in his remarks to the house today Mr O'Brien avoided the issue of what will be done with revenue raised as a result of this bill. He referred to the fact that the aim of the bill is to promote marine safety, and I concur with that observation.

He also indicated that it is the government's hope that revenue raised through the bill will be minimal because everyone will comply with the requirements and there will therefore be little revenue. However, he avoided saying what will happen to the revenue that is raised, and I place on record that I believe it is an important principle that any revenue raised is invested in boating facilities that will further improve the experience of recreational boating and boating safety. That was certainly the approach that was taken under the former Labor government. I believe the principle should be continued, and I urge the government to do that.

Marine safety and promoting marine safety compliance needs to be a partnership between the boating community and those in government who are responsible for enacting and enforcing regulations to ensure marine safety. I note that members of the government have said that the government has had extensive consultation on this bill, but some of the statements that have been made by industry associations and by VRFish, the Victorian recreational fishing peak body, have made it very clear that they are not happy, they are not satisfied and they do not believe that the consultation process has been adequate — never mind how perfect members of the government believe it to have been.

The reason I raise the comments by peak bodies is that it is very difficult to move forward with marine safety as a partnership between all of the responsible organisations and representative bodies if they do not feel part of it. Clearly as matters stand some of the very important organisations in this area do not feel they have been adequately involved in the preparation of the bill that is now before the house. In relation to the consultation process, for example, comments have been made that a great deal of time was taken up with information sessions at which members of the boating community were not adequately informed to be able to put forward their views, because they were busy simply receiving information, and that the regulatory impact statement was not released until part of the way through the supposed consultation process.

Clearly the consultation process has not been perfect, and the government needs to do better in this area if it is to ensure that marine safety is seen as a partnership between the great many Victorians, including me, who enjoy recreational boating, who use boats and hire-and-drive vessels, who go fishing and who enjoy boating in a whole range of ways, their representative organisations and those parts of government that are responsible for the marine safety framework. That framework, which includes this bill, is designed to ensure that when people go boating they not only enjoy the experience but also do so safely and at the end of the day make it home to their families. We have recently seen some tragic examples of how quickly things can go wrong when people set out and do not take all of the steps that can be taken to minimise the risks and ensure that boating is undertaken in the safest way possible. With those brief remarks I conclude my comments.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 49 agreed to.

Clause 50

Mr BARBER (Northern Metropolitan) — The minister may not have heard my contribution to the second-reading debate. The issue I raise is that this part of the bill relaxes the regulatory regime for the port against the recommendations of the Essential Services Commission (ESC). Can the minister tell me which group of port users support this proposition?

Hon. M. J. GUY (Minister for Planning) — I am advised that the Port of Melbourne Corporation supports it and the port of Geelong does not oppose it.

Mr BARBER (Northern Metropolitan) — I actually said 'port users'. I understand the ports want to get rid of the competition regulator. I read their submissions,

but I was questioning which groups of the port users — those who may have to pay fees — support this proposition.

Hon. M. J. GUY (Minister for Planning) — I advise that port users were consulted as part of the ESC process and that no opposition to the proposal was raised.

Mr BARBER (Northern Metropolitan) — We could be here all day. The minister missed my second-reading contribution through no fault of his own. I read out a number of submissions from a whole range of port users who wanted to keep the current regime. The Greens will vote against this clause because we support them in wanting to keep the current regime.

Committee divided on clause:

Ayes, 37

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

Noes, 3

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

Clause agreed to.

Clauses 51 to 55 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

BUSINESS OF THE HOUSE

Adjournment

Debate resumed from earlier this day; motion of Hon. D. M. DAVIS (Minister for Health):

> That the Council, at its rising, adjourn until Tuesday, 7 February 2012.

And Hon. M. P. PAKULA's amendment:

> That the words 'Tuesday, 7 February 2012' be omitted with the view of inserting in their place 'a day and hour to be fixed by the President, which time of meeting shall be notified in writing to each member of the Council'.

Mr LENDERS (Southern Metropolitan) — By leave, without wishing to put words into Mr David Davis's mouth, I would like to put on the record that I had a discussion with Mr Davis and we have had a very reasonable outcome on this matter. When I raised the issue this morning I do not think there was any ill will from Mr Davis. It was simply that the motion to adjourn the house to a fixed time would have prevented the Auditor-General from tabling reports. That was the advice we had in government: the Auditor-General was not prepared to table them because they would not attract privilege.

The issue was adjourned this morning and we have come back with an outcome which the government in this house has said it accepts. It is a very good outcome and an issue we should look at in the Procedure Committee.

I do not often congratulate Mr Davis from across the chamber for a reasonable approach, but I do it today because this is what the dialogue should be — —

Mr Finn — Because it is Christmas.

Mr LENDERS — No, Mr Finn, it is Christmas, but I do not do this because of Christmas. Credit where credit is due: this was a good response and process today. It is unfortunate the horse has bolted from the stables, because the Assembly actually passed its motion in that form, which still precludes the Auditor-General from tabling some of his reports over the next 40 days.

That is an unfortunate move by the government and something I am very critical of, but I will put on the record that it is a good outcome for today. As I understand it, the government will support Mr Pakula's amendment. That is something we on this side of the house genuinely congratulate the government on.

Amendment agreed to; amended motion agreed to.

CRIMINAL PROCEDURE AMENDMENT (DOUBLE JEOPARDY AND OTHER MATTERS) BILL 2011

Committee

Resumed from 6 December.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I seek leave for Mr O'Brien to share the table with me during the committee stage.

Leave granted.

Clause 17

The DEPUTY PRESIDENT — Ms Pennicuik will move her amendment 1 to clause 17. Can I just advise that her proposed amendments 2, 3 and 4 will be tested in one go, but if she wishes she can move her amendment 5 on its own.

Ms Pennicuik — It is tidier to do it with the others.

The DEPUTY PRESIDENT — Okay. Ms Pennicuik, to move her amendment 1.

Ms PENNICUIK (Southern Metropolitan) — I want to do them all in one. Before I move the amendment, Deputy President, I would like to respond to what you just mentioned about the amendments as a whole. Amendment 5 is a totally different amendment from amendments 2 to 4. I also want to mention that clause 17, which the committee is dealing with now, is a substantial clause. It runs from pages 9 to 24 of the bill and inserts a new chapter 7A into the Criminal Procedure Act 2009. It has quite a lot of proposed new sections.

In addition to moving amendments to certain of those sections, beginning with amendment 1 which I will move in a moment, I will also have questions on certain of those sections — for example, amendment 1 relates to proposed section 327D. I do not have any further amendments until we get to proposed section 327L, but I have questions on some of the intervening new sections. I am proposing that once we have dealt with my amendment to proposed section 327D, perhaps we can see if there are questions on 327E, 327F et cetera until we get to proposed section 327L. I think it might be a more orderly way to proceed rather than jumping around the course, if that is satisfactory to you, Deputy President, and to the other people in the committee.

The DEPUTY PRESIDENT — Order! Just to be clear, I did invite Ms Pennicuik, if she wished, to move her amendment 5 on its own, or to link it. If she wants to move it on its own, that is fine. We are on amendment 1, then you have questions on subsequent elements of clause 17, and then we will deal with the other amendments. That is fine.

Ms PENNICUIK — I move:

1. Clause 17, page 11, line 16, omit 'it is more likely than not that,'.

This is an amendment to the new section 327D as inserted by clause 17. My amendment is to paragraph (b) of that proposed section. The effect of my amendment would be to omit the introductory phrase 'it is more likely than not that,' so that the paragraph would then read:

> (b) had it not been for the commission of the administration of justice offence, the person would have been convicted of the firstmentioned offence at the trial.

This matter was raised in the Scrutiny of Acts and Regulations Committee (SARC) report, and it was raised by the Law Institute of Victoria. It is in line with one of the COAG (Council of Australian Governments) principles to use this phrase, but in my view it is a phrase that — without wanting to make a pun — is more likely to be used in a civil proceeding than in a criminal proceeding. In order to get a criminal conviction you need to establish beyond reasonable doubt that an offender is guilty of the offence, not that 'it is more likely than not' that they are guilty of an offence.

We are talking here about overturning an acquittal and the double jeopardy rule that has been in place for a thousand years. The test to overturn an acquittal and the definition of what a tainted acquittal would be should be strong. It must be established that that particular taint would have to be substantive, compelling et cetera to actually overturn an acquittal and retry someone who has been acquitted. I do not think the inclusion of the phrase 'it is more likely than not' is strong enough. I also refer members to parts of the SARC report, particularly on page 6, where it says:

> While the committee considers that the purpose of ensuring that people who are acquitted of serious crimes are not able to escape punishment where compelling new evidence of guilt emerges … or the acquittal was tainted by an orchestrated perversion of the original trial … may justify limits on charter section 26, it notes that new chapter 7A may permit retrials in circumstances that fall outside these scenarios.

On page 7 it goes on to say:

> Also, there is no requirement in new section 327D that either … the acquitted person has been the intended beneficiary of

> the administration of justice offence or that the taint of the original trial be remedied (or even remediable) at the retrial.

Without going through the whole SARC report, which we all know is quite long, if you have read the report through a few times, as I have, you know the upshot is that there are a lot of loopholes in this bill which in my view mean the bill is not watertight or strong enough to make it very difficult to overturn an acquittal. That is why I have moved that amendment.

Hon. M. P. PAKULA (Western Metropolitan) — The opposition will not be supporting amendment 1 for the following reason: when you are talking about an administration of justice offence that has been committed, you are talking about something like jury tampering or interfering with a witness. The effect of Ms Pennicuik's amendment would be that the Court of Appeal would have to know for certain that the person would have been convicted if that had not occurred. We simply think that test is too difficult for it to meet. We are talking about an offence that may have influenced a jury and may have caused someone to be acquitted. In those circumstances we think it is more likely than not, given that the Court of Appeal still has to be satisfied of other things as well, particularly the fact that a fair new trial can be held, that that is sufficient.

I just do not think it is practical to have a situation or a provision that says the Court of Appeal has to be satisfied that the person would have been convicted if it were not for the administration of justice offence. I think that would actually render the entire provision unenforceable because, as it appears to us, it would not be possible for the Court of Appeal to be satisfied of that beyond any doubt at all, which is what the effect would be if Ms Pennicuik's amendment was accepted. Whilst the wording that is there at the moment may not be 100 per cent perfect, it is better and is more capable of being effectively applied by the Court of Appeal than the wording that would remain if Ms Pennicuik's amendment was accepted.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik for her amendment. In fact, Mr Pakula is on the same line that we are: we will not be supporting the proposed amendment. It is important to say for the record that the proposed section 327D provides that part of the test of whether an acquittal is tainted is whether — as Mr Pakula has pointed out — it is more likely than not that, had it not been for the commission of the administration of justice offence, the person would have been convicted of the firstmentioned offence at the trial.

New section 327L provides that the Court of Appeal may set aside a previous acquittal where it is satisfied that the acquittal was tainted. The Court of Appeal must therefore be satisfied that, in the absence of the commission of the administration of justice offence, a jury would have been more likely than not to have returned a verdict of guilty rather than not guilty.

The Court of Appeal must consider what changes there would have been in the evidence presented to the jury if the administration of justice offence had not been committed. This may involve considering the case in the absence of certain evidence or with the addition of certain evidence. The court must then determine what kind of difference this may have made to the verdict of the jury. The administration of justice offence at the first trial may have involved any of a number of different kinds of acts, including perjury, tampering with evidence, threatening witnesses and bribing a judge. The administration of justice offence may have infected part or all of the evidence of a witness.

The court will have transcripts of evidence and witness statements; however, the jury will have had the benefit of seeing and hearing the evidence being given, assessing the demeanour of witnesses and drawing conclusions about what evidence they would accept and would not accept, but the jury does not provide reasons for its decision. The Court of Appeal therefore will not know with certainty what evidence was crucial to the jury in reaching its verdict. As a result, assessing the extent of difference that the administration of justice offence would have made to the jury's verdict is a difficult task.

New section 327D recognises these challenges that the Court of Appeal faces and sets a high but realistic test for the court to apply. The amendment proposes removing the words 'it is more likely than not that'. In effect, this would mean that the Court of Appeal must be satisfied that the person would definitely have been convicted of an offence that the person was acquitted of had it not been for the commission of the administration of justice offence. Given the nature of the inquiry the Court of Appeal must undertake, it would be unlikely that the Court of Appeal could ever reach such a conclusion.

Further, it would place the Court of Appeal in the position of concluding that the person is in fact guilty because they would have been convicted at the first trial. If that is the case, there is no point in conducting a further trial because a jury verdict of guilty would merely confirm the conclusion of the Court of Appeal and a jury verdict of not guilty would be at odds with a decision of the Court of Appeal. This would cast both

the jury and the Court of Appeal in inappropriate roles. The bill appropriately recognises the different functions of a jury and the Court of Appeal and provides the appropriate test for the Court of Appeal to apply.

Ms PENNICUIK (Southern Metropolitan) — Just briefly, Deputy President, I hear what Mr Pakula has said and I hear what the minister has said. It could be said, too, that the removal of that clause that I am proposing perhaps makes it, as you are saying, too difficult, but I suggest that leaving it in there makes it not difficult enough. I think the clause either way — if it is left as it is and if it is worded as with our amendment — could be wrong. I also make the comment that this clause needs to be considered in the rest of the bill.

The minister talks about the Court of Appeal, but under the bill the DPP (Director of Public Prosecutions) can bring an indictment against a person before the Court of Appeal has in fact considered anything, which I think is a major flaw in the bill, which we will go to in other clauses. So given that that will stand, it is in fact the DPP who will be making the first call as to whether it is 'more likely than not' that there would have been a conviction, and I am suggesting that setting aside an acquittal based on the fact that it is 'more likely than not' that it was a 'tainted acquittal', as is outlined in new section 327D, is not a strong enough reason for setting aside an acquittal and exposing a person to double jeopardy.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that we have gone through that, but it is also in the COAG model, so we are, as I said, keeping with the current position.

Ms PENNICUIK (Southern Metropolitan) — I understand about the COAG model, but this bill does not follow the COAG model in its entirety. Even though that particular bit is in the COAG model, again you have to look at the whole bill, and, as I said, I will talk about some of those issues as we approach other clauses. There are flaws in the bill and there are flaws in the COAG model as well.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again, the bill is measured, it is appropriate and it is the implementation of the COAG model to Victoria, so that is where we are.

Amendment negatived.

The DEPUTY PRESIDENT — Order! I invite Ms Pennicuik to move her amendments 2, 3 and 4 to clause 17, although I think she has some other issues she wishes to raise.

Ms PENNICUIK (Southern Metropolitan) — Yes. As I foreshadowed, there are some other proposed sections of new chapter 7A, which is to be inserted by clause 17, about which I would like to ask the minister before moving my amendments to later provisions in clause 17. The first question is with regard to new section 327A, which goes to the circumstances in which police may reinvestigate an offence after an acquittal. There is quite a long new subsection which goes for three pages of the bill. Questions were raised by the Scrutiny of Acts and Regulations Committee regarding the reinvestigations and an answer was supplied by the minister.

If you remember, Deputy President, during the second-reading debate I mentioned that I had not had the chance to actually read the minister's response to the questions raised by SARC. The minister's response to those questions states:

> The list of powers included with the scope of reinvestigation was a policy decision made following careful consideration and consultation with key stakeholders. It was not considered necessary to specifically include any other investigative powers in the definition of reinvestigation.

He goes on to say:

> … Victoria's approach of specifying all of these investigation powers is a much more practical way of setting out rights and obligations.

My question to the minister is, and I hope he is with me, given that in the second-reading debate yesterday I mentioned that most of the key groups do not feel that they were consulted very widely on this bill: who was consulted? Who is the minister referring to when he says 'careful consideration and consultation with key stakeholders'? What is meant by it is 'more practical' to set things out this way? Is practicality an aim of the bill?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — When Ms Pennicuik says 'the minister', is she talking about the Attorney-General?

Ms Pennicuik — The Attorney-General.

Hon. R. A. DALLA-RIVA — The Attorney-General. I thought she was talking about me the other day. I will just find out.

Ms PENNICUIK (Southern Metropolitan) — Just to clarify for the minister, I am talking about the Attorney-General's response to SARC.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have in terms of the consultation was that it included the Law Institute of Victoria, the Criminal Bar Association of Victoria, the Victorian Bar, the Director of Public Prosecutions and the police.

Ms PENNICUIK (Southern Metropolitan) — One of the concerns I have with the bill is that in new section 327E(4) it states that the DPP must not authorise a reinvestigation unless he or she is satisfied of certain things, including that it is in the public interest for a reinvestigation to proceed and that in the DPP's opinion the previous acquittal would not be a bar to the trial of the person for an offence that may be charged as a result of the reinvestigation.

One of the concerns I have with the bill is that the DPP is making a lot of decisions about what is in the public interest and whether the previous acquittal would be a bar, whereas the overriding safeguard of the changing of the double jeopardy regime is that the Court of Appeal makes those judgements. In the interests of justice, which is supposed to also be an overriding safeguard, it is actually the Court of Appeal that has the last say. I am wondering with the DPP making a decision about the acquittal and the Court of Appeal making the decision further down the line, which of them has the last say.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is a tiered approach. The advice I have is that the DPP will make the investigation decision but it is the Court of Appeal that will determine the trial.

Ms PENNICUIK (Southern Metropolitan) — It is an important point if we could get to it. If you look at page 13 of the bill, new section 327E(4)(b) states that the DPP may authorise a reinvestigation if:

> in the DPP's opinion, the previous acquittal would not be a bar to the trial of the person for an offence that may be charged as a result of the reinvestigation.

I ask: is it not the role of the Court of Appeal to make that decision, not the DPP? The DPP is not the Court of Appeal; he or she is a public officer appointed by the executive of the day, not a court.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that the Court of Appeal will make the ultimate determination on whether there is a retrial. In terms of section 307E(4)(b), that is part of the reinvestigation process. The retrial is determined by the Court of Appeal on application to the Court of Appeal.

Ms PENNICUIK (Southern Metropolitan) — I will not labour it too long. My concern goes to the Director of Public Prosecutions making a judgement that he or she is allowed to make and allowing the reinvestigation to continue on that judgement. That is almost a pre-emption of the determination that the acquittal be set aside. I am just concerned about the role of the DPP vis-a-vis the role of the Court of Appeal, for the people of Victoria — and the people of Australia, actually, because not all states are following the Council of Australian Governments model.

This particular bill follows the COAG model, but the Western Australian bill, for example, does not follow the COAG model, and I will get to the Western Australian bill when I get to the next section, section 327F. As I understand it, the WA model does not allow the DPP to charge a person under indictment until the Court of Appeal has allowed the acquittal to be set aside, whereas in this bill the DPP can charge someone before that happens.

I am concerned about that chicken-and-egg issue that is raised by this bill and the protection of people against double jeopardy, where they can be charged when they have formally been acquitted of a charge. They are formally an acquitted person, but under this bill they can be recharged while they are still an acquitted person. That is my concern.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am just trying to get clear where Ms Pennicuik is heading in terms of the process. She is talking about the reinvestigation process. There is, I guess, a three-step process in terms of the DPP being satisfied under subsection (4)(a)(i) and (ii) and then (b) of new section 327E. So there are three parts. Then new section 327H on page 15 of the bill says that the DPP may apply to the Court of Appeal for an order. The advice I have is that — and I refer to subsection (4) on page 16 — the DPP has 28 days after a direct indictment is filed under new section 327F.

In terms of the separation, it is outlined in the SARC report, which is the response by the Attorney-General, in the fifth paragraph on page 9 of *Alert Digest* No. 15 of 2011:

> The requirement that the DPP directly indict an acquitted person before applying to the Court of Appeal within 28 days was a policy decision. The rationale was to use the processes available in the Criminal Procedure Act 2009 while still in effect providing the same powers and processes as envisaged by the COAG model. By using the direct indictment process, the DPP will be required to give notice of the indictment to the accused (section 171 of the Criminal Procedure Act) and will have powers to compel the accused to attend court

(section 174 of the Criminal Procedure Act) (by summons or warrant). For this reason, it is not necessary to provide the Court of Appeal a discretion to issue a summons to the acquitted person to appear in this bill (the procedure proposed by the Western Australian double jeopardy reform legislation and cited by the committee).

Ms PENNICUIK (Southern Metropolitan) — I understand that, having read the Attorney-General's response. So it is a policy decision — and it is one that concerns me greatly, I have to say — that the Court of Appeal does not have a look-in here until 28 days after the DPP has decided to file an indictment, which can be a long time after the DPP has decided that it is in the public interest to reinvestigate a matter and the DPP has made the decision, under new section 327E(4)(b), which I have also raised as a concern.

I think we have had enough discussion about that, except to say that I would appreciate clarification on when a situation would arise where the DPP would not authorise the police to reinvestigate a matter or a senior member would not authorise a reinvestigation. This whole new section 327E is written in such a way as to indicate that the DPP would authorise an investigation, and it does not really set out why the DPP would not. It is a concern. If the minister were able to give examples of where the DPP would not authorise a reinvestigation, that may be helpful.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — At the top of page 12 of the bill, on reinvestigation, the police have to be satisfied. Then, at the top of page 13, subsection (4) of new section 327E provides that the DPP must be satisfied; so there is a process. As I said also on the notion that it is a long time, there are 28 days, and that is specified on page 16 in new section 327H(4).

Ms PENNICUIK (Southern Metropolitan) — I think we understand each other, Minister. Section 327H is the part we have referred to in our conversation, which says that after the DPP has filed an indictment under new section 327F, new section 327H provides that the DPP may apply to the Court of Appeal to set aside an acquittal, and that must be within 28 days. Then new section 327I provides for an extension of the 28 days. What sorts of reasons would there be for giving an extension to the 28 days? To clarify, new section 327F says, 'in the interests of justice to do so', but what sort of example would there be?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — My full process was correct on both sections, and the advice I have received is such. As Ms Pennicuik rightly pointed out, the first instance of the use of the words 'it is in the interests of justice to do so' is on page 17 of the bill. In terms of being 'in the interests of justice to do so', clearly that proviso would be on a case-by-case basis and it would be for the court to consider what the interests of justice would be. If Ms Pennicuik is asking for a definitive answer, I do not have one. It would be a test that the court would apply in the circumstances.

Ms PENNICUIK (Southern Metropolitan) — I think that is all I have to say on those clauses, so I am happy to proceed with my amendments. I move:

2. Clause 17, page 18, line 15, after "fair" insert "and in the interests of justice".

3. Clause 17, page 19, line 11, after "fair" insert "and in the interests of justice".

4. Clause 17, page 21, line 22, after "fair" insert "and in the interests of justice".

I understand that amendment 2 is a test for my amendments 3 and 4, which would insert the same phrase into the new sections 327M and 327N respectively. Section 327L deals with the Court of Appeal's determination of an application in which the acquittal may be tainted, section 327M concerns the Court of Appeal's power to make a determination of application when there is fresh and compelling evidence and section 327N outlines that the Court of Appeal may make a determination on an application to set aside an acquittal where an administration of justice offence has occurred.

I have grouped the sections together in the interests of explanation and expediency. The reason for the insertion of this clause is that the safeguard in this whole bill — that is, the safeguard of people against double jeopardy — is that the court would only overturn an acquittal on any of those three grounds if it was in the interests of justice to do so, and it does not say that in any of those clauses.

If we look at new section 327L(c), for example, it says the Court of Appeal, amongst other things, could say that it is likely that a new trial for the offence would be fair, having regard to subsections (i), (ii) and (iii). None of those amounts to 'in the interests of justice', which is the fundamental core element according to which the court would make a decision about overturning an acquittal; it would have to be in the interests of justice to do so. I suggest that even the wording that the trial was 'fair' would be a subset of 'in the interests of justice', as would the matters under subsections (i), (ii) and (iii) which appear in all the new sections L, M and N into which I am wishing to insert this new phrase.

I have read the Attorney-General's response to what was raised by SARC as an issue that concerned it, where he says:

> The committee seeks further information as to a requirement that a court may only order a retrial of an acquitted person if it is satisfied that 'in all the circumstances it is in the interests of justice for the order to be made,' in comparison to the requirement in new sections 327L–327N —

which I am talking about here —

> that the Court of Appeal be satisfied that a new trial is likely to be fair.

The Scrutiny of Acts and Regulations Committee drew the attention of Parliament to those new sections, and I have paid attention to them, as the committee advised. I am not convinced by the response of the Attorney-General to this, where he states:

> The wording in the bill that a court may only order a retrial of an acquitted person if it is satisfied that 'in all the circumstances it is in the interests of justice for the order to be made,' is the same as the South Australian legislation and is very close to the COAG model even though it does not use the exact words 'that it is in the interests of justice for an order to be made'. If the Court of Appeal does not consider that the trial would be fair then it would also necessarily have to conclude that it would not be in the interests of justice.

I do not agree with what the Attorney-General says there. I think that being 'fair' is part of being 'in the interests of justice'. The other factors that are listed there regarding the length of time, et cetera, are also subsets of 'in the interests of justice'. The legislation would be much improved, and people who are at risk of double jeopardy would be better served if that phrase — which is a key safeguard in the whole regime of having exemptions to double jeopardy — were inserted into these three sections. That is why I am moving my amendment today.

The DEPUTY PRESIDENT — Order! I just want to clarify that Ms Pennicuik's amendments 3 and 4 are not actually tested by amendment 2, because they are separate points. Ms Pennicuik could, if she wished, put them separately. However, I am inviting her to do them en bloc, so that rather than testing one another they would be tested en bloc.

Ms PENNICUIK — Yes. I understand that, Deputy President, which is why I have addressed them en bloc. We can test them en bloc, because that is the way I have spoken to them.

Hon. M. P. PAKULA (Western Metropolitan) — The opposition will support Ms Pennicuik's amendments, and we will support them for the reasons given by Ms Pennicuik. It is very straightforward that in regard to these offences it should be not only fair that a new trial can occur but also in the interests of justice. That has been expressly stated by the government, and the bill ought to reflect that.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — the government will be opposing Ms Pennicuik's amendments to new sections 327L, 327M and 327N and the insertion of the words 'and in the interests of justice' after the word 'fair'. We do not see what value it would add to include the words 'and in the interests of justice' in the test which the Court of Appeal must apply in determining applications under the new sections I have mentioned.

The Attorney-General addressed this issue in his response to the letter he received from the Scrutiny of Acts and Regulations Committee and the report of that committee. It is worth noting that SARC thanked the Attorney-General for his response and did not make any further comment or pose any further questions. In fact Mr O'Brien, my learned colleague at the table with me, outlined in his contribution to the second-reading debate on Tuesday this week the government's response to these amendments and referred to the Attorney-General's response to SARC.

I do not know if members wish me to again quote from the response of the Attorney-General; I will save the time of the chamber and not do so. However, I note that in the final summation of his response of 2 December 2011 the Attorney-General said, amongst other things:

> New sections 327L, 327M and 327N also specifically allow the court to consider any other matter that it considers relevant. This, and the requirement to consider whether a new trial would be fair, gives the court a broad discretion that encompasses considering the interests of justice.

Ms PENNICUIK (Southern Metropolitan) — The minister mentioned the Attorney-General's response to SARC. I would just like to briefly say in response to the minister and put on the record that the Attorney-General's response is completely inadequate with regard to this matter. It does not answer the matter at all.

Committee divided on amendments:

Ayes, 19

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

Noes, 21

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

Amendments negatived.

Ms PENNICUIK (Southern Metropolitan) — Sadly, Deputy President, I have another question before I move my amendment 5. My question is regarding new section 327M, specifically subsection (2)(k). There was a question raised about paragraph (k) in the Security of Acts and Regulations Committee report regarding whether the requirement to disclose a reason for the charge would be interpreted to mean specifying the aggravating circumstances under that particular charge. The Attorney-General in his response said it was doubtful there would be that requirement under this section. I would like to know what the jurisprudence is on that, which I imagine the advisers might be able to assist with, and I would also like to know how a person who has been charged is made to understand the reason they have been charged. It is a bit confusing, so I will just read it out:

> … the details of the charge are … known —

to the accused, because there has —

> … been substantial disclosure through the previous trial …

I would have thought that where it says that a new charge under proposed subsection (2)(k) — we are on page 20 of the bill — can be brought only where there is fresh and compelling evidence, evidence from the first trial cannot be relied on; so there is a bit of confusion. How will the accused know what the reason is, or will they know at all?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The adviser is trying to get some more detail as to what Ms Pennicuik is seeking, because there is a response provided on page 9 of *Alert Digest* No. 15 of 2011, which I covered earlier. Maybe Ms Pennicuik might want to explore that a bit more so that we get to the nub of what she is seeking advice on.

Ms PENNICUIK (Southern Metropolitan) — There are two parts to the question. One is that there was a concern by SARC that the aggravating circumstances in an indictment made under new section 327M(2)(k) might not be spelt out. The Attorney-General says it is 'doubtful' that they would be spelt out. That is one part of the question. The other part of the question is that under the general indictment the DPP might make under this section, the Attorney-General seems to imply that the person would understand the reasons for the indictment because they were at the first trial. But if the reasons are about fresh and compelling evidence, then they would not have been at the first trial. That would not have been present at the first trial, so how would they know the reason? They are entitled to know the reason under the Charter of Human Rights and Responsibilities.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I understand where Ms Pennicuik is at. How would they know? The advice I have indicates that they would know, because they would have the indictment — in other words, the charge — that was laid against them that would say there was fresh and compelling evidence. That would be the reason for that indictment. Ms Pennicuik asked how they would know: they would know because the indictment would specify what the offence or what the retrial matter was about.

Ms Pennicuik interjected.

Hon. R. A. DALLA-RIVA — Yes, and I will find out the reasons. But I understand where Ms Pennicuik is at. The first part of Ms Pennicuik's issue is about the indictment; I will seek guidance about the second part of her issue.

I want to make sure I get this right. The indictment will specify one of the three exceptions in relation to the reasons. I am seeking advice as to where that is, so we can get the issue totally sorted out. I have a bank of lawyers working for Ms Pennicuik! The indictment, as I said, specifies with sufficient particularity the circumstances of the offence. There are parts of Ms Pennicuik's matter that I may have to take on notice. I am happy to provide what I can while we are

proceeding and dealing with other matters so I can get the answer that Ms Pennicuik is seeking.

Ms PENNICUIK (Southern Metropolitan) — I appreciate that. I make this point again: had there been enough time for us to consider the bill in more detail, particularly the answers supplied by the Attorney-General just yesterday to the several significant questions raised by the Scrutiny of Acts and Regulations Committee — the more you look at it the more complicated it gets — we may have saved some time. However, given the time we had, I was not able to provide the minister with the questions earlier.

Hon. M. P. Pakula — That is a good reason to support amendment 5.

Ms PENNICUIK — That is right; it is a very good reason. Does the minister have an answer?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — New section 327H, on page 15, says:

> (2) An application must specify whether it is based on —
>
> (a) a tainted acquittal; or
>
> (b) fresh and compelling evidence; or
>
> (c) an administration of justice offence.

They are the three areas outlined in the bill.

Ms PENNICUIK (Southern Metropolitan) — When would a person who is being indicted find out more detail than that as to what the new evidence is or what the nature of the administration of justice offence is? That is what I am asking.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I can give an example of what fresh and compelling evidence encompasses in practice. I will give just one example that has been provided. The fresh and compelling evidence exception is limited to where there is a change in the available evidence. In other words it does not extend simply to allowing the prosecution a second chance to convict the accused. It is important that police and the prosecution prosecute vigorously and do not rely on the possibility of an exception to double jeopardy as a reason for not investigating thoroughly and introducing available and relevant evidence. The provisions should not operate to excuse or compensate for prosecutions based on inadequate investigations.

Most commonly, advances in technology will mean that DNA evidence that was not available at the first trial will be fresh and compelling evidence. However, where the evidence was inadmissible at the first trial but because of a change in law is now admissible, new section 327C provides that this may form part of the evidence that is said to be fresh and compelling. This may include hearsay evidence, where the rules governing the admissibility of such evidence now permit more hearsay evidence to be admitted.

However, it would need to be clear that the evidence was inadmissible at the time of the original trial, irrespective of whether prosecutors sought to adduce the evidence. If at the first trial the prosecution chose not to tender the evidence purely for tactical reasons, the evidence is not likely to be capable of forming part of fresh and compelling evidence.

There are also procedures for direct indictment under the Criminal Procedure Act 2009, chapter 5, part 5.2, section 161. The details are outlined there, to add a bit more night reading for Ms Pennicuik.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for the information he has given me, most of which I was aware of and does not really answer the question, which is: given my concern that the indictment can occur before the Court of Appeal has seen what the compelling or fresh new evidence may be or before it has adjudicated on whether or not a trial was tainted, and given that a person can be presented with an indictment telling them that under one of those three conditions they will be charged again with an offence, when will they know what the compelling and fresh evidence is? Will they know before the Court of Appeal has adjudicated on it, for example?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The process is set out on page 16 of the bill. New section 327H states:

> (6) A copy of the notice of application must be served personally on the accused …
>
> (7) The DPP must provide a copy of the notice of application to the legal practitioner who last represented the accused in the criminal proceeding …
>
> (8) An accused is entitled to appear at the hearing of an application under this section and may be represented by a legal practitioner.

Ms Pennicuik interjected.

Hon. R. A. DALLA-RIVA — You asked about the process, and it is outlined in the bill.

Ms PENNICUIK (Southern Metropolitan) — I do not want to exacerbate levels of frustration any further.

I understand the process — I have read the bill. What I am asking about is the content, but I have asked three times and have not got the answer. Perhaps the minister could take it on notice and let me know later.

Before I move my final amendment, I have to say that none of the conversation we have had has allayed my concern regarding the process where the DPP can make this indictment before the Court of Appeal has even looked at why the DPP would be indicting someone before their acquittal has been set aside — before the court has even said that it does or it does not have enough evidence to do that. This is a fundamental problem with the bill which I am not getting the answer to, and I do not think we will get an answer by asking the question any more times.

I move:

5. Clause 17, page 24, after line 12 insert —

"327T Review of Chapter

(1) The Attorney-General must conduct a review of the operation of this Chapter and related amendments made by the **Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011.**

(2) The review must be undertaken as soon as practicable after the fifth anniversary of the day on which section 17 of the **Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011** comes into operation.

(3) The Attorney-General must cause a copy of the report of the review to be laid before each House of the Parliament.".

The amendment inserts a new section 327T into the bill following section 327S on page 24 of the bill. It has the title 'Review of chapter', and it refers to new chapter 7A which is inserted in the act by clause 17 of the bill.

I understand that a similar amendment was passed to similar legislation passed in the Western Australian Parliament only last week, and I have modelled my amendment on the amendment that was agreed to by the Western Australian Parliament.

I think this is a very important amendment, because it requires the operation of the new chapter to be reviewed after five years. Given the doubts about certain provisions of this bill, such as the differences it has from the COAG model and from other states, and given the fact that my previous amendments regarding the interests of justice have not been agreed to and the implications the legislation will have on people who have been acquitted and who may be innocent but who even under this new provision may still face the prospect of a new trial — this is serious business we are talking about — it is not too much to ask that the provision be reviewed after five years, and that is why I have moved this amendment. I commend it to the house, and I urge the government to support it.

Hon. M. P. PAKULA (Western Metropolitan) — The opposition will be supporting Ms Pennicuik's amendment 5. As I said during the second-reading debate, double jeopardy is a principle that has underpinned the justice system across the Western world for hundreds and hundreds of years. We are making a change to that today. We are departing from it to some extent, and none of us know for sure how departing from that principle is going to affect the administration of criminal justice. It may be positive, it may be negative or it may have next to no impact at all.

It is important to note that Ms Pennicuik's amendment 5 is not a sunset provision. It is not a provision which says that this bill is automatically repealed after five years unless it is renewed. It is simply a provision which says that after five years there should be a review of how the provisions in this bill have affected the administration of criminal justice and that should be reported on and placed before the house.

It is worth noting that there was a similar provision inserted into the legislation to bring forward the Charter of Human Rights and Responsibilities. That was appropriate. If it is appropriate for the Charter of Human Rights and Responsibilities, it is certainly appropriate for a bill which changes a legal principle that has stood for hundreds and hundreds of years and has been the foundation of our system of administration of criminal justice. The opposition will be supporting Ms Pennicuik's amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank members for their comments. The government will not be supporting Ms Pennicuik's amendment 5, which seeks to insert new section 327T. The COAG model does not contain such a review mechanism, and with the exception of Western Australia, as put by Ms Pennicuik, this type of provision does not appear and presumably was not considered necessary in the legislation of Australian jurisdictions which have implemented the COAG model. In addition, it is not anticipated that there will be such a large number of cases under these reforms that a formal legislated review process would be required.

I note the comment about whether there have been any cases. There have been no reported cases under double jeopardy laws in Australian jurisdictions. However, it is not possible to state with certainty that no charges have been laid or applications made to conduct new prosecutions under the double jeopardy reforms because if this occurred recently, the cases may be subject to suppression orders. In terms of the small number of UK cases since the Criminal Justice Act 2003 came into operation, in summary these cases mainly focused on issues such as the meaning of new and compelling evidence and whether it was in order to conduct a new trial. Although broadly similar, there are obviously some differences between the existing UK model and the proposed Victorian legislation. The view of the government is that a review was not considered in the COAG model, and as such we will not be supporting the amendment.

Ms PENNICUIK (Southern Metropolitan) — Briefly, the COAG model came into being six or seven years ago. Most jurisdictions had introduced this reform by 2008, except for Western Australia which introduced it last week. Western Australia has taken the view that it is a good idea to put in a review clause, and I take the same view. That is all I have to say on the matter. I think it is unfortunate that the government is not supporting the amendment, because it does not do any harm to the bill at all.

Committee divided on amendment:

Ayes, 19

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

Noes, 21

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

Amendment negatived.

Clause agreed to; clauses 18 to 23 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

The ACTING PRESIDENT (**Mr Elasmar**) — Order! The question is:

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

House divided on question:

Ayes, 37

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

Noes, 3

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

Question agreed to.

Read third time.

CITY OF GREATER GEELONG AMENDMENT BILL 2011

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 ('the charter act'), I make this

statement of compatibility with respect to the City of Greater Geelong Amendment Bill 2011 ('the bill').

In my opinion, the bill as introduced to the Legislative Council is compatible with the human rights protected by the charter act. I base my opinions on the reasons outlined in this statement.

Overview of the bill

The purpose of the bill is to provide for the direct election of the mayor of Greater Geelong by the voters of the municipality and to make other related amendments.

The bill achieves this by amending the City of Greater Geelong Act 1993.

Human rights issues

Section 18 of the charter act protects the right to take part in public life. Section 18 states that 'every eligible person has the right, and is to have opportunity without discrimination, to vote and be elected at periodic state and municipal elections that guarantee the free expression of the will of the electors …'

Clause 5 (new section 11) of the bill provides that a person may not be a candidate for the positions of mayor and councillor simultaneously. This may be regarded as a limitation of the right to take part in public life under section 18 of the charter act, as it imposes a condition on a person's eligibility to be a candidate for mayor or councillor in local council elections for the City of Greater Geelong.

To the extent that clause 5 is a limitation on the right to participate in public life, the limitation is reasonable and justified. The purpose of the limitation is to improve the electoral process for the City of Greater Geelong by ensuring a clear distinction between the roles of mayor and councillors at the City of Greater Geelong. The role of mayor is one of leadership and accountability to the entire municipality and is distinct from the role of councillors elected to represent individual wards. This distinction minimises the possibility of bias or the perception of bias by the mayor towards a given ward in the municipality.

The mayor of Greater Geelong will have additional responsibilities and powers which distinguish the mayoral role from that of a councillor. In addition to taking precedence at municipal proceedings in the municipality, clause 6 (new section 11E) of the bill gives the mayor of Greater Geelong the additional power to appoint a councillor to represent the council as well as the power to appoint a councillor as chairperson of a special committee.

Limiting the eligibility of candidates to nominate for a single role is not uncommon in municipal elections. The City of Melbourne Act 2001 contains a similar prohibition on dual nominations. In addition some other states, namely Queensland and South Australia, also prohibit dual nominations for mayor and councillor positions.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

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

That the bill be now read a second time.

Incorporated speech as follows:

The City of Greater Geelong Amendment Bill 2011 will amend the City of Greater Geelong Act 1993 to reconstitute that council to include a mayor who is directly elected by all the voters of that municipality.

The government made a commitment to the people of Geelong that it would allow them to directly elect their mayor. This bill will give legislative effect to that commitment.

Geelong is Victoria's second largest city and the council is one of the largest in the state. It is important that a municipality of such state and regional significance has governance arrangements that will help it grow and prosper.

A mayor elected by the whole Greater Geelong community will be someone with the endorsement to speak on behalf of that community and to advocate for the city's interests nationally and internationally. A mayor elected for the full four-year term of the council will also ensure consistent leadership for the council.

Before deciding what model for the direct election of the mayor was best for Greater Geelong, the government undertook extensive consultation with the community. It also consulted key stakeholders, including the Greater Geelong City Council. The model provided in this bill reflects the outcomes of those consultations.

At the next local government elections, in October 2012, the mayor of Greater Geelong will be directly elected to represent the entire Greater Geelong community. The form of election will be by preferential voting and election will be at the same time as the election of councillors. Each voter will receive two ballot papers; one for mayor and one for their ward councillor.

Candidates will be required to decide whether they wish to nominate for the position of mayor or for a position as councillor. Dual nominations will not be allowed. This is consistent with the arrangement at the City of Melbourne and with local governments in some other states.

Limiting nominations to either mayor or councillor recognises that the roles have distinct differences and will provide clarity for voters about the roles being sought by candidates. It will also ensure that the person elected to be mayor is not someone who also sought election in a particular ward and may be perceived as having a bias in favour of that ward.

At the 2012 elections, the electoral structure for the election of ordinary councillors will be unchanged — that is, voters will elect 12 councillors to represent 12 single-member wards.

The standard arrangement, which applies to all other Victorian councils under the Local Government Act 1989, is that there may be no more than 12 councillors for a council. Under this bill, Greater Geelong will exceed this number for its next term of office. This is because the addition of the mayor will result in 13 councillors being elected. This situation will only apply for one term of the council.

Before the following general election, in 2016, an electoral representation review will be undertaken by the Victorian Electoral Commission to recommend an electoral structure that includes no more than 11 ordinary councillors. This will realign Greater Geelong with other municipalities.

After the election, the council will be required to elect one of the councillors to be the deputy mayor. The term of office of a deputy mayor will be up to 12 months and a councillor may be elected for successive terms as deputy mayor.

The deputy mayor will perform the duties of the mayor when the mayor is unavailable. If the position of mayor is vacant for any period, the deputy mayor will become the acting mayor.

Specific provision is also made in this bill for allowances for the mayor and deputy mayor. These allowances will be set by an order in council and adjusted annually in the same way as the allowances for the Lord Mayor and deputy lord mayor of Melbourne.

The mayor of Greater Geelong will have additional powers appropriate to a leadership position elected by the entire community. The mayor will be able to decide which councillors will be the council representatives on other organisations, except for remunerated positions which will continue to be appointed by council. In addition, the mayor will be empowered to appoint councillors to chair special committees of the council.

These additional powers of the mayor are generally similar to those of the Lord Mayor of Melbourne, except that the Lord Mayor's powers are broader and subject to delegation by the council.

The model proposed for Greater Geelong is different from that applying at the Melbourne City Council, which is the only other Victorian council with a directly elected mayor. This reflects feedback from the Greater Geelong community about their preferred model.

After the new model has been in operation for two years, the government intends to review its effectiveness and comparison to the Melbourne model. The review will also consider whether a model for the direct election of mayors should also be available for other councils. Further advice about this review will be provided in due course.

The provisions in this bill aim to enhance the leadership and representative democracy in one of the most significant councils in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr TEE (Eastern Metropolitan).

Debate adjourned until next day of meeting.

PLANNING AND ENVIRONMENT AMENDMENT (SCHOOLS) BILL 2011

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Planning and Environment Amendment (Schools) Bill 2011.

In my opinion, the Planning and Environment Amendment (Schools) Bill 2011, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the Planning and Environment Amendment (Schools) Bill 2011 (the bill) is to amend the Planning and Environment Act 1987 (the act) to ensure that a person or organisation is not required to pay a growth areas infrastructure contribution (GAIC) in respect of subdividing or purchasing land for a school, or carrying out building work for a school or buildings ancillary to a school.

This is consistent with and builds on the government's commitment to remove the requirement for non-government schools to pay a GAIC on land they currently own in growth areas. The bill will apply the policy to all government and non-government primary and secondary schools.

The GAIC scheme establishes a requirement for persons subdividing, purchasing or undertaking building work on land in Melbourne's growth areas to contribute to the provision of essential infrastructure in those areas.

Three GAIC events trigger the imposition of a GAIC. These are the issue of a statement of compliance relating to a plan of subdivision of land; making of an application for a building permit to carry out building work on land in the contribution area; and the occurrence of a dutiable transaction relating to land in the contribution area. In each case, there are various classes of actions which do not trigger GAIC. These are set out in the act and referred to as excluded events.

The bill amends the act to make the issue of a statement of compliance for subdividing land solely to provide a site for a school, or making a building permit application to carry out building work for the purpose of a school or ancillary buildings, excluded GAIC events.

Human rights issues

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

Conclusion

I consider that the bill is compatible with the charter act because it does not engage any human rights protected by the charter act.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

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

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of this bill is to amend the Planning and Environment Act 1987 (the act) to implement a government election promise to remove the requirement for non-government schools to pay a growth areas infrastructure contribution, commonly referred to as GAIC, on land they currently own in growth areas. This bill implements the government's commitment to ensure a non-discriminatory approach between government and non-government school providers, and to ensure that any person or body establishing or expanding a school in a growth area will not be required to pay GAIC.

The GAIC scheme establishes a requirement for persons subdividing, purchasing or undertaking building work on land in Melbourne's growth areas to pay to the state a contribution toward providing essential infrastructure for urban development in growth areas. This is separate from any requirement to pay a contribution toward local infrastructure under a development contribution plan incorporated in a planning scheme.

A GAIC is a once-only charge. It is imposed when the first GAIC event occurs in relation to land in a contribution area, unless the person liable to pay the GAIC is exempted from the liability. If an exemption applies, a GAIC is imposed in respect of the next GAIC event that occurs.

Three GAIC events trigger the imposition of a GAIC (section 201RA of the act). These are the issue of a statement of compliance relating to a plan of subdivision of land in the contribution area; making an application for a building permit to carry out building work on land in the contribution area; and the occurrence of a dutiable transaction relating to land in the contribution area. In each case, there are various classes of actions which do not trigger GAIC. These are set out in the act and referred to as excluded events.

In addition to excluded events, section 201TB of the act provides that no GAIC is payable in respect of a dutiable transaction relating to land if duty would not be chargeable under specified provisions of the Duties Act 2000. These include section 45, which provides that no duty is chargeable in respect of a transfer of dutiable property to, or a declaration of trust over dutiable property to be held in trust for, a religious, charitable or educational purpose, or a corporation or body of persons established for a religious, charitable or educational purpose. The State Revenue Office has advised that section 45 of the Duties Act 2000 applies to the transfer of dutiable property to a school, or to the relevant minister for school purposes. Therefore no provision is required in this bill to exempt the purchase of land by school providers from triggering GAIC.

The bill amends the act to make subdividing land solely to provide a site for a school, or making a building permit application to carry out building work for the purpose of a school or ancillary buildings, excluded GAIC events.

I will now refer to the key provisions of the bill.

Clause 3 of the bill defines a school in terms of the Education and Training Reform Act 2006. The new exclusions will apply to primary schools and secondary schools, not to preschool or tertiary education facilities. The clause also inserts a definition of construction to make it clear that for the purposes of part 9B of the act, this term has the meaning that it has in the Building Act 1993.

Clause 4 of the bill amends section 201RF of the act, which sets out classes of excluded subdivisions of land that are not GAIC events. It adds an additional class of excluded subdivision — the subdivision of land solely for the purpose of creating a site for an existing or proposed school. A subdivision solely to provide land for transport infrastructure or any other public purpose is already an excluded subdivision, which means that a subdivision solely to provide a site for a government school is not a GAIC event. It is inequitable that an equivalent subdivision solely to provide a site for a non-government school is a GAIC event. The bill remedies this by inserting a specific exclusion that applies to all schools.

Clause 5 of the bill amends section 201RG of the act, which sets out excluded building work. Currently there are no excluded events which would cover all building work for a school. The effect of the proposed amendment will be that building work to construct, modify or extend any building for the purpose of a school or which is ancillary to a school will not be a GAIC event. This could include a multipurpose hall or recreation building, a place of worship, or a preschool centre, all of which could be seen as part of an integrated school complex. The key point is that the building must be ancillary to a school existing on the site.

The bill does not include any provisions relating to GAIC charges that have already been imposed on land to be developed for a school. These may be effectively built into the cost of a school site which may, for example, be purchased as part of a comprehensive development estate. Addressing this issue will be complex. Rather than delay action on remedying the specific problem referred to in the government's election policy, this matter will be addressed after further consideration.

The important point is that as a result of the changes implemented by this bill, no school provider will be required to pay a GAIC as a result of any action taken directly to subdivide land solely to provide a site for a school, purchase a

site for a school, or obtain a building permit for any building work to establish, expand or improve a school.

I commend the bill to the house.

Debate adjourned on motion of Mr TEE (Eastern Metropolitan).

Debate adjourned until next day of meeting.

PUBLIC PROSECUTIONS AMENDMENT BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Public Prosecutions Amendment Bill 2011.

In my opinion, the Public Prosecutions Amendment Bill 2011, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill refines the existing arrangements in the Public Prosecutions Act 1994 (the act) to clarify the role relationships between the Director of Public Prosecutions (DPP), chief Crown prosecutor (CCP) and the solicitor for public prosecutions (SPP). The bill also revises the role of associate Crown prosecutor. The bill will also remove the minimum term of reappointment for senior Crown prosecutors in certain circumstances.

The bill gives the Director of Public Prosecutions new functions under the act and transfers functions from the Committee for Public Prosecutions to a Director's Committee comprising the DPP, CCP and the SPP. The bill abolishes the Committee for Public Prosecutions.

The bill also makes consequential amendments to the act and the Public Administration Act 2004 and provides transitional arrangements in relation to these amendments.

Human rights issues

The bill engages the right to recognition and equality before the law.

The bill will remove the minimum term of reappointment for SCPs who are eligible for the pension under section 35 of the act. The pension entitlement for SCPs is based on section 14 of the County Court Act 1958. Generally, pension entitlement is determined according to age and duration of appointment prior to resignation or retirement from office.

Section 8(3) of the charter act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

The bill will provide that a SCP who is eligible for the pension under section 35 may be reappointed to the office of SCP for a period of up to 10 years. Due to the nature of eligibility for a pension under the County Court Act 1958, the potential effect of this provision is to create differential treatment on the basis of age. Therefore this provision may limit the right to equality however I consider that any limit on the right to equality is reasonable and justified under section 7(2) of the charter act.

The purpose of this amendment is to encourage SCPs who are eligible for the pension to remain as salaried advocates to ensure that the public prosecutions service retains the benefit of their skills and experience. Under the current arrangements, the minimum term of reappointment for a SCP is 10 years and a shorter term of appointment cannot be accommodated.

The removal of the minimum term of reappointment for SCPs will allow for greater flexibility and may encourage SCPs to remain in the public prosecutions service for a further period of up to 10 years instead of retiring upon the expiration of their initial term of appointment.

Conclusion

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

Richard Dalla-Riva, MLC
Minister for Employment and Industrial Relations
Minister for Manufacturing, Exports and Trade

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

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

That the bill be now read a second time.

Incorporated speech as follows:

Overview

The government is committed to enhancing Victoria's public prosecutions service after the difficulties of recent times. This

bill delivers a key component of that commitment, by amending the Public Prosecutions Act 1994 (the act) to refine the existing arrangements, including in particular refining the role relationships between the Director of Public Prosecutions (DPP), the chief Crown prosecutor (CCP) and the solicitor for public prosecutions (SPP).

The bill will build on the strengths of the current act and ensure the continuation of the important and valuable work of Victoria's public prosecutions service. The bill retains the key roles and functions established by the current act, including the separation of prosecution and support functions that was a key innovation introduced by my predecessor, the Honourable Jan Wade, MP. This reform has worked well to free up successive DPPs to focus on their key role as the chief prosecutorial decision-maker for the state of Victoria.

This bill will refine the existing arrangements in the act to support a responsive and effective prosecutorial service for the state of Victoria. The bill will realign the existing role relationships to assist the DPP in the performance of his or her functions and powers under the act. The overall effect of the bill will be to unify the existing public prosecution offices into an integrated public prosecutions service under the DPP, while ensuring that the DPP and the Crown prosecutors have the necessary support to enable them to focus on the DPP's core function — the prosecution of offences on behalf of the Crown.

Director of Public Prosecutions

The bill strengthens the position of the DPP as the person with overall responsibility for the conduct of public prosecutions and with accountabilities to ensure the proper exercise of that responsibility.

The bill continues all of the existing powers and functions of the DPP and gives the DPP new functions in relation to Victoria's public prosecutions service. The public prosecution service is defined for the first time by the bill to include the DPP, the CCP, Crown prosecutors (CPs — which includes senior Crown prosecutors), associate Crown prosecutors (ACPs), the SPP and the Office of Public Prosecutions (OPP).

The bill makes clear that the DPP is the head of the public prosecutions service. The bill provides that the performance of functions of the CCP, SPP, CPs and ACPs are subject to the general direction and control of the DPP, while continuing the independent prosecutorial discretions of the CCP and CPs. This balances the prosecutorial decision-making independence of the CPs with the need to ensure that the public prosecutions service functions as an integrated and cohesive organisation. This change will ensure that the CCP, SPP, CPs and ACPs are all accountable to the DPP for the performance of their functions and duties on his or her behalf.

Those provisions of the act which provide for the independence of the DPP and define the relationship between the DPP and the Attorney-General continue unchanged.

Chief Crown prosecutor

Currently there is no provision in the act for a standing deputy to act as DPP when the DPP is on leave or during vacancy in the office of DPP. The bill provides that the CCP is the standing deputy for the DPP and will act as DPP when the office of DPP is vacant or the DPP is absent from duty or otherwise unable to carry out the duties of office. The current provision relating to the appointment of an acting DPP by the Governor in Council will be retained so as to continue to allow for flexibility in the acting arrangements, particularly for longer absences or a vacancy.

The bill will update the description of the CCP's functions in relation to CPs and ACPs. The performance of these functions will be aligned with the need to conduct prosecutions in an effective, efficient and economic manner. The bill will also amend the act to remove the reference to CPs and ACPs functioning as a group, in order to remove any doubt as to whether the CCP may manage the performance of functions and duties by an individual CP or ACP.

Crown prosecutors and senior Crown prosecutors

The bill will preserve the qualification, retirement, pension and resignation requirements for CPs. However, the bill will alter the current process for making recommendations to the Attorney-General for the removal from office of a CP. This function will transfer from the Committee for Public Prosecutions to the DPP following consultation with the Director's Committee comprising the DPP, the CCP and the SPP.

The bill will also remove the minimum term of reappointment for SCPs in certain circumstances. The purpose of this amendment is to encourage SCPs who are eligible for the pension to remain as salaried advocates to ensure that the public prosecutions service retains the benefit of their skills and experience.

Under the existing arrangements, the minimum term of reappointment for a SCP is 10 years and a shorter term of appointment cannot be accommodated. By removing the existing minimum term, the act will allow for greater flexibility and may encourage SCPs to remain in the public prosecutions service for a further period of up to 10 years instead of retiring upon the expiration of their initial term of appointment.

Associate Crown prosecutors

The bill will make substantial changes to the role of ACPs. Future appointments to the role of ACP will be made by the DPP after consultation with the Director's Committee. ACPs will be employed as part 3 employees under the Public Administration Act 2004 (PAA). The SPP will exercise the functions of a public service body head in relation to the ACPs, including the function of termination in accordance with the PAA. These changes will ensure that the merit and equity safeguards of the PAA are applicable to the position of ACPs.

Appointment by the DPP after consultation with the Director's Committee is also a more appropriate mode of appointment having regard to the classification, nature and duties of the role. Governor in Council appointments of Crown prosecutors will in future be reserved for those positions which carry the responsibility of making independent prosecutorial decisions on behalf of the Crown.

ACPs will continue to be managed on a day-to-day basis by the CCP as part of the team of Crown prosecutors, and it is envisaged that ACPs will perform functions similar to junior counsel at the private bar.

These changes will strengthen and clarify the role of ACPs. They will lay out more clearly a career path available for solicitor advocates within the OPP who are interested in

making the transition to act as counsel, and they will also facilitate and encourage the movement of legal practitioners between the Victorian Bar and the public prosecutions service.

Transitional provisions will allow for the ACPs currently holding office to serve the balance of their term under Governor in Council appointment on their current terms and conditions of appointment.

Office of Public Prosecutions and solicitor for public prosecutions

The SPP will retain administrative responsibility for the OPP, so as to enable the DPP to focus on the role of chief prosecutorial decision-maker in the state. However, the bill will provide that the SPP manages the OPP on behalf of the DPP. The bill will recast the role of the SPP as an executive appointed and removable by the DPP under part 3 of the PAA.

These reforms will continue the operational separation of the solicitor and administrative support functions of the OPP from the prosecution roles of the DPP and Crown prosecutors, which has generally worked well, while at the same time ensuring that the DPP has ultimate capacity and responsibility to ensure the proper provision of those functions as part of a single public prosecutions service.

The functions of the OPP will be updated by the bill to include the appearance of staff of the OPP in proceedings on behalf of the DPP subject to any relevant guidelines established by the Director's Committee.

Director's Committee

The bill retains the Director's Committee, which must be convened by the DPP if he or she is making a special decision. The primary role of the Director's Committee is an advisory one which enables the director to consult with the Director's Committee before making particular decisions.

The bill will build on the role of the Director's Committee as a formal consultation mechanism and transfer functions to the Director's Committee from the Committee for Public Prosecutions. The Committee for Public Prosecutions, which has been largely inactive in recent years, will be abolished.

These reforms will enable the Director's Committee to operate as an executive committee supporting the DPP in relation to the operation and management of the public prosecutions service. The new functions will also promote formal coordination and consultation between the DPP, the CCP and the SPP on key decisions. This will include consultation on proposed candidates for appointment and reappointment to the role of CP and ACP.

Amendments to the Public Administration Act 2004

The bill will make some consequential amendments to the PAA. The SPP will retain the functions of a public service body head in relation to the OPP and will assume this function in relation to the ACPs appointed under the act as amended by the bill.

The PAA will also be applied to the DPP for the limited purpose of employing the SPP and the ACPs. This will ensure that principles of merit and equity are applied to relevant processes and decisions.

Transitional arrangements

In order to ensure the seamless ongoing operation of the public prosecutions service, the bill includes transitional arrangements to preserve the basis and terms of appointment of the current SPP and ACPs for the duration of their appointments.

After 17 years in operation, the Public Prosecutions Act 1994 has served this state well. The changes proposed by the bill will further enhance the act to support a just, responsive and effective public prosecutions service into the future.

I commend the bill to the house.

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

Debate adjourned until next day of meeting.

SERIOUS SEX OFFENDERS (DETENTION AND SUPERVISION) AMENDMENT BILL 2011

Second reading

Debate resumed from 24 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Ms PULFORD (Western Victoria) — On behalf of the opposition I am pleased to make some comments on the Serious Sex Offenders (Detention and Supervision) Amendment Bill 2011. Detention and supervision orders have been available to courts as a post-sentence option since 2009 when the then Labor government passed the Serious Sex Offenders (Detention and Supervision) Act 2009. The then opposition was supportive of the legislation, and the then shadow minister, Mr McIntosh, the member for Kew in the Assembly, indicated that the opposition viewed the bill 'as a significant improvement, particularly in regard to the test, the new detention orders and the supervision orders'. Similarly, we will not be opposing the bill on this occasion.

The arrangements for the detention and supervision of serious sex offenders are incredibly important matters. As legislators we need to take every possible action we can to ensure the greatest protection to potential victims of sex crimes. The impact on the victims of sex offenders is often lifelong and is an incredibly significant thing. It needs to be balanced against the rights of those who have served custodial sentences.

Labor is very proud of the principal act; at the time it was groundbreaking legislation in the management, detention and supervision of serious sex offenders. This legislative framework is very much about addressing

issues associated with a small group of offenders in Victoria. We believed then that the act provided an appropriate and balanced measure of protection against serious sex offenders.

The member for Altona in the Assembly, Ms Hennessy, went through — —

Mr Lenders — A very good member.

Ms PULFORD — She is a very good member. She went through Labor's position in quite some detail in the debate on this bill in the Legislative Assembly, including detail on the parts of the act that this bill amends. These are very much a set of technical amendments that will improve the operation of this legislation. The bill is broadly supported by stakeholders.

The opposition supports the changes that this bill will effect. It is crucial that the government continue to support this legislation in a number of ways with a broader response to and investment in the difficult issue of sex offenders in Victoria. We are still waiting to hear how the government intends to deliver on its election promise of GPS bracelets for this group of offenders. We have some concerns about how the government will make good on its promise of transparent management of serious sex offenders. But in terms of the provisions of the bill that is before us for consideration this afternoon — the last piece of legislation the house will consider before we break for the year — the opposition does not oppose this bill. We are proud of the work that has gone before in this area and we believe a rigorous and effective regime for this small group of offenders is something that we can also support. With those words, I conclude my contribution.

Ms HARTLAND (Western Metropolitan) — The Greens will also be supporting this bill. As Ms Pulford said, it is a set of technical amendments to an existing act which the Greens supported in the last Parliament, because as a Parliament and as a community we need to recognise that there is a group of people who are always going to be offenders. We have to have a regime by which we can protect the community from these people. For those reasons the Greens will support this bill.

Ms CROZIER (Southern Metropolitan) — I am also pleased to rise and speak on the Serious Sex Offenders (Detention and Supervision) Amendment Bill 2011. I thank both Ms Pulford and Ms Hartland for their support for this important bill. As Ms Pulford highlighted, it is an important matter; it goes to the heart of community safety. She highlighted the principal act and the concerns that that act addressed. This is addressing some technical amendments in relation to the principal act. I thank them for their support.

As many members know, sex offences are viewed as extremely serious and at times very heinous crimes. We must do what we can to protect the most vulnerable in our community. Without going into too much detail, those who are most vulnerable can be young children, both male and female; young adults, male and female; and adults, male and female. They can be adversely affected by sex offenders, and those most vulnerable can suffer much psychological and physical trauma. They can include people with a disability and the frail, who can also be victims of sex offenders. As a government and as legislators we must do what we can, as Ms Pulford rightly pointed out, to protect those people within our community.

As has been said in the other house, this bill deals with some technical amendments. There have been many reports about concerns in the community about this matter. There was a research paper on recidivism of sex offenders undertaken by the Sentencing Advisory Council in January 2007. It goes to some very interesting aspects in relation to recidivism. Like the opposition and the Greens, this government recognises that any degree of recidivism by the small group of serious sex offenders cannot be tolerated. So it is imperative that appropriate legislative responses are available to protect people in the community and to rehabilitate those offenders where we can. We must do whatever we can to keep those offenders in safe housing, to keep them away from their victims and to reassure the community that we have safe and strong laws in place to ensure that that occurs.

I will not go into the details of this bill. In his second-reading speech the minister outlined the technical aspects very succinctly. Ms Hartland and Ms Pulford have indicated that they are pleased to support this bill, and I think that is what is required at this point in time.

Just in summary, the bill amends the Serious Sex Offenders (Detention and Supervision) Act 2009. It amends the Civil Procedure Act 2010 so that the act does not apply to proceedings under the Serious Sex Offenders (Detention and Supervision) Act 2009. It also amends the Disability Act 2006 so that treatment plans under that act must be consistent with supervision orders made under the Serious Sex Offenders (Detention and Supervision) Act 2009.

The bill will modify the obligations that apply to offenders subject to interim supervision orders; suspend the requirement to apply for a review of an order if an application to renew an order has been made; suspend the requirement to apply for a review if the offender is held in custody on remand; clarify the process for making interim orders to increase flexibility and efficiency; allow nominated senior police to dispense with the notice period that is required if an offender is to be charged with the offence of breaching supervision order conditions; broaden and clarify the existing information-sharing provisions; amend the parts of the principal act that apply to offenders who are subject to orders made under the Serious Sex Offenders Monitoring Act 2005; clarify when interim detention orders can be made; and, as I said, clarify the relationship between the principal act and the Disability Act 2006 and the Civil Procedure Act 2010.

In conclusion, I thank those opposite and all members of the house for their support of the bill.

Hon. P. R. HALL (Minister for Higher Education and Skills) — In reply I just want to thank the opposition and the Greens for their support for this legislation and in particular Ms Pulford, Ms Hartland and Ms Crozier for their concise and thoughtful contributions to the debate on this piece of legislation.

Motion agreed to.

Read second time; by leave proceed to third reading.

Third reading

Motion agreed to.

Read third time.

QUESTIONS ON NOTICE

Answers

Hon. P. R. HALL (Minister for Higher Education and Skills) — I have answers to the following questions on notice: 3256–61.

ADJOURNMENT

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

That the house do now adjourn.

Legislative Council: procedures

Mr LENDERS (Southern Metropolitan) — On this last night of the sitting year the matter I raise on the adjournment is for the attention of the Minister for Health, Mr David Davis, in his capacity as the Leader of the Government. It goes to the honouring of election commitments as to how this house is run. I have made reference to these commitments on many occasions during the year, such as the very vocal cries from now government members when they were in opposition about how inappropriate it was that not all ministers were arrayed here every night for the adjournment. That was something of critical importance when members opposite were in opposition. When the Labor Party reduced its representation for the adjournment to a single minister, the opposition benches howled in a cacophony about how inappropriate and appalling it was. We are now on notice paper no. 51, so we have had 51 sitting days, and from the first day of this new Parliament we have never had the bench of ministers on the adjournment as was called for.

I draw Mr Davis's attention also, and I have raised this before, to the Premier's solemn commitment that there would be no Dorothy Dixers. Dorothy Dixers are as rampant in this house as ever. In fact they are being done with a lack of subtlety. At least when we were in government we never ranted on in response to Dorothy Dixers. At least we had the intelligence not have the person sitting next to us ask a Dorothy Dixer. There is very little sophistication about this ignoring of the Premier's edict. We also have poor responses to adjournment matters. Admittedly this is mainly from the Premier himself and Mr David Davis.

When government members were in opposition we heard a lot of noise about the need to refer things to parliamentary committees in order to have greater scrutiny of bills in this place. However, while the coalition has been in government there have been no more resources for parliamentary committees. I pay tribute to the government for honouring its commitment to set up the legislation and reference committee joint committee structure in the standing orders but, despite the great calls while members opposite were in opposition, there have been no new resources for it. Also, Mr David Davis said in opposition that the first bill of the new government would be one on a government advertising panel. On sitting day 51 of the new government we have not seen a sign or a whiff of that bill.

The action I seek from Mr David Davis is that he honour the promises he made on parliamentary reform in this place, that he not be a hypocrite but that he do

the things that he called for when he was in opposition but which he has not delivered in government. The action I call for is that he actually be straight, honour his commitments and not welsh on them.

The PRESIDENT — Order! This is an adjournment item that I am not entirely happy with because the action sought insinuates that the minister is not behaving appropriately as a minister. Using the term that he be 'straight' is a reflection on the member that is unwarranted, particularly in the adjournment debate. I will give Mr Lenders a few moments to put forward a different action. I understand all the matters that Mr Lenders raised. The other thing about an adjournment matter is that members are only supposed to raise one item. I am taking the matters that Mr Lenders raised in the context that they are process matters of governments in the house; I am taking that as the central issue. I ask Mr Lenders to revisit his final remarks.

Mr LENDERS — The action I seek from the Leader of the Government is that he implement the things he called for before the election.

Western Victoria Region: town planning

Mr RAMSAY (Western Victoria) — My adjournment matter is for the Minister for Planning, Matthew Guy. I congratulate the minister on announcing additional planners for councils to deal with the plethora of planning permit applications that have built up over many years, given the inflexible, onerous and dictatorial hierarchy of planning decisions overseen by the previous Labor government.

Many rural councils across Western Victoria Region have contacted me to raise a number of issues with the rural zones — a legacy of the previous government — which in part had good intentions to preserve food production areas such as farming zones but, as identified at the time, were too restrictive to accommodate other business uses in those zones. The previous government's planning permit process for wind farms also remains as that government's legacy, with permit conditions still to be met by many applicants and councils still trying to grapple with past planning policies while now having greater responsibility for planning decisions for the future.

My request of the minister is: would he agree to meet with representatives from shires in Western Victoria Region — for example, the Pyrenees, Moorabool, West Wimmera and Northern Grampians shires — to hear firsthand the planning issues that councils are dealing with, given the past lack of flexibility in planning decisions? More importantly, he needs to hear about the issues that councils in Western Victoria Region face in responding to the changing needs of their communities in the future.

Manufacturing: i-STEP program

Mr SOMYUREK (South Eastern Metropolitan) — I raise a matter for the attention of Minister Dalla-Riva in his capacity as the Minister for Manufacturing, Exports and Trade, and perhaps also in his capacity as the Minister for Employment and Industrial Relations, concerning his decision to axe funding for the industry skills training and employment program, otherwise known as i-STEP.

The axing of the i-STEP program is another example of the damage this government is doing to the Victorian manufacturing sector by failing to deliver a manufacturing policy and moreover refusing to take any form of action to cushion the deleterious impact on the local manufacturing sector of the high Australian dollar until its slow, cumbersome and ill-fated Victorian Competition and Efficiency Commission (VCEC) process is completed. The feedback I have received from manufacturers during my travels this year is that skills shortages are a key issue in the manufacturing sector and that skills training and employment are drivers of Victorian manufacturing.

The axing of well-targeted industry skills training and employment programs like i-STEP just because the Victorian government has not yet responded to the VCEC report into manufacturing is a dereliction of duty on the part of the Baillieu government. The axing of the i-STEP program comes on top of the Victorian manufacturing sector losing 10 000 jobs during the current government's term of office. I ask the minister to reinstate funding for the i-STEP program so that it can continue to achieve good results for both employers and job seekers and so that it can continue to assist the growth of the Victorian manufacturing sector.

Orbost Regional Health: award

Mr O'DONOHUE (Eastern Victoria) — I was very pleased to learn that Orbost Regional Health has been named Victoria's top rural health service for 2011, and I am sure the minister at the table, Mr Hall, would also be pleased about that fact.

I congratulate Orbost Regional Health on its work. It works with an isolated population base spread over a large geographical area and is an integral part of the Orbost community, not only as a result of the economic activity that the health service generates and the

employment that it supports but also because of its engagement and association with the local community. Its hard work, innovation and advocacy has been recognised with this award, and I congratulate it on that.

Given that this has been duly recognised, I would like to extend to the Minister for Health an invitation to visit Orbost Regional Health in the next available period so he can see for himself some of the excellent work that it does in servicing such a large geographical area with such a small population base using the resources it has. Orbost Regional Health is to be congratulated, and I extend an invitation to the minister to come and see firsthand exactly what it does.

Torquay: secondary college

Ms TIERNEY (Western Victoria) — My adjournment matter this evening is for the Minister for Education, and it is in relation to the minister's response to an adjournment matter I raised regarding the Torquay secondary school. As I have stated on a number of occasions in this place, in the lead-up to last year's state election the coalition promised Torquay families a fully fledged, brand-new secondary college in Torquay by term 1, 2013.

In an adjournment matter I raised on 13 October this year I requested that the minister give an absolute commitment to the people of Torquay that the coalition will honour its election commitment to Torquay families. I have since received from the minister a response to my adjournment matter which in part states:

> … should the new secondary college facilities not be open for the beginning of the 2013 school year, the department will ensure alternative arrangements are made for students to continue their studies in Torquay.

It was reported in the *Geelong Advertiser* of 24 November this year that the government has conceded that the new secondary college will not be ready for the start of the 2013 school year as originally promised but has said that students will be accommodated on the school grounds until the facilities are complete. However, the minister has released no detail on what these alternative arrangements will include. After a full year of uncertainty about their educational future, Torquay students now face extra uncertainty about whether they will be required to complete their senior secondary years in a second-rate portable classroom situation. Time and again the minister has been asked to let the community know what is going on with this issue, but the minister's responses simply cause more uncertainty.

The action I seek this evening is for the minister to inform me and the Torquay families of what the alternative arrangements will mean for Torquay secondary students and whether these arrangements will include second-rate facilities, such as portable classrooms, on the site of the Torquay P–9 college.

Midwives: postgraduate training

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the Minister for Health. Tomorrow I will be meeting with a group of midwifery students who have done their three-year theoretical course and have just found out that the state government has taken away the 22 graduate midwifery positions from the Postgraduate Medical Council of Victoria allocation for midwives. While they have done their schooling, these students need to do one year in a hospital to be able to be midwives. As the minister would be aware, there is currently a major crisis in maternity services. In the western region Sunshine Hospital and Mercy hospital are literally not able to cope with the number of maternity patients they have now.

The group I will meet with tomorrow are students who, with one more year of training, will be able to enter the workforce. I do not quite understand why the government or the minister cut these 22 positions. The request I make of the minister is that he meet with these midwifery students and explain why the cut has occurred. I also ask that he consider reinstating the positions so these students can go on to graduate as midwives.

Rail: St Albans level crossing

Mr ELSBURY (Western Metropolitan) — The matter I wish to raise this evening is for the attention of the Minister for Public Transport and relates to the Main Road level crossing in St Albans. I hope that many in this chamber are aware that there is a major issue with traffic in that area and that it has been recognised for many years. In 1999 the Kennett government committed to undertake a separation of the roadway and the rail line. Unfortunately when the Bracks government came in it decided it did not need to do anything about that — —

Mr Finn — 'They voted for us anyway', it said. That's what it said; that was the former government's attitude.

Mr ELSBURY — 'That'll do'. That was the theme of one of my speeches during the week. The Bracks government just left the level crossing alone. It made

some soothing noises to the community but really just left it alone and did nothing about it.

I would like the minister to come out to the Main Road railway crossing to see firsthand what is going on and the issues that are currently plaguing the community in that area and to meet with some of the members of the traders association in St Albans and a number of other people who have raised these issues with me on a number of occasions. The concern is that this crossing has claimed lives in the past and that it binds up a lot of the traffic in the area. By separating the road and the rail crossing and making it possible for traffic to flow freely, thus allowing trains to pass through without any chance of obstruction by traffic, we would improve the efficiency and the commercial and industrial capacity of the St Albans area.

Again, the action I seek is that the minister come out to St Albans to meet with interested parties who have been conveying their concerns to me and that he work with me and the community to make this happen. Our policy commitment is that by the end of this first term we will start construction work on the site. That is a commitment made by the coalition government. I look forward to the minister coming out to St Albans to see just how much this work will mean to people in the area.

Kindergarten inclusion support services: eligibility criteria

Ms MIKAKOS (Northern Metropolitan) — My matter is for the Minister for Children and Early Childhood Development. I wish to express concerns raised with me by a Lancefield family in their application for a kindergarten inclusion support service (KISS) package for their three-year-old daughter, who is ready to start four-year-old kindergarten next year. For privacy reasons I will refer to their daughter by her first name only, but I have provided Minister Hall with the family's particulars by way of a letter.

Lily was born with a condition that severely restricts the flow of air through her trachea to her larynx. When she was three months old she underwent a tracheostomy to insert a tube into her trachea. This tube allows Lily an alternate way of breathing by bypassing the obstruction in her upper airway. Lily's condition is such that to attend kindergarten she will require the constant supervision of a trained carer who can perform suction or an emergency tube change if her airway becomes blocked.

Lily's family began the process of applying for a KISS package six months ago, and they have provided the Department of Education and Early Childhood Development with many medical reports. According to the department's KISS information and application kit, parents and kindergartens were meant to be notified by 28 October 2011 if they were successful. However, other than verbal approval in principle, this family has had very little communication from the department so far.

The family has had to chase the department for information. They were advised this week by a staff member at the Loddon Mallee regional office that Lily's request, as well as those of another five families in the region, was on hold because the minister had requested new protocols and that it was unknown when the protocols would be finalised. They were also told that Lily was unlikely to be starting kindergarten in February. Since I raised the issue of the protocols today in question time, magically the new guidelines have been provided to this family, although the old guidelines are still on the department's website.

The new eligibility criteria state that a child:

> requires health support procedures during the kindergarten program that can reasonably be expected to be undertaken by kindergarten staff with specific training and ongoing monitoring …

A child like Lily, who needs an externally trained carer, is now likely to be ineligible. It is appalling that the goalposts have been moved at the 11th hour for this family. If Lily is to start kindergarten in February, her carer requires approximately six weeks of training in the procedures necessary to keep her alive. It is now two weeks away from Christmas, and many public servants will soon be going on leave. I am concerned that time is running out to put the necessary arrangements in place for Lily.

I note that the Premier has claimed that front-line services would not be affected by the government's $480 million cuts to the Department of Education's budget, but we have seen many cuts to the Victorian certificate of applied learning, child care, reading programs and many other services.

I call on the minister to expedite approval of KISS funding for children like Lily with complex medical conditions whose applications have now been stalled to enable them to start kindergarten in February next year.

City of Wyndham: swimming pool funding

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Sport and Recreation. Very recently Mr Elsbury and I had a

meeting with the outgoing mayor of Wyndham City Council and its CEO. At that meeting a number of issues were raised, but in particular the issue of the need for a new pool in Wyndham was raised, it has to be said with some vigour, by both the CEO and the mayor. The project they talked about includes a major upgrade to the council's leisure centre. Wyndham built Melbourne's first 50-metre indoor pool back in 1999, which was funded by the then Kennett government, and I think it is important to note that nothing was forthcoming from the Labor Party while it was in government for 11 years.

The council needs to undertake a $27 million upgrade to meet the needs of its growing community for at least the next 10 years. It is important to point out that the last time I noted it Wyndham — I have not checked in the last hour or so — was the fastest growing municipality in Australia. It is a quite remarkable place, and it is quite remarkable to see the speed with which it is growing. Every time you turn around another subdivision has gone up. The project responds to a recent acknowledgement by the Minister for Planning, Mr Guy, concerning the huge population growth that the city is experiencing and the need to ensure a timely provision of much-needed infrastructure. Surely the biggest issue in the west at the moment is keeping up with the growth and the infrastructure that is needed.

The project will also ensure that the sports minister's objective is delivered for Wyndham and regional residents, which is to ensure that more people are more active, more often. I think that is a good slogan to live by. I am sure we will all be doing our exercise over the summer months, and if this pool were to be built, it would make it much easier for the people of Wyndham to get out, be healthy and fit and enjoy the great outdoors. I ask the minister to provide the necessary funding to build this pool. It would be an enormous boost for the people of Wyndham, who need such a facility. The old one is quite good, but it is getting a little past its prime — —

Mr Elsbury interjected.

Mr FINN — As Mr Elsbury points out, it is a long way past it.

Mr Lenders interjected.

Mr FINN — Mr Lenders chimes in just at the time when I am talking about things being past their prime, and that is entirely appropriate for Mr Lenders. In asking for the minister's support on this one, I was just about to wish members and staff and their families all the very best for Christmas. I think this upgrade would be a marvellous Christmas present for the people of Wyndham.

Responses

Hon. P. R. HALL (Minister for Higher Education and Skills) — I have written responses to adjournment debate matters raised by Mr Scheffer on 8 February, Mrs Coote on 24 May, Mr Elsbury, Mr O'Brien and Mr Leane on 25 October, and Mr O'Brien and Mr Somyurek on 10 November.

This evening nine adjournment matters have been raised. The first of those was raised by Mr Lenders for the Minister for Health calling on the minister to implement those matters of parliamentary reform that he called for prior to the election. I will pass that request on to the Minister for Health.

Mr Ramsay raised a matter for the Minister for Planning requesting that the minister meet with local councillors in his electorate to discuss wind farm planning matters, and I will pass that request on to the planning minister.

Mr Somyurek raised a matter for the Minister for Manufacturing, Exports and Trade concerning i-STEP, which is an industry skills training and employment program, and I will pass that request for reconsideration of any funding cuts to that program on to the minister.

Mr O'Donohue invited the Minister for Health to visit the very fine health service in Orbost, and I concur with him that such a visit would be very worthwhile. I will pass that invitation on to the Minister for Health.

Ms Tierney raised a matter for the Minister for Education seeking some guidance as to what interim accommodation arrangements might be provided for students at Torquay secondary college, and I will pass that request on to the minister.

Ms Hartland raised a matter for the Minister for Health and requested that he meet with midwifery students to discuss a decision that it seems will take away opportunities for practical placements in order to allow them to finish their training. Again, I will pass that request on to the Minister for Health.

Mr Elsbury invited the Minister for Public Transport to look at a rail crossing in St Albans and in particular to meet with some interested local people out there to discuss arrangements for the implementation of the government's election policy to upgrade that crossing. I will pass that request on to the minister.

Ms Mikakos raised a matter for the Minister for Children and Early Childhood Development regarding a young constituent and in particular the need for a support package to enable her to attend kindergarten. She has given me the name of that person in a letter, and I will pass the letter on and refer the minister to the adjournment matter in which the member detailed the case.

Mr Finn provided some advocacy for a new swimming pool for the good citizens of Wyndham and requested that the Minister for Sport and Recreation get behind that particular project. I will pass that request on to the minister.

Finally, while I am on my feet, I too wish to extend to my colleagues in the chamber all the best for Christmas. I hope we have a restful period. I will see everyone again at a date and time to be decided by you, President, but that will most likely be in early February. The season's greetings are extended to the staff of the chamber, who serve us very well.

Christmas felicitations

The PRESIDENT — Order! I take this opportunity to extend my best wishes to everybody for the Christmas and holiday period. In doing so, I particularly extend my thanks and appreciation to all the people who have contributed to the running of the Parliament, and particularly the running of the house, throughout 2010. I extend my personal appreciation to the Leader of the Government, Mr David Davis; the Leader of the Opposition, Mr Lenders; the members of the Greens — whilst it seems Mr Barber is now in a leadership position with the Greens, they still work in concert as a triumvirate; and to the Deputy President, Mr Viney.

In particular I extend my appreciation to the whips, Mr Koch and Mr Leane. I think their job is quite underrated. Bernie Brookes, the CEO of Myer, caused a bit of a scuttle in share prices, certainly amongst analysts, when he said talking to analysts about the performance of his business was a bit like herding cats. I certainly think the role of the two whips is very much like herding cats. They do an exemplary job and are quite important in terms of helping me to maintain the procedures of this house. I extend my thanks to them.

I convey my appreciation to all members of the house for the support they have given me throughout the year and for the way in which they have conducted themselves. Members of the house can be proud of their accomplishments this year in terms of the way we have transacted business. I think all members can take credit for that.

I extend my appreciation to the clerks of the Parliament and the papers office for their support of the chamber and to all the redcoats, the attendants, who have done a splendid job in supporting members this year. We do appreciate that. Further afield, Hansard has provided its usual high standard of services to us, and we appreciate that, especially given the number of late-night sittings Hansard staff have endured. Whilst many areas of the Parliament are impacted by those late-night sittings, Hansard staff probably bear the brunt of them because of the nature of their work. I also extend my thanks to the catering department; the library; the grounds people; parliamentary services, including IT; electorate office support; human resources; and so forth.

I place on record my appreciation, on behalf of members, to the media for their support of the Parliament and encouragement of the Parliament's activities. The cut and thrust of politics is a matter that obviously causes many of us grief at times, but I have been particularly encouraged that on a number of occasions, especially with respect to works around the Parliament House buildings, the media have shown genuine interest and support, recognising the iconic nature of this building. I appreciate that.

I extend felicitations to the electorate officers of MPs as well. They have obviously worked hard. Many of them are new to the Parliament this year, because of the results of the election last year. As members of Parliament we rely very heavily on their counsel, work, energy, enthusiasm and so forth. Very often they are the face of the MP for the constituents, and on behalf of the Parliament I extend our thanks to the electorate officers.

It would be remiss of me if on this occasion I did not also acknowledge the work of Jessica Lalor, who has been my executive assistant throughout this year. Jessica has been an outstanding support to me, and going by the feedback I have had from members, I think they have all found that she has been helpful in the areas where they have needed to transact business with her in terms of setting up appointments or suchlike. I certainly thank her for her work.

I hope I have not missed anyone out in terms of the thankyous. They are heartfelt. It has been a long, hard year. Obviously a change of government brings a range of challenges and even a range of emotions to the processes of our Parliament. The thanks I convey, initially on my personal behalf but in some respects also on behalf of other members of Parliament through these words I am speaking tonight — words directed in particular to the staff of the Parliament and people such as the protective services officers, other security staff,

our electorate office people and so forth — are heartfelt and genuine.

I hope everybody has a very safe and happy time with their loved ones, friends and family over this holiday season. For those who celebrate Christmas I wish them all the best for that, and for those who celebrate Hanukkah I wish them all the best. I am sure this is a time we will all enjoy. I think everybody has earnt the rest. I thank members very much.

The house stands adjourned.

House adjourned 6.33 p.m.