**PARLIAMENT OF VICTORIA**

# PARLIAMENTARY DEBATES (HANSARD)

## LEGISLATIVE COUNCIL

## FIFTY-SEVENTH PARLIAMENT

## FIRST SESSION

**Tuesday, 22 November 2011**

**(Extract from book 18)**

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

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## The Governor

The Honourable ALEX CHERNOV, AO, QC

## The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

## The ministry

| | |
|---|---|
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| Minister for Health and Minister for Ageing | The Hon. D. M. Davis, MLC |
| Minister for Sport and Recreation, and Minister for Veterans' Affairs | The Hon. H. F. Delahunty, MP |
| Minister for Education | The Hon. M. F. Dixon, MP |
| Minister for Planning | The Hon. M. J. Guy, MLC |
| Minister for Higher Education and Skills, and Minister responsible for the Teaching Profession | The Hon. P. R. Hall, MLC |
| Minister for Multicultural Affairs and Citizenship | The Hon. N. Kotsiras, MP |
| Minister for Housing, and Minister for Children and Early Childhood Development | The Hon. W. A. Lovell, MLC |
| Minister for Corrections, Minister for Crime Prevention and Minister responsible for the establishment of an anti-corruption commission | The Hon. A. J. McIntosh, MP |
| Minister for Public Transport and Minister for Roads | The Hon. T. W. Mulder, MP |
| Minister for Ports, Minister for Major Projects, Minister for Regional Cities and Minister for Racing | The Hon. D. V. Napthine, MP |
| Minister for Gaming, Minister for Consumer Affairs, and Minister for Energy and Resources | The Hon. M. A. O'Brien, MP |
| Minister for Local Government and Minister for Aboriginal Affairs | The Hon. E. J. Powell, MP |
| Assistant Treasurer, Minister for Technology and Minister responsible for the Aviation Industry | The Hon. G. K. Rich-Phillips, MLC |
| Minister for Environment and Climate Change, and Minister for Youth Affairs | The Hon. R. Smith, MP |
| 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 |
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| 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 |
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| 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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## TUESDAY, 22 NOVEMBER 2011

# Tuesday, 22 November 2011

**The PRESIDENT (Hon. B. N. Atkinson) took the chair at 2.03 p.m. and read the prayer.**

## ROYAL ASSENT

**Messages read advising royal assent to:**

**15 November**

**Transport Legislation Amendment (Public Transport Development Authority) Act 2011**
**Victorian Responsible Gambling Foundation Act 2011**
**Water Legislation Amendment (Water Infrastructure Charges) Act 2011**

**22 November**

**Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Act 2011**
**Sentencing Amendment (Community Correction Reform) Act 2011.**

## QUESTIONS WITHOUT NOTICE

### Minister for Children and Early Childhood Development: correspondence

**Ms MIKAKOS** (Northern Metropolitan) — My question is to the Minister for Children and Early Childhood Development. I refer to the minister's letters to Take a Break petitioners dated 4 November 2011, and I ask: was the letter composed by public servants in her department or by members of her personal staff?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — I do not know what the member is talking about.

**The PRESIDENT** — Order! The minister is not aware to which letter the member is referring.

**Hon. W. A. LOVELL** — There have been a number of letters.

**The PRESIDENT** — Order! The minister would sign probably hundreds of letters a day, and she is not sure to which letter the member is referring.

**Ms MIKAKOS** (Northern Metropolitan) — I am happy to provide a copy to the minister. However, given that she has sent more than 5000 of them, I assume she would know which one I am talking about.

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — I tell the opposition spokesperson that this letter was prepared by a member of my staff.

*Supplementary question*

**Ms MIKAKOS** (Northern Metropolitan) — My supplementary question is in regard to the same letter, of which, as I have said, 5000 copies have gone out to petitioners across Victoria, and I ask: was the letter compiled and distributed using departmental resources?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — Five thousand of these letters were not sent out on 4 November at all.

### Nurses: enterprise bargaining

**Mrs KRONBERG** (Eastern Metropolitan) — My question is directed to the Minister for Health, Mr Davis, and I ask: can the minister update the house on progress of negotiations with the ANF (Australian Nursing Federation)?

**Hon. D. M. DAVIS** (Minister for Health) — I thank the member for her question and for her interest in health-related matters in the eastern suburbs of Melbourne. I want to take the opportunity to update the house on the EBA (enterprise bargaining agreement) activities with respect to nurses.

Whilst detailed negotiations are occurring during conciliation between the Victorian Hospitals Industrial Association and the ANF, I can inform the house that the ANF union applied to the Federal Court of Australia for a stay and that request for a stay today was not upheld in the Federal Court. That means that the orders of Fair Work Australia that indicate the action of the ANF is not a protected action remain in force.

The ANF union has taken a step which is really quite unfortunate given that two meetings of the Fair Work Australia tribunal have found that patient safety would be compromised by the closure of many beds across the state. The ANF took the view that one-third of hospital beds across the state would be closed, and it is clear that over a period of days the ANF escalated the number of bed closures — up to almost 1000 additional beds were closed across the state by the ANF. I make the point that this was an unsustainable situation given the impact that it was having on emergency departments in the state and the significant number of elective surgery cancellations.

I am informed that as of around midday today 232 beds around the state have been closed by the ANF union as

a result of its industrial action. I make the point that that is a significant number. It has increased since yesterday, when 139 beds were closed in Victoria due to the actions of the ANF union. That number has increased since the meeting the ANF held yesterday, where its members voted to take unprotected action in clear defiance of the decisions of Fair Work Australia.

We are in, I have to say, unfortunate and very concerning territory where patient health and safety is at risk and where Fair Work Australia, the independent umpire, has taken the position that the protected action should cease and that unprotected action should also cease. I make it clear to Mrs Kronberg and the house, through you, President, that the government believes it is quite wrong for the ANF union to be closing hospital beds around the state as part of its industrial action in a way that is likely to impact severely on patients.

I am concerned. I remain committed to finding a negotiated way through this, as does the government. The government is prepared to work with the ANF union and nurses across the state to seek a way to pay nurses significantly more. The government's wages policy has been outlined in this chamber by a number of members of the ministry on a number of occasions, and it is well understood. A number of individual groups within the public sector have been able to negotiate good outcomes.

## Minister for Children and Early Childhood Development: correspondence

**Hon. M. P. PAKULA** (Western Metropolitan) — My question is to the Minister for Children and Early Childhood Development. I also refer to the minister's letters to Take a Break petitioners, at least one of which is dated 4 November and is in the minister's possession, and I ask: does this letter and its contents comply with the relevant Auditor-General's guidelines for the use of departmental resources?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — When a constituent writes to me, or indeed when a constituent even petitions the Parliament, I think they deserve and expect a response, and I will respond to constituents' concerns.

*Supplementary question*

**Hon. M. P. PAKULA** (Western Metropolitan) — I note that the minister completely ignored the basis of the question, which was whether or not the letter in general terms complies with the guidelines of the Auditor-General, so perhaps she will be able to answer if I make it a bit more specific. Specifically, is it the minister's understanding that the Auditor-General's guidelines deem it acceptable to use departmental resources to circulate correspondence promoting the election promises of her federal Liberal Party colleagues and encouraging them to support a campaign run by her federal colleagues?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — As I said in my substantive answer, this particular letter was in answer to a concern raised by a constituent and it provided information to that constituent. I will continue to respond to constituents when they raise concerns with me.

## Schools: mathematics and science

**Ms CROZIER** (Southern Metropolitan) — My question is to the Minister for Higher Education and Skills, Mr Hall. I ask: can the minister explain to the house how the Baillieu government is inspiring school students to study science and mathematics at TAFE and university?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I thank Ms Crozier for her question and interest in this matter. During the last sitting week of this Parliament I spoke about inspiring and engaging primary school students in the area of maths and science with a maths and science initiative which is an outcome of an promise given by the government at the last election. I spoke about the primary teachers who were embarking upon a program to specialise in maths and science teaching at primary school. That is an important first step.

The Baillieu government acknowledges and recognises the need to build on that and to provide opportunities for senior students to study maths and science and to pursue careers involving maths and science at a tertiary level. One of the ways to achieve that is to piggyback on the Australian Grand Prix event and stage alongside that event a careers and skills forum to encourage students and to provide them with opportunities to demonstrate interest in maths and science technology and engineering and advanced manufacturing skills. So it was that just last month I was joined by Ms Crozier on the grand prix track at Pit Stop Lane, which is in her electorate, and we launched the Careers and Skills Forum that will take place alongside the 2012 Australian Grand Prix. This forum will be held on 15 March next year.

I know the Grand Prix engages those in the opposition parties to a great extent, as it does many young people. It is the government's initiative to use that particular

event in Melbourne to encourage young people to recognise and acknowledge the many important careers they might have in advanced manufacturing, particularly in the motor and aviation industries. This forum will be run by the Australian Grand Prix Corporation in partnership with the Victorian government and the Defence Materiel Organisation.

I was pleased to be joined by Ms Crozier and two young ambassadors to promote this particular skills forum. It is a great opportunity to engage young people in maths and science careers. The Baillieu government is determined to pursue this as one of its key agendas. Mind you, the only disappointment of the day was the fact that Ms Crozier and I are of such a height that we had difficulty fitting into the Formula One motor vehicles at that particular event, but it was not through lack of trying! It was of great excitement to us, and I am sure it will attract the interest of many young Victorians to participate in the Careers and Skills Forum next year. Hopefully they will be engaged and excited to pursue a career that might involve maths and science and advanced manufacturing.

## Minister for Children and Early Childhood Development: correspondence

**Mr LENDERS** (Southern Metropolitan) — My question is for the Minister for Children and Early Childhood Development. I, too, refer to her letter of 4 November to Take A Break petition signers. How many public servants were engaged in compiling and distributing the letter on the minister's letterhead and the attached petition for Senator Fifield?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — I guess the shadow minister is referring to the letter of 4 November. There were no public servants involved in the printing or distribution of this letter in my office on 4 November.

*Supplementary question*

**Mr LENDERS** (Southern Metropolitan) — It begs the question: if there were no public servants from the minister's office and no mention of postage, were they doing it in the department? The specific supplementary question to the minister is: were there any costs to the taxpayer in wages, postage or printing of this letter to citizens with the attached petition for Senator Mitch Fifield?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — This is a single letter that would have been printed by a member of my staff, signed by me, put in an envelope and posted through my office on 4 November.

## Manufacturing: food processing industry

**Mr ONDARCHIE** (Northern Metropolitan) — My question today is for the Minister for Manufacturing, Exports and Trade. I ask the minister: can he advise the house on the importance of the food processing industry as one of Victoria's leading manufacturers and exporters?

**Hon. R. A. DALLA-RIVA** (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. Mr Ondarchie understands the importance of the food processing industry and the impact that it has in Victoria, on exports in particular. I also acknowledge Mr Ondarchie for the many visits that we have had throughout Northern Metropolitan Region to many of the large companies throughout that area.

I was privileged last week to join the Premier, the Deputy Premier and my ministerial colleague Peter Walsh in hosting some of the state's top manufacturers at a round table on the future of Victoria's food processing industry. The round table brought together 17 companies that employ more than 25 000 Victorians. They included several of our leading exporters, with the food and beverages sector accounting for $4.8 billion of this state's annual exports to global markets — a very important and strategic sector. This was one of an extensive range of initiatives launched by the coalition government in its first year in office to strengthen its engagement with business at all levels.

The food processing industry in Victoria is facing a number of challenges: the high dollar, intense global competition and the threat of higher energy costs through the carbon tax. These are pressures common to all manufacturers, yet the Victorian coalition government understands the particular importance of the food processing sector in supporting the economies of our regional communities. Up to 28 000 people are employed in food processing in regional Victoria, which is around 30 per cent of all of Victoria's regional manufacturing jobs.

The round table provided a welcome opportunity for the ministers, the Premier and the Deputy Premier to sit down together face to face with the leading industry stakeholders to get a better understanding of the challenges they face and to look at how government and industry can work together to increase productivity through less intrusive government regulation, better

access to skilled labour, improved transport and infrastructure and more efficient use of water and energy. There are opportunities to strengthen our food manufacturing by boosting productivity and competitiveness. The more businesses that are able to transform themselves into internationally competitive and innovative enterprises, the more the food industry in Victoria will strengthen and expand.

The future success of individual manufacturing businesses will be determined by their capacity to adapt to the changing market conditions by innovating, by identifying new markets, products and services, and by continuously looking for improvements to productivity and competitiveness. Productivity and competitiveness: those are the words that those opposite fail to understand time and again. It is also important for government to become more responsible and flexible in assisting businesses.

Under the Baillieu government, industry support is being reshaped to reflect the needs of industry at the firm level. Through the Victorian Competition and Efficiency Commission report this government has undertaken the most rigorous review of the manufacturing sector of anywhere in Australia. In drafting our response to the VCEC report, we will be identifying the pressures applying specifically to manufacturing and looking at how best to tailor specific firm-based solutions.

My department is expanding its engagement with Victorian businesses. We are opening more Victorian government business offices, we will be doubling the number of business development managers over the next 12 months and we will be rolling out our enhanced company engagement model to collect more relevant and timely data on business issues.

## Minister for Children and Early Childhood Development: correspondence

**Ms MIKAKOS** (Northern Metropolitan) — My question is to the Minister for Children and Early Childhood Development. I again refer the minister to the letter of 4 November on the minister's letterhead. Given that the minister has refused to respond to questions around compliance with the Auditor-General's guidelines, and given that she has denied that she has sent 5000 letters, I ask the minister: how many similar letters have been sent?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — Firstly, I do not like being verballed by the member. I did not say I would not respond to anything. A number of letters have gone out regarding Take a Break.

*Honourable members interjecting.*

**Hon. W. A. LOVELL** — There have been a number of letters that have gone out regarding Take a Break. I do not have the actual number in my possession at the moment. There are a number of letters.

*Supplementary question*

**Ms MIKAKOS** (Northern Metropolitan) — I again refer the minister to her refusal to respond on this issue and particularly her refusal to respond in relation to the compliance with the Auditor-General's guidelines, and I ask: will the minister cooperate with any inquiry by the Auditor-General's office into the content of and the distribution of this letter?

*Honourable members interjecting.*

**The PRESIDENT** — Order! I am concerned about this supplementary question in the respect that I think it is hypothetical. I would ask the member to perhaps rephrase the question. I would be comfortable with it not having a reference to an inquiry that does not exist — in other words, if it asked, will the minister be prepared to provide information at a subsequent stage or something of that nature. Talking about an inquiry is hypothetical in my view, and I am concerned about that. Ms Mikakos, to rephrase the question.

**Ms MIKAKOS** — Given that the minister has refused to inform the house as to how many letters have gone out on her ministerial letterhead, will she advise the Auditor-General's office of the precise number of letters that have gone out on her ministerial letterhead and what resources were used by her department in distributing this letter?

*Honourable members interjecting.*

**The PRESIDENT** — Order! I will allow the minister to answer. I do not regard that question as hypothetical, although if that information happened to appear on the Auditor-General's desk out of the blue, I am not sure he would know why it was there. Presumably he will be informed about this particular letter, and he might put two and two together. I will allow that question.

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — I am happy to answer questions, and I have answered questions today.

I would always comply with any requests from the Auditor-General for information.

## Housing: affordability

**Mr KOCH** (Western Victoria) — My question without notice is for the Minister for Planning, the Honourable Matthew Guy. Can the minister inform the house what action the Baillieu government has taken to address Melbourne's housing supply shortage and further tackle housing affordability issues?

**Hon. M. J. GUY** (Minister for Planning) — With pleasure I answer Mr Koch's question in relation to what the Baillieu government is doing to address the critical issue of housing unaffordability and the housing affordability issue we have made so much of an effort to combat in our first 12 months in government. With the Growth Areas Authority I have moved fairly promptly to bring forward the release of seven draft precinct structure plans for Melbourne. This is the largest number of land lots ever put out for public consultation in one move. This is an extraordinary way in which the Baillieu government is moving forward, with a potential 37 000 lots of land provided for in these seven draft precinct structure plans that we have put out for public comment.

These seven new suburbs, which could feature as part of the precinct structure plans, will come with open space provisions, sporting provisions, passive recreation and of course infrastructure provisions attached. This is what the Baillieu government is doing and working towards to combat housing affordability in Melbourne. This is why we have a target of 50 000 lots to be released by next March. This is why the Baillieu government is getting praise throughout Australia. I looked at the *Herald Sun* at the weekend where the immediate past president of the Urban Development Institute of Australia (UDIA), Peter Vlitas, is reported as saying that he had noticed a substantial increase in the rollout of new housing estates. He was quoted as having said:

> There's a lot more choice now … Prices have stabilised, and more competition means homebuyers have more choices within their favoured suburb.

That is what it is all about. Oliver Hume Research recently said that:

> … the number of saleable lots continues to trend upwards —

in Melbourne —

> from the bottom of the cycle in June 2010. It is now above the long-run trend for the second … quarter.
>
> … Supply is now the highest since the June quarter of 2007.
>
> …
>
> … the 2750 lots are equal to 4.2 months supply … which was last experienced in the September quarter of 2006.

The precinct structure plans that I have brought forward — seven of them — in Botanic Ridge, Diggers Rest, Lockerbie, Lockerbie North, Merrifield West, Rockbank North and Toolern Park increase the number of players in the market, and that will substantially increase and aid affordability in Victoria. As I said, that is why we have a residential program of 50 000 lots in our March-to-March year to tackle affordability head on. As you know, President, it is vitally important that we bring these land lots to the market to attract new people to Melbourne so we can remain a livable city. But, as everyone in the chamber knows from today's media, I am not the only one who supports the state government's planning policies. Who else?

*Honourable members interjecting.*

**Hon. M. J. GUY** — Why do we not have a conversation?

*Honourable members interjecting.*

**Hon. M. J. GUY** — Why do we not talk about it? We have seen that Oliver Hume Research backs the government's land release policy. We have seen that the UDIA backs the government's planning policies. Lo and behold, at 10 minutes to 12 last night I checked my Blackberry. My wife looked at me and said, 'Why are you checking your Blackberry at 10 minutes to 12?'. I said, 'You won't believe it; I am reading this subheading'. It says:

> … John Brumby has backed changes made to the urban growth boundary by the Baillieu government.

I could not get to sleep; the excitement kept me up for another half an hour. I do not agree with John Brumby on everything — I do not agree with him on much — but I do agree with him on this. The Baillieu government is doing all it can to tackle affordability, and no other person supports us now except the ex-Premier himself, John Brumby.

## Health: air quality standards

**Mr BARBER** (Northern Metropolitan) — My question is for the Minister for Health, and it is in relation to his department's recent submission to the Australian air quality national environment protection measure review, which is under way. The submission notes:

> There is enough new health evidence to warrant review of all pollutants especially since many of the pollutants do not have a clear threshold for adverse health effects.

The submission also notes that our standards for sulfur dioxide are lower than the World Health Organisation's standards and that we have no enforceable standard for fine particulates. Given that the major point sources of these two pollutants are coal-fired power stations, what health impacts does the minister believe are occurring to populations in Victoria as a result of Victoria's and Australia's current pollution standards?

**Hon. D. M. DAVIS** (Minister for Health) — I thank the member for his question. He raises, I think, long-term points about the standards that might be applied. The EPA (Environment Protection Authority) obviously has a critical role in monitoring the various standards that are in place. That is the responsibility, as I have outlined to this house before, of the Minister for Environment and Climate Change. Obviously the measures that are in place have some relationship to the standards that are set and the arrangements that are in place; obviously health has a role in examining a number of these points.

I am happy to take on notice the details the member has raised about the long-term commitments or the long-term measures that might be in place and to come back to him with a fuller answer. I indicate that I am indebted to him for giving me this note from the environmental health unit and that I will come back with a longer and more detailed response.

*Supplementary question*

**Mr BARBER** (Northern Metropolitan) — The minister, I think, made a number of mentions of long-term impacts and long-term action. Since his department is now saying the standards are inadequate at the national level and since Victoria's standards match the national standards, what action does the government intend to take at the Victorian level to reduce the health impacts, which are undoubted in places like the Latrobe Valley and Anglesea, where the government already has responsibility for ensuring a healthy environment for vulnerable groups?

**Hon. D. M. DAVIS** (Minister for Health) — As I said, I will take the substantive aspect of the member's question on notice and come back with a more complete response. But I make the point that the standards that are in place now are national standards. Obviously the EPA monitors those matters, and equally health has an interest in that more broadly. As to what measures might be relevant in the longer term, that is a matter for national discussion and likely for international discussion as well. I can indicate that there is proper monitoring of the current standards in place and proper enforcement of the current standards, as the member would expect.

## Kindergartens: Melton South

**Mr RAMSAY** (Western Victoria) — My question without notice is to the Minister for Housing, who is also the Minister for Children and Early Childhood Development. I refer the minister to a recent media report on Channel 7 on outcomes for children in Melton South. I ask: can the minister comment on the needs of children in Melton South and what the government is doing to address the lack of kindergarten infrastructure?

**Hon. W. A. LOVELL** (Minister for Children and Early Childhood Development) — I note that the member referred to a Channel 7 report that was based on information from a draft report — I emphasise that it is a draft report. The actual report in question was commissioned by the Department of Education and Early Childhood Development under the former Brumby government. The research for that report was undertaken by the Murdoch Childrens Research Institute. I have to say that I actually agree with the comments Mr Tee made on the Channel 7 news piece that insufficient kindergartens result in children's disadvantage.

It is worth noting when this research took place, because this research and the findings in this report actually relate to the period of June 2010 to November 2010 — the final five months of the Brumby government. In other words, the research was undertaken in the final five months of the Brumby government — the final five months of 11 years of Labor government — and therefore it is a report card on those 11 years of Labor failing the children of Melton.

What did the findings reported on Channel 7 refer to? They said that only 35 per cent of three-year-old children in Melton received their three-year health check, only one-third of the babies in Melton were breastfed at two weeks and there was a lower than average kindergarten participation rate. That is a damning report on 11 years of Labor in Melton. It is a damning indictment of Labor's 11 years, its failure to plan for population growth and its failure to provide services in western Melbourne. It is typical of Labor's tendency to take its heartland for granted. It expects the people of Melton to go out and vote Labor when it does not provide any services to them.

Mr Tee's comments on Channel 7 were the height of hypocrisy. He knew he was commenting on a Labor government. It is the Baillieu government which is

making available record funding for kindergarten infrastructure.

**Mr Viney** — On a point of order, President, I know the minister is speaking on the fly and having fun, but I fail to see how this has anything to do with government administration. We have had 2 or 3 minutes of her simply attacking the previous government. All members of this house are more interested in what this government is going to do. We would be interested in the minister complying with the standing orders and actually talking about government administration.

**The PRESIDENT** — Order! The minister has another 1 minute and 30 seconds to complete her answer. The minister's answer is certainly responsive to the question that was asked, and I daresay that part of the minister's answer to come is going to reflect a change or some position of the government against what she has been describing as a matter of context. The minister, to continue.

**Hon. W. A. LOVELL** — This is all about learning from the mistakes of the past, the mistakes of 11 years of Labor. I am proud to say that it is a Baillieu government which is making available record funding for kindergarten infrastructure, extending kindergarten fee relief, supporting cluster management and delivering for Victorian families and children. Just last week I announced the opening of a $26 million funding round for the children's capital program. Across all governments in the history of Victoria this is a record funding commitment in a single year. I am very proud of the $26 million funding round, and I encourage services in Melton to apply to be supported by the coalition government where they were ignored by Labor.

## QUESTIONS ON NOTICE

### Answers

**Hon. D. M. DAVIS** (Minister for Health) — We have not quite reached the levels of last week, but we are doing well. I have answers to the following questions: 341, 352, 362, 374, 379, 388, 399, 409, 415, 421, 426, 434, 445, 455, 459, 467, 473, 478, 482, 488, 492, 619, 629, 632, 633, 654, 668, 703, 704, 734, 852, 856–74, 899, 1032, 1180, 1468–505, 1507–17, 1575, 1653, 1967, 2004, 2055, 2260, 2424, 2427, 2428, 2657, 2935–9, 4067, 4068, 4500–64, 4566–81, 4615–723, 4725, 5015, 8092–135, 8156.

## PETITIONS

**Following petitions presented to house:**

### Victorian certificate of applied learning: funding

To the Legislative Council of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the Baillieu government's axing of $12 million funding for the Victorian certificate of applied learning program.

In particular, we note:

1. VCAL provides an important learning alternative to the VCE for students across Victoria;

2. government secondary schools stand to lose up to $125 000 in funding which will impact heavily on teachers expected to deliver the support and services despite having inadequate time and resources to do so;

3. funding has been axed despite strong objections from principals, teachers, parents and students across Victoria.

The petitioners therefore request that the Baillieu government immediately reverse its decision and restore funding to this vital program as a matter of urgency.

**By Mr TARLAMIS (South Eastern Metropolitan) (151 signatures).**

**Laid on table.**

### Planning: green wedge development

To the Legislative Council of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the current review seeking to turn green wedge land into commercial and housing developments.

The protection, nurturing and enhancement of green wedge land has been supported by both political parties for over 30 years in recognition of the important role that open space plays in improving the mental and physical health of the community and maintaining the livability of Melbourne. They are the lungs of our city.

We are concerned that the current review of the green wedge, which only looks at opportunities for commercial and housing development, does not get the balance right because it does not consider the impact that bulldozing green wedges will have on the environment, the mental and physical health of the community and the livability of Melbourne.

We are concerned that once gone the green wedges are gone forever and that future generations will regret the destruction of the green wedges.

The petitioners therefore request that the Baillieu government stops the current review which only recognises green wedges as a development opportunity, agrees to strengthen and grow rather

than reduce green wedge space and works with the community to enhance and improve Melbourne's green wedges.

**By Mr TEE (Eastern Metropolitan) (602 signatures).**

**Laid on table.**

## Children: Take a Break program

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council that funding for the Take a Break occasional child-care program, which is provided at more than 220 neighbourhood houses and community centres across Victoria, will cease after 31 December 2011.

The Take a Break occasional child-care program allows parents and guardians to participate in activities including employment, study, recreational classes and voluntary community activities while their children socialise and interact with other children in an early learning environment.

Full funding for the program was provided by the previous state Labor government but will not be continued by the Baillieu government beyond December 2011.

The cut to funding will mean that families across Victoria will be unable to access affordable, community-based occasional child care to undertake tasks that benefit the family and allow them to take a break.

The petitioners therefore request that the Baillieu government reinstate funding for the Take a Break occasional child-care program.

**By Mr LEANE (Eastern Metropolitan) (29 signatures).**

**Laid on table.**

## Victorian certificate of applied learning: funding

To the Legislative Council of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the state government's axing of $48 million funding for the Victorian certificate of applied learning program.

In particular, we note:

1. VCAL provides an important learning alternative to the VCE for students across Victoria;

2. secondary schools stand to lose up to $125 000 in funding which will impact heavily on teachers expected to deliver the support and services despite having inadequate time and resources to do so;

3. funding has been axed despite strong objections from principals, teachers, parents and students across Victoria.

The petitioners therefore request that the state government immediately reverse its decision and restore funding to this vital program as a matter of urgency.

**By Mr LEANE (Eastern Metropolitan) (327 signatures).**

**Laid on table.**

## Children: Take a Break program

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council of the Baillieu government's decision to end funding for the Take a Break occasional child-care program in December 2011.

In particular, we note:

1. The program is provided at more than 220 neighbourhood houses and community centres in Victoria.

2. The program allows parents and guardians to participate in activities including employment, study, recreational classes and voluntary community activities while their children socialise and interact with other children in an early learning environment.

3. The cut to funding will mean that families across Victoria will be unable to access affordable, community-based occasional child care to allow them to take a break.

The petitioners therefore request that the Baillieu Government reinstate funding for the Take a Break occasional child-care program.

**By Ms MIKAKOS (Northern Metropolitan) (268 signatures).**

**Laid on table.**

## Anglesea power station: health impacts

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council that burning of brown coal poses significant risks to human health and the environment. The continuation and possible expansion of coalmining and combustion so close to the Anglesea township, and its vulnerable populations of schoolchildren and the elderly, represents a significant public health risk.

Under the Mines (Aluminium Agreement) Act 1961 Alcoa Anglesea intends to 'exercise its right to a second 50-year term'. It is our understanding that Alcoa and the state government plan to sign a renewed lease in the next few weeks. This will allow Alcoa to continue current mining and power station operations and continue the expansion of the mine.

It is of further concern that if the mining lease is signed and the mining operations are expanded, this current hazard to public health will increase. Over time, as the population

increases, greater numbers of people, including vulnerable children and the elderly, will be exposed to this polluted environment.

The petitioners therefore request that two actions be undertaken immediately:

1. that a government funded independent study be undertaken on the environment in Anglesea to establish the current levels of pollutants in our environment;

2. that by 2014 Alcoa replaces brown coal energy with alternative, renewable energy to supplement the power requirement at Point Henry and that the Victorian government subsidise Alcoa for the increased cost of this 160-megawatt supplementary power requirement.

**By Mr BARBER (Northern Metropolitan) (506 signatures).**

**Laid on table.**

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

## SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

### *Alert Digest* No. 14

**Mr O'DONOHUE (Eastern Victoria) presented *Alert Digest* No. 14 of 2011, including appendices.**

**Laid on table.**

**Ordered to be printed.**

## PAPERS

**Laid on table by Clerk:**

Crown Land (Reserves) Act 1978 —

Minister's Order of 7 November 2011 giving approval to the granting of a licence at Lynch's Bridge Historic Precinct Reserve.

Minister's Order of 9 November 2011 giving approval to the granting of a lease and licence at Torquay and Jan Juc Foreshore Reserve.

Gambling Regulation Act 2003 — Monitoring Licence and Related Agreement issued to Intralot Gaming Services Pty Ltd, 14 November 2011.

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

Ararat Planning Scheme — Amendment C23.

Brimbank Planning Scheme — Amendment C144.

Cardinia Planning Scheme — Amendment C86.

Casey Planning Scheme — Amendments C114 and C153.

Latrobe Planning Scheme — Amendment C68.

Maroondah Planning Scheme — Amendment C42.

Moorabool Planning Scheme — Amendment C57.

Whitehorse Planning Scheme — Amendment C129.

Statutory Rules under the following Acts of Parliament:

Climate Change Act 2010 — No. 128.

Marine Act 1988 — No. 125.

Road Safety Act 1986 — Nos. 126 and 127.

Subordinate Legislation Act 1994 —

Approval of Sports Betting Event (International Rules) made under the Gambling Regulation Act 2003 and related documents under section 16B.

Documents under section 15 in respect of Statutory Rule Nos. 116, 121, 122 and 125.

A proclamation of the Governor in Council fixing an operative date in respect of the following act:

Commercial Arbitration Act 2011 — 17 November 2011 (*Gazette No. S369, 15 November 2011*).

## BUSINESS OF THE HOUSE

### General business

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

That precedence be given to the following general business on Wednesday, 23 November 2011:

1. notice of motion 135 standing in the name of Ms Pulford relating to the Australian Services Union's equal pay test case;

2. notice of motion 219 standing in the name of Mr Barber relating to the introduction of the Members of Parliament (Serious Misconduct) Amendment Bill 2011;

3. notice of motion 222 standing in the name of Ms Hartland relating to the production of a report commissioned by the department of education;

4. the notice of motion given this day by Mr Lenders relating to the 2011 Victorian Families Statement;

5. notice of motion 198 standing in the name of Ms Pennicuik relating to marriage equality; and

6. order of the day 26 regarding the Office of Police Integrity report tabled on 27 October 2011.

**Motion agreed to.**

## Mines (Aluminium Agreement) Amendment Bill 2011

**Mr BARBER** (Northern Metropolitan) — I desire to move, by leave:

> That under section 52 of the Constitution Act 1975 the Honourable Michael O'Brien, MP, Minister for Energy and Resources, be permitted to attend the Legislative Council for the purpose of explaining and answering questions during committee of the whole in relation to the provisions of the Mines (Aluminium Agreement) Amendment Bill 2011.

**Leave refused.**

# MEMBERS STATEMENTS

## Springvale Community Aid and Advice Bureau

**Mr TARLAMIS** (South Eastern Metropolitan) — I rise to congratulate the Springvale Community Aid and Advice Bureau on 40 years of service to the Springvale and wider south-eastern community. Springvale Community Aid and Advice Bureau, or SCAAB, was established in 1971 at the instigation of local activists. Merle Mitchell, AM, was particularly influential and is now a patron of the organisation. I recommend that members read the history of the organisation which was written by her and is located on the bureau's website.

The bureau provides services, support and practical help for people in need. It was one of the first organisations in Victoria to receive funding from the Department of Immigration to help people settle, and it continues to assist about 10 000 new Australians each year to find local information, housing, health care, schooling and employment support. It was initially housed in a farmhouse at 5 Osborne Avenue, Springvale, which was rebuilt in the 1980s using philanthropic and government funding.

When the new building was opened in 1988 by former Premier John Cain and the then Mayor of Springvale, Ron Kirkwood, SCAAB made this pledge:

> Our pledge for the future is that we will continue as an organisation with its roots deeply embedded in the community. We will remain absolutely committed to social justice, to equity, and the provision of high-quality services.

As Merle Mitchell wrote in the history:

> Volunteers established SCAAB and were the only staff members for some time. Their importance has not diminished.

The volunteers, the director Anna Hall, the paid staff, the committee members and friends of SCAAB have all made, and will continue to make, an outstanding contribution to their community. I congratulate the bureau, which is officially recognising its 40th anniversary tonight with a celebration at the Springvale City Hall.

## Western Victoria: road tragedy

**Mr RAMSAY** (Western Victoria) — It is with great sadness that I rise to pay tribute to six very fine people whose lives were taken far too early in a tragic accident in western Victoria on Saturday, 12 November. For five young friends, including a set of twins, Dunkeld was the destination for a day at the races when tragedy struck. A father going about a day's labour also met his death in the accident, which left five families and their friends and communities in western Victoria devastated and grieving. A full week of funeral services is under way in Warrnambool and Terang to farewell those families' loved ones, and my heartfelt sympathy goes out to all the families.

We must reinforce the Premier's message, which is to be forever vigilant on our roads, particularly country roads, where the terrain is not so familiar, and particularly over the festive season when additional traffic movement is expected on them.

## Skipton Art Gallery: opening

**Mr RAMSAY** — From tragedy on the roads to the tragedy of the floods, and in stark contrast it was a pleasure to reopen a small business in Skipton which was impacted upon by the floods. John and Juli Davine, proprietors of the Skipton Art Gallery, have been to hell and back, with their business ruined by floods not once but three times. Their art gallery was completely gutted, and they faced the significant hurdle of rebuilding with only a small amount of financial assistance and the possibility, given the low-lying area, of being flooded again. Despite many impediments, the largest of which was the new building codes which service industry premises are subject to, and with the support of family and friends and through their own sheer determination, John and Juli rebuilt the art gallery into a combined gallery and tea room.

With 60 friends in support at the opening and my own small contribution of a painting purchase, Juli and John are now on their way. I know the Skipton Art Gallery and tea room will be a great success. All it needs, like a lot of businesses affected by the floods in regional Victoria, is for visitors to come in and support it.

## Bellarine Art Show

**Ms TIERNEY** (Western Victoria) — On 28 October I had the pleasure of opening the seventh annual Bellarine Art Show at St Leonards Yacht Club. It attracted over 250 entries and was hosted by the yacht club. I would like to thank John Royle, the commodore, Dot, Dennis, Lorraine, Arthur, Karen and all the other members who worked so hard leading up to the show as well as during the opening on Friday night and through to the Sunday night. It is a great event, which provides an opportunity for local artists to display their talents. It is a coming together of the wider local community. It is also a reminder of our natural environment. I look forward to next year's Bellarine Art Show and I congratulate all involved.

## East Geelong: men's shed

**Ms TIERNEY** — I also congratulate the East Geelong men's shed group, which after a number of years has finally been able to get its shed organised. The shed was opened last month at the Grinter Reserve by Cr John Mitchell, the mayor of the Greater City of Geelong. Although it is still early days, the group is off to a good start with about 60 members. For membership inquiries, people can drop in on Tuesdays or Thursdays between 10.00 a.m. and 12.00 midday, or contact Bob Westlake on 0447106036.

## Baiada Poultry: employment conditions

**Ms HARTLAND** (Western Metropolitan) — Last week I attended the picket line of the Baiada workers at Laverton. The factory processes much of the chicken that we eat in Victoria. The conditions of workers at this factory are particularly appalling. Most workers are badly paid, they work in very dangerous conditions and many of them do not speak English. There have been some outrageous occurrences at the factory.

But there was good news today. The workers have now got a two-year agreement, with a 4 per cent increase in the first pay period, 4 per cent in the following year, minimum rates and no more cash-in-hand work, accountability in contracting and retained accident make-up pay, as well as better union rights and recognition, including training and support. I particularly want to congratulate the workers at Baiada, because it has been very difficult for them; they have stood up for their rights. I also congratulate the National Union of Workers on the support it has given them.

I also believe the nurses have a right to have this government respect their work. The Greens completely support them in the actions they are taking now to make sure that nurse-patient ratios are kept and that they get the pay increases they deserve. The government should actually sit down and talk with these people rather than demonising them in the press.

## Gippsland Asbestos Related Disease Support

**Mr SCHEFFER** (Eastern Victoria) — Each year Gippsland Asbestos Related Disease Support, also known as GARDS, conducts a ceremony in the Morwell Centenary Rose Garden to commemorate those who have died of asbestos-related diseases, celebrate the strength of those who suffer with the disease and acknowledge families and friends. Because asbestos-related diseases afflict people many years after their contact with the substance, governments and health authorities must take the long view. Many of those who suffer today contracted the disease decades ago, and those who are contracting it today — mainly through renovating their homes without safety equipment — may not present with the disease until many years into the future.

While most people who suffer from mesothelioma do so because of occupational exposure, the rise in new cases, the so-called third wave, arises from the activities of do-it-yourself home renovators. The rise in new cases of mesothelioma is predicted to reach around 18 000 Australia-wide by 2020, and the third wave of deaths from exposure has the potential to continue to grow for years after 2020.

GARDS is today at the forefront of the battle to make sure that home renovators are provided with the advice and equipment they need to protect themselves from inhalation of asbestos dust. GARDS, in partnership with the Latrobe City Council, the Gippsland Trades and Labour Council, government agencies such as WorkSafe, and the Department of Health have developed a home renovators asbestos removal kit as part of an ongoing effort to protect the community. I commend the work of GARDS and the many people in Gippsland who campaign today for the wellbeing of the generations to come.

## Housing: Norlane development

**Mr KOCH** (Western Victoria) — I congratulate the Minister for Housing, the Honourable Wendy Lovell, who last week announced a four-year, $80 million housing project that will see more than 320 new public and affordable private homes built in the suburb of Norlane near Geelong. The new Norlane project will be one of the largest public and private housing renewal programs ever undertaken in Victoria. Over the next four years a mix of 320 new and affordable private and

public homes will be built on 200 vacant blocks of land, which will revitalise Norlane and attract new investment through a partnership approach, creating new jobs and local opportunities. This follows the Premier's announcement last month that the coalition government will establish one of the first two work and learning centres in North Geelong to support the economic participation of local residents in the area. It is expected to open before July next year.

The minister also announced the establishment of a community advisory committee so that the local community remains involved in the new Norlane development project. At the minister's request, I am privileged to be chairing this important committee, which will include representatives from the local community, business, government and community services. This is a great opportunity for Geelong, as it will attract much new investment to the area, providing work for those in the local building trade and expanding the range of housing options available to young families.

## Old Fire Station Cafe, Preston: art exhibition

**Mr ELASMAR** (Northern Metropolitan) — On Saturday, 12 November, I attended the launch of the Liberate Your Mind's Eye art exhibition, which was held at the Old Fire Station Cafe in High Street, Preston. It was very well attended. The exhibition featured creative works by artists Raymond Quinton and Vanco Hristov. I wish both artists a long and successful career in their chosen artistic field of endeavour.

## Lebanon: independence day

**Mr ELASMAR** — On another matter, today is the independence day of Lebanon. I would like to take this opportunity to wish the Consul General of Lebanon, Mr Henri Castoun, his wife and the Victorian and Australian Lebanese communities a successful and joyous celebration. My prayers are for peace not only in the Middle East but for the whole world.

## Sultanate of Oman: national day

**Mr ELASMAR** — On another matter, I was also pleased to attend the 41st national day celebrations of the Sultanate of Oman. The reception was hosted by the Consul General of the Sultanate of Oman, Mr Hamed Mohammed Al-Hajri, and Mrs Raya Al-Hajri. Many of my parliamentary colleagues, including you, President, were in attendance. It was a very enjoyable occasion. After serving for six years in Melbourne, I understand the Consul General and his family will be returning to their homeland. I wish them a safe journey.

## Lucas McArthur

**Mrs PEULICH** (South Eastern Metropolitan) — I wish to place on record my condolences as well as those of my staff, my family and other Liberals on the recent passing of Mr Lucas McArthur, the husband of Rochelle McArthur, a former mayor of Frankston and Liberal candidate for Frankston in 2006, leaving a bereaved wife, bereaved children and lots of family members and friends. It is very sad that at such a young age he has been snatched from a loving family.

## Schools: Western Metropolitan Region

**Mrs PEULICH** — On a different tack, I rise to thank my parliamentary colleague for Western Metropolitan Region, Andrew Elsbury, for his recent invitation to visit four local secondary schools in Melbourne's west. We had the pleasure of visiting and speaking with the principals and school council representatives from Sunshine College, Victoria University Secondary College, Galvin Park Secondary College and Werribee Secondary College.

There is a lot of work to be done to fix the problems left behind by 11 years of neglect in Melbourne's west, and it is only by speaking with school principals and school councils and seeing the issues firsthand that one can form a reasonably accurate assessment of the extent of the problems. All the schools were very supportive of the recent announcement by the Baillieu government of a full maintenance audit of all government schools, an audit that will examine every building in every government school.

I would like to thank principals, Julie Myers from Galvin Park Secondary College, Tim Blunt, a former colleague of mine, from Sunshine College, and Genevieve Simson from Victoria University Secondary College. I would like to make special mention of Thando Bhebe, who made a presentation to me of a book called *Harvester Town* when I visited Sunshine College.

## Chief Commissioner of Police: appointment

**Ms BROAD** (Northern Victoria) — I wish to congratulate Mr Ken Lay on his appointment as Chief Commissioner of Victoria Police. I further wish to commend Mr Lay on his early statements in his capacity as chief commissioner recognising that 30 per cent of crimes in Victoria are connected to family

violence, as well as his statement: 'We've simply got to get better at this'. Mr Lay also said:

> The interesting thing for me is understanding that a woman or child is more likely to get assaulted in their home than they are on the street.

I note that Mr Lay has made a commitment to early action to tackle the scourge of family violence. In this context I wish to draw the attention of the chief commissioner to a proven and award-winning crime prevention program in my electorate that is focused on the prevention of family violence. The program is called BSafe, and Victoria Police has supported the program in north-eastern Victoria for several years. It is simply too effective a program to allow historical resourcing issues between levels of government and government agencies to prevent its continuation. I request that the chief commissioner find a way of continuing and even extending this program, BSafe, as part of his commitment to early action to tackle family violence across Victoria.

## Remembrance Day

**Mr EIDEH** (Western Metropolitan) — On Friday, 11 November, I attended a commemoration ceremony for Remembrance Day 2011 at the cenotaph in Queens Park, Moonee Ponds. I was joined by councillors from Moonee Valley City Council, members of the community and my parliamentary colleagues in the Legislative Council for the Western Metropolitan Region, Colleen Hartland and Bernie Finn. I would also like to acknowledge the member for Essendon in the Legislative Assembly, Justin Madden, and the federal member for Melbourne, Adam Bandt. We sang a number of hymns led by the magnificent Moonee Valley Brass Band and Strathmore Secondary College Choir to commemorate the event. Following the commemoration a presentation of medals was held to recognise the service of past and present servicemen of the nation who sacrificed themselves for the wellbeing of Australians.

Remembrance Day is a day of great importance to our nation as it gives all Australians an opportunity to express their gratitude to the servicemen and servicewomen who fought for the opportunity to live every day in freedom. I take this time to also acknowledge all councils, RSL clubs and community members around the country who paid their respects to the fallen and current serving members of the defence forces in Australia. I would like to take this opportunity to thank Moonee Valley City Council, the Essendon RSL, the community and all who were involved in the day for remembering with respect and honour the fallen, the survivors and the people still serving. Lest we forget.

## Wind farms: government policy

**Mr TEE** (Eastern Metropolitan) — I am disappointed to report today on the ongoing fallout of the government's policy to close down the wind farm industry in Victoria. On 16 November the *Weekly Times* reports:

> The first wind farm developer to fall victim to restricted Victorian government planning laws is closing its Melbourne office.
>
> Global wind farm developer Windlabs … said the government's planning laws had gone too far and the company was moving staff to its Canberra head office.

This is just one example of the ongoing damage being done by this government's wind farm policy.

**Mr Barber** interjected.

**Mr TEE** — It is a policy that will see job losses in regional Victoria, Mr Barber, the loss of rental income for farmers in regional Victoria and increasing rates as councils struggle to manage the government's red tape. The government has ripped the floor out from under this industry. I ask the government to stop, think and come back with a better, fairer and more balanced approach, so that families in regional Victoria can have a better future.

## STATE TAXATION ACTS FURTHER AMENDMENT BILL 2011

*Second reading*

**Debate resumed from 10 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).**

**Mr LENDERS** (Southern Metropolitan) — I rise to speak on this bill, which is a complex bill, as are most of the six-monthly taxation amendment bills that come into this house.

**Mr Barber** — On a point of order, President, I am looking around the chamber for a minister.

**The PRESIDENT** — Order! There is a minister here in Mr Dalla-Riva.

**Mr LENDERS** — This type of bill is introduced frequently. This bill introduces a range of measures. I will not take the house through the measures in general terms, because they were canvassed by the Treasurer in his second-reading speech and succinctly responded to

on behalf of the Labor Party by my colleague the member for Lyndhurst in the Assembly, Tim Holding. I would like to focus on part 3 of the bill, and in particular the clause that deals with narrowing the period a financial institution can hold a deposit that is given by a homeowner as part of the purchase of a home. Part of the reason that I wish to focus on this today, and I will explore it with the Assistant Treasurer in the committee stage, is because I wonder what is so different here, in 2011, with this particular clause, than was the case when it was considered by this house in 2009?

I am pleased the Assistant Treasurer has come into the chamber, and for his benefit I will just recap what I have said. I seek to take this bill into committee. It is a complex bill, but the concepts are not complicated. The Assistant Treasurer might spare us the committee stage if he could, in his summing up, take us through why in 2011, when the Baillieu government seeks to reduce the period a financial institution can hold onto a deposit, it is suddenly good public policy, whereas in 2009, when the Brumby government sought to do this, it was just nothing but a ruthless grab for revenue that was going to rip the heart out of regional Victoria. I paraphrase here, but that is the gist of what was said.

I am referring the house to the background of this legislation. Clearly this is an opportunity for the state government to bring forward some tens of millions of dollars of revenue. I understand the Treasurer would wish to pad out his budget surplus this year. As I pointed out in the committee stage of the budget earlier this year, when all the water authority dividends were deferred out of the last Brumby budget into the first Baillieu budget, it just happened to reduce the surplus left by the Brumby government and, by a thin fig leaf, give the Baillieu government the appearance of having a surplus in its first budget.

What we are seeing here today is a one-off bringing forward of revenue from the 2012–13 financial year to the 2011–12 financial year that is undoubtedly designed to again give the government a budget surplus. I am not going to argue that it is hypocritical of the government to do so. I am not going to argue that it is inappropriate for the government to bring forward this revenue, because, as I argued in 2009 in this place, this is appropriate public policy. But the main response that I wish to draw from Mr Rich-Phillips is to the question: why was it not appropriate public policy in 2009, but it is appropriate in 2011?

I remind the house of what happened in 2009 when the then government announced this as part of the budget measures to come forward. They were not budget measures as such, but it was a procedure that was announced in late 2008. It was part of a series of matters that dealt with a stamping out of tax evasion, where freehold purchases were deemed to be 299-year leases, if I remember correctly. The then opposition agonised forever over wanting more information. Debate on the bill was adjourned at the time for three reasons, and one was to get clarity as to those leasehold arrangements. It would be churlish of me to say it was just about trying to protect mates. It would be kinder to say it was to get greater clarity.

**Hon. G. K. Rich-Phillips** interjected.

**Mr LENDERS** — Eventually, Mr Rich-Phillips. There were two other clauses, but the one that got the greatest attention was this one. When the legislation was being debated in this house a reasoned amendment was moved that it not be considered until a lot of questions had been answered about residential tenancies. At the time we had an assortment of parties who were opposed to the legislation. We had the coalition, which wanted more information, and the law institute and various property councils wanted more information.

Leaving that aside, eventually common sense prevailed. The Greens were concerned because if the period of time for deposits was reduced, there would be less interest from those deposits going into legal aid. They were concerned about various other matters, but that was their particular issue. Mr Kavanagh from the Democratic Labor Party was less concerned about that. The long and the short of the government's proposal was that it would shorten the period banks could hold deposits from 90 days to 14 days. The then opposition railed and said that was unreasonable. Mr Kavanagh moved an amendment to make it 30 days, and that failed. It was not just that Labor brought forward a proposal — —

**Hon. G. K. Rich-Phillips** — It wasn't as simple as that.

**Mr LENDERS** — Yes, Mr Rich-Phillips, I am sure you would say that it was not as simple as that.

As Treasurer I introduced a bill that meant that instead of banks holding money for 90 days, they would hold it for 14 days. The opposition said that was too short a period, that the world as we knew it would end and that meteorites would rain down on regional Victoria. I am only mildly paraphrasing; there was that sort of magnitude of excitement in the debate. Mr Kavanagh moved an amendment to change the period to 30 days. That was in the general case; there were a couple of

exceptions, like an extra 15 days if you lived more than 150 kilometres from the Melbourne GPO, if I recall correctly. The then opposition still had an issue with that. In between these events a reasoned amendment was moved in this house. The reasoned amendment was defeated because there was a mix-up with the pairing arrangements as the Opposition Whip was away and communications had not occurred. The government gave leave for the vote to be resubmitted and the reasoned amendment was carried.

I remember attending a long meeting in the Treasury building with a former member for Southern Metropolitan Region, Ms Huppert; Mr Rich-Phillips; the current Treasurer, Mr Wells; and half the State Revenue Office and the Department of Treasury and Finance. A cast of hundreds it appears were there — —

**Mr Barber** — I was there.

**Mr LENDERS** — You were there, Mr Barber. It was interesting to hear Ms Huppert having a long debate with her former sparring partners in commercial law across the room. We tried to resolve those outstanding issues but ultimately some of them were not resolved. In the end amendments were introduced in the house, the committee stage was adjourned again — there was a bit of goodwill there — and eventually the law remained at 90 days.

If Mr Rich-Phillips says, 'We did not think it was a good idea at the time, but we do now because we need the revenue', I will accept that. Treasurers need revenue, and a one-off bringing forward of a lot of revenue by 30, 40, 50 or 60 days is good policy — that is why the Labor government introduced legislation to do this in 2009.

There are a range of other provisions in the bill, and I could spend a lot of time going over what the member for Lyndhurst in the other place, Tim Holding, went through and seeking clarity on a range of matters, but that would probably waste the time of the house.

I ask Mr Rich-Phillips to succinctly sum up in his reply why the 30-day period that Mr Kavanagh proposed, with Labor's support, was not appropriate in 2009 but is appropriate in 2011. If the answer is because he is in government now and he was not then — that would be an honest answer — I will accept that and not persist with further questioning. I seek an answer from Mr Rich-Phillips. The opposition does not oppose the bill but awaits his response with interest.

**Mr BARBER** (Northern Metropolitan) — I sat down to read this legislation for the first time with a slight degree of excitement — more than I would usually anticipate with a taxation bill. What really got me going was the release of a Victorian Competition and Efficiency Commission (VCEC) report into state taxation, *Securing Victoria's Future Prosperity — a Reform Agenda*, a few days prior. This report recommends changes to the very taxes that are dealt with by this bill, including payroll tax, duties and land tax.

The incoming government asked the commission to look at productivity in the Victorian economy. Productivity is an issue we debated considerably in the last Parliament, and we continue to debate it in this Parliament because at the end of the day productivity is what makes us rich — you cannot get rich without productivity.

Any time a report such as this makes serious suggestions to improve productivity it is worth us all having a read of it, and the report does make such recommendations. I based my initial opinion on a newspaper report, but when I dug up the relevant report I found an entire chapter entitled 'Improve the investment climate by reforming taxation' and even a tantalising subheading '5.2 Achieve a breakthrough in taxes to boost productivity'. You, Deputy President, can understand my disappointment when I read this bill and realised that there was no reform agenda and no breakthrough being achieved through it.

The way members of the Liberal Party talked about taxes when in opposition, you would think they would be itching to get their hands on the levers of state taxation so that they could introduce the very reforms that VCEC and for that matter the Henry tax reform have previously proposed. After all, in the Auditor-General's review of Victoria's finances for the period just gone we see that transfer duties rose by 8.5 per cent, putting an extra $300 million in the hands of the incoming government; the growth areas infrastructure charge was introduced for the first time in that financial year, raising $70 million; land tax rose by 20 per cent, raising an extra $230 million; payroll tax rose by 7.3 per cent, raising an extra $294 million; and registration fees rose by 6.9 per cent, raising an extra $60 million.

These are the very state taxes that VCEC refers to as in some cases inefficient or draining on the productivity of the economy, yet the government does not seem to have taken much notice of this report in its framing of this bill. It has been in office for 12 months, so you would have thought it had had its opportunity.

If Ken Henry and VCEC know what they are talking about, there are some considerable gains to be made by

reforming these taxes. Table 5.1 of the report details the welfare loss of each additional dollar of revenue raised above the current average level. In the case of land tax, it describes this as a rather low burden, but in the case of payroll tax and stamp duties on the transfer of land, motor vehicles and especially insurance it indicates all sorts of deadweight losses coming through the economy as a result of taxing what are in many cases transactions rather than assets.

The commission canvasses various views and makes some strong recommendations. It has heard from the Victorian Employers Chamber of Commerce and Industry, the Property Council of Australia, the Housing Industry Association, the Real Estate Institute of Victoria and the Australian Industry Group. Come to think of it, it is not a very wide gene pool, but I am sure they found common ground with what the Victorian Competition and Efficiency Commission was offering. But we know the government has no intention of following through on VCEC's recommendations. VCEC was a bit of a vanity exercise for the former Premier, Mr Brumby. He wanted to be able to talk the talk on productivity, and having his own state-based version of a Productivity Commission certainly allowed him to do that. But if we went back and looked at some of its recommendations, I am not sure that we would find a lot of results.

I certainly intend to keep a book on VCEC, at least as we go forward. It is producing reports regularly, and I would like to know how many of its recommendations are being adopted by the new government. If we get to 12 months and the answer is not many, we might make a case to get rid of VCEC. After all, if it is costing us money, politicians are not listening to it and no government wants to implement its findings, it has fairly limited value to the taxpayer.

Having said that, it appears that the commission has not attempted to design a detailed tax package that would achieve what it says are the necessary aims of reform. It is suggesting strongly that Victoria could go it alone and reform its state taxes, but we would see very little of those benefits being harvested with this particular piece of legislation, worthy though it is. We will support the legislation. I do not propose to go through all of the many changes; by my reading they have been adequately covered in the second-reading speech. The Greens will support the bill.

**Mr P. DAVIS** (Eastern Victoria) — There is one thing for sure about this place: the introduction of a taxation bill is a great way to empty the chamber! I wonder why, because it is a primary function of the Parliament to enable the government to raise and expend funds contributed by the people of the state. In any event, there is a perception that public finance is not exciting. I know Mr Lenders and Mr Rich-Phillips and obviously Mr Barber are very excited about public finance, as am I. In making those introductory comments let me say that we could abridge the debate this afternoon succinctly, given the comments by the Leader of the Opposition indicating that the opposition supports the bill. In fact he made the case that the opposition vigorously supports the bill and wished that it had been passed a couple of years ago.

On the other hand, Mr Barber said 'Harder, harder, faster, faster', but he substantially referred to a Victorian Competition and Efficiency Commission report which is in draft form. I assume he is referring to the draft report of VCEC which is open for public comment and submission. It would be unreasonable, Mr Barber — through you, Deputy President — for the government to usurp and pre-empt the task it has delegated to VCEC: to have a look at the issue and make recommendations in consultation with the community.

**Mr Barber** — That is a reason to keep VCEC going.

**Mr P. DAVIS** — No, I am responding to Mr Barber's contribution, which was basically about the government not implementing a draft report. No government implements a draft report. The purpose of initiating a report is to consider the findings, which clearly have not been concluded.

**Mr Barber** — Look up anything you have said on stamp duty in the last 15 years.

**Mr P. DAVIS** — That will be edifying, I am sure; thank you, Mr Barber. I want to make some very quick remarks, because I do not want to prolong this debate as it is unnecessary. Mr Lenders has put a proposal to the Assistant Treasurer for a clear clarification of the policy rationale for a section of this bill. I remind members that the State Taxation Acts Further Amendment Bill 2011 is an omnibus bill: it amends a number of acts and could be classified in some respects as technical and administrative. It aligns a number of provisions with current State Revenue Office administrative practice under the office's discretion — in this case, in effect, in favour of rather than against the interest of the taxpayer. There are limited revenue implications, other than the principal one to which the Leader of the Opposition has alluded. It otherwise simplifies and updates the taxation framework.

The bill also deals with a High Court of Australia decision on the definition of 'charitable organisation' in relation to an exemption from payroll tax for predominantly commercial activities. There is currently a limited revenue loss, which could expand if this measure is not supported. The bill will restore the longstanding policy position that an exemption exists only in relation to the charitable work of an organisation rather than its commercial activities. By proceeding with this amendment we will restore a competitive neutrality with businesses that are in the same field of endeavour but are not registered as charities.

The bill amends the Duties Act 2000 to reduce the period of due payment from 90 days to 30 days, to which the Leader of the Opposition alluded. I understand that 85 per cent of all duty payments on property transactions occur within 30 days; therefore only 15 per cent are paid in the period beyond 30 days to 90 days. Therefore this provision will bring forward that revenue, which is a total of $47 million on a one-off basis in this financial year. Importantly, it will bring in consistency with current commercial practice.

It was this issue around which the Leader of the Opposition was referring when he sought from the government a policy clarification as to why 30 days is better than 14 days, which he proposed when he was Treasurer.

**Mr Lenders** — Or 30, which is what Mr Kavanagh proposed.

**Mr P. DAVIS** — Mr Kavanagh was not the Treasurer, as I recall.

**Mr Lenders** — We supported his amendment, and you didn't.

**Mr P. DAVIS** — As Mr Rich-Phillips said by interjection earlier, these matters are never simple, and I can assure my learned colleague the Leader of the Opposition that when it comes to state taxation they are never simple and there are very complex reasons why governments introduce bills, and this bill is a very good one. I make the point that Victorian taxpayers will still be in a better position than taxpayers in every other state and territory, other than the Northern Territory, where the duty is payable within five months from the contract of sale date. In Victoria it is due within four months from the contract date, and in all other states it is due within either three or two months. Therefore Victorian taxpayers will still have a greater degree of leniency than those in any state other than that cavalier cowboy, would-be state of the Northern Territory. The government position is that 14 days, as proposed in the previous Parliament, was clearly insufficient time for the administrative processes to be put in place, for the preparation of the detailed paperwork and for the transactions to be given effect, and that a practical solution has been found to this issue after consultation with stakeholders. Importantly, this brings this practice into line with what would be regarded as the usual terms of commercial practice, being 30 days.

This bill also deals with a clarification of the definition of primary production land for land tax purposes; it allows more effective compliance activities for the collection of livestock duties; it recognises valuations of land by the valuer-general for land tax purposes; and it streamlines the assessment of land tax on time-share schemes, but in fact no more taxpayers will be assessed.

While I would be delighted to make some more and further detailed comments, on the basis of the contributions by the opposition and the Greens, I think there is sufficient to rely on the minister's response to this debate.

**Hon. G. K. RICH-PHILLIPS** (Assistant Treasurer) — I thank the Leader of the Opposition, Mr Barber and Mr Davis for their contributions to the second-reading debate on this bill. I go first to the points Mr Barber raised first about the draft VCEC (Victorian Competition and Efficiency Commission) report into a state-based reform agenda, as Mr Davis and Mr Barber expressed some disappointment that the recommendations of that VCEC work are not reflected in this bill. I assure Mr Barber that the preparation of this bill preceded the VCEC draft report by a considerable period of time. That VCEC work is currently in draft form, and the government looks forward to receiving the final report from VCEC some time, I think, early in the new year. That is why the VCEC work is not reflected in the bill the house is dealing with today.

The Leader of the Opposition, Mr Lenders, raised the issue of the reduction in the period for the payment of stamp duties under this legislation. He rightly raises the fact that this matter was debated by this Parliament some two or three years ago under previous legislation when Mr Lenders was Treasurer. As Mr Lenders recounted, there were a number of issues with respect to that legislation. Different parties were concerned about different elements of that legislation. I recall the debate around 299-year leases and the need to close that loophole with respect to lease transactions that were being used in place of actual transfers to attempt to avoid duty. The government supported that particular measure to address the issue around leases.

Where we did differ with the then government was the proposed reduction from 90 days to 14 days for the payment of stamp duty. Mr Lenders not unreasonably asks what has changed and why the government has a different position now. I think Mr Davis, in his contribution, spoke about the difference between 14 days and 30 days and the fact that it is a substantial — —

**Mr Lenders** — What about Mr Kavanagh's amendments?

**Hon. G. K. RICH-PHILLIPS** — I will come to Mr Kavanagh's amendments, Mr Lenders.

There is a substantial difference between a 14-day proposal and a 30-day proposal, and as Mr Davis pointed out, around 85 per cent of transactions are settled within a 30-day window. Therefore this change will not have a significant impact on a significant proportion of transactions, which of course also means that in terms of the house's understanding or expectation that this will produce a huge windfall for the government, the reality is it will not. Because most transactions are already settled within the 30-day period, the amount of revenue that will be brought forward in a one-off is a relatively modest amount.

On the issue of Mr Kavanagh's proposal of 30 days, it is true that when the house last considered this issue Mr Kavanagh, then an independent member of this house, brought forward — —

**An honourable member** interjected.

**Hon. G. K. RICH-PHILLIPS** — DLP (Democratic Labor Party); I beg your pardon — Mr Kavanagh, then a DLP member of this house, brought forward a proposal for 30 days in place of the previous government's proposed 14 days. My recollection is that that amendment proposed by Mr Kavanagh did not proceed to a vote; I think it was withdrawn by Mr Kavanagh. However, it was also the case, as I indicated by way of interjection during Mr Lenders's second-reading contribution, that Mr Kavanagh's proposal was not a simple 30-day replacement of the existing 90 days. It was in fact contingent on a definition that divided metropolitan settlements from regional settlements and provided different time frames based on a radius — it might have been 150 kilometres from the GPO. What Mr Kavanagh was seeking to do in proposing 30 days in place of the previous government's 14 was to make the legislation considerably more complex than it already was, and that was not supported by the current government.

We believe that reducing the period from 90 days to 30 days now is a reasonable balance between the concerns which were expressed two years ago when 14 days was on the table. We believe 30 days is a reasonable balance between those two proposals, and that is why the government is proceeding with a 30-day time frame in place of the existing 90 days. I certainly recognise Mr Lenders's interest in this matter, and I thank members for their contributions.

**Motion agreed to.**

**Read second time.**

*Third reading*

**Hon. G. K. RICH-PHILLIPS** (Assistant Treasurer) — By leave, I move:

That the bill be now read a third time.

I thank members for their contributions and cooperativeness.

**Motion agreed to.**

**Read third time.**

## MINES (ALUMINIUM AGREEMENT) AMENDMENT BILL 2011

*Second reading*

**Debate resumed from 10 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).**

**Mr LENDERS** (Southern Metropolitan) — In rising to speak on this bill I will choose my words very carefully. This is a serious piece of legislation with ramifications for employment in Geelong. It is one that in terms of the parliamentary process has many flaws; however, the Labor Party will not oppose it.

I will explain why I am choosing my words carefully in saying the Labor Party will not oppose this bill. That is a form of words that parties have used for decades in this place when there have been pieces of government legislation those parties would vote for when the legislation was put to the test. The Labor Party will vote for this legislation when the Greens undoubtedly call for a division on the second and third readings.

The reason I am spending a bit of time on that phraseology is that the Minister for Energy and Resources, Michael O'Brien, went around trying to scare people in Geelong in an absolutely disgraceful fashion when this bill went through the Legislative

Assembly and when Lily D'Ambrosio, Labor's shadow minister for energy and the member for Mill Park in the Assembly, said the Labor Party would not oppose the bill but would vote for it if it came to a division.

As Mr O'Brien hopefully knows, being a minister of the Crown, and hopefully knows, being a barrister, and hopefully knows as someone who is meant to have an understanding of government and a sense of civic decency, the use of the processes of the Parliament in such a way — to frighten people in relation to jobs in a regional city — is disgraceful. His going around and doing that was an abuse of the process. Probably the best treatment Mr O'Brien got was that the Geelong media completely ignored him, because Lily D'Ambrosio had shown people that what he was doing was a joke.

This is a serious piece of legislation. Party members getting up in the house and saying they do not oppose a piece of legislation does not mean what Mr O'Brien said it meant. It means that the party will vote for the legislation but it is not going to own every single dotted 'i' or crossed 't' without question. Such legislation is not going to be owned by the opposition, but the opposition will let it through the Parliament if it thinks it is necessary or better than the status quo.

Let me now turn for a bit to what this bill is about. The minister outlined it in his second-reading speech, which was reasonable, unlike his ranting in the Geelong community. What the Parliament is being asked to address here today is not legislation as we normally know it. The Parliament is being asked to ratify an agreement signed by Michael O'Brien, the Minister for Energy and Resources, with the Alcoa company. I want first to put out there clearly what we are being asked to do. This is not unusual. This was done by the Parliament of Victoria in 1961 when the first 50-year agreement was entered into with Alcoa.

The opposition's questions about this — and it will never know the answers — are: in its negotiations did the government get the best possible economic rent for the brown coal facilities at Anglesea? In its negotiations did the government get the best possible environmental outcome in Anglesea? In its and the company's negotiations did the government get the best social outcomes? Obviously there was debate around Anglesea, particularly regarding the school, some of the visual amenity issues, some of the stream flows and other things.

From the point of view of parliamentarians in opposition we could seek to amend the deed, but that would be a waste of time, because it is a written agreement signed by the minister already. We are therefore not seeking to amend it. That would be futile, and it would ultimately have us trying to stand in the shoes of the minister to strike an agreement which is essentially commercial but has these environmental and social aspects on the side. In the end that is the job of the Department of Primary Industries, which advises the minister, and of the minister, who forms a view and signs the agreement. That is what he did.

The Parliament is not really being asked to say whether perhaps the minister could have got more economic rent; we do not know. Perhaps the minister could have achieved a better environmental outcome; we do not know. This is a negotiated commercial agreement with the company that employs 1000 people at Point Henry. In the end for us what underpins this is: in the parliamentary process could we or could we not do something to get a better outcome? The reality is we cannot. We are being asked to support the legislation — it is yes or no.

I can go through the history of this project. As I said before, it was a 50-year project begun back in 1961. If we look through the agreement, we see that it goes through all the sorts of things necessary, firstly, to bring the earlier agreement, written 50 years ago, into the 21st century — it was struck in the last millennium — and secondly, to both adjust the law to what has happened and also pick up those seismic shifts that in our view have happened, in particular in the areas of the environment and of value for money with respect to jobs.

This bill takes into account the change — for heaven's sake — to decimal currency and the change to the metric system. Those things are obvious. The agreement seeks to link many of the ways Alcoa operates on this site to the contemporary mining legislation, the occupational health and safety legislation, the water legislation and a range of other things. Again, whilst I do not have a lot of positive things to say about Michael O'Brien, particularly after his outrageous scaremongering in Geelong, I will give credit to him and his department for their courtesy in the briefing process and for trying to enable us as an opposition to see exactly what had changed. We had one briefing, and because it was difficult to get all the answers, the minister's office courteously gave us a second briefing. Credit where credit is due in terms of their helping us deal with this.

Fundamentally what we have presented to us here is a commercial agreement signed by a minister with a company, and we are being asked to ratify it for the next 50 years. We could have a debate about whether

that is good governance or not. We could have a debate about whether we could have got, as I said, greater economic rent or not — and I suspect Mr Barber is going to dwell on many of these things. We could have a debate on the environmental outcomes and on the social outcomes. Ultimately, however, the choice before this house today is: do we ratify or not ratify?

This agreement expires on 31 December, and the Parliament is sitting this week and next week. The reality is that if this legislation is not approved, 1000 jobs in Geelong will be under threat. What Alcoa would do is anyone's guess, but it is a sovereign company that trades in all parts of the world, and it ultimately makes the choices about whether it will have these jobs in Geelong or in Canada or somewhere in central Africa.

For us it is not a bit of navel gazing about what could have been, what should have been, what ought to have been or what we would like to have happened; the reality is that the Baillieu government is presenting this to the Parliament literally at the 11th hour. Essentially it is saying to the Parliament, 'Ratify it or be damned'. I know Mr Barber will probably be seeking more time for this to be considered. It is not an unreasonable request, but I flag that we acknowledge this needs to be ratified. We also have the view that it needs to be ratified this week. For it to go on to the next sitting week of Parliament would start to cut things particularly fine.

From the Labor Party's point of view it will not oppose the legislation even if the Minister for Energy and Resources, Mr O'Brien, goes on another frolic around Geelong to try to stir up the known universe about how terrible that is. It means we will vote for this when it comes to the second reading and we will vote for it when it comes to the third reading. We acknowledge this is an agreement which has been signed and which cannot be amended by the Parliament. It is take-it-or-leave-it legislation, and we need to rely on trust that this is the best outcome for the state. On reflection, it would have been much better for this to have come many months ago and it would have been better for more to have been brought into the discussion on this, but the reality is that this is not the case.

We wish the 1000 people in Geelong well in their jobs and in their security into the future. We will vote for the legislation if it comes to a vote, but I repeat that on our construction and on the construction of the member for Mill Park in the Assembly, Ms D'Ambrosio, saying that the Labor Party does not oppose the bill is exactly what Mr Rich-Phillips said dozens of times in this house when Labor proposed legislation and what Mr O'Brien said many times in the Legislative Assembly when he was a shadow minister and when the Labor government proposed legislation and the opposition did not vote against it — it said it did not oppose it.

The reason we are not opposing the bill rather than enthusiastically embracing it is, in this case, that it is essentially a fait accompli. We were not part of the negotiations, but we are being asked to endorse the legislation. We will endorse the jobs in Geelong, we will not oppose the bill and if it comes to a vote we will support the government on this. But it is not simple, and sadly it is unhelpful when a minister seeking cooperation for 1000 jobs in Geelong thinks it is his job to run around with a press release like an undergraduate student in a frenzy trying to make out that what Ms D'Ambrosio said in the Assembly was something completely different.

I will sit down now and await the committee stage with interest. I reserve the right for the Labor Party to participate in that discussion, but I think I have concluded our position on this bill quite clearly.

**Mr BARBER** (Northern Metropolitan) — It is quite clear from my research into this issue, which has been ongoing throughout the year, that Alcoa's operation of a coalmine and a coal-fired power plant in Anglesea is making certain citizens ill. The operations are also destroying an internationally significant ecosystem. Alcoa is polluting the atmosphere through an inefficient form of power generation, which we are all very familiar with, and it is doing this with a whole series of favourable terms and subsidies from the state of Victoria's taxpayers to it. It is doing large parts of it in secret, for reasons which I will now turn to before going back to canvass some of the issues.

It is interesting that Mr Lenders for the Labor Party said he was prepared to take the bill on trust from the government and that he was doing it on behalf of 1000 jobs in Geelong. There are thousands in Anglesea whose interests he also needs to represent; 500 of them signed a petition that I tabled in Parliament this morning and many hundreds more have signed other petitions that could not be tabled because they were in a different format. Really we owe it to everybody, including the employees of Alcoa and local residents in Anglesea, to scrutinise this legislation and the issues surrounding it until we get it right and until we are absolutely confident that we are getting it right. That is extraordinarily difficult because of the secrecy associated with these processes.

Throughout the year I have been asking questions of ministers via the chamber and through freedom of information requests on behalf of residents of Anglesea who have been asking these questions, and I have barely been able to get any answers. One great difficulty is the total exemption under the Freedom of Information Act 1982 for Alcoa's operations introduced by a special amendment in section 14 of the Alcoa (Portland Aluminium Smelter) (Amendment) Act 1984, only a year or two after the Freedom of Information Act 1982 itself was created. Section 14(1) states that documents are exempt documents if they are:

> A document relating to the establishment, operation or carrying on of the smelter or affecting or relating to the smelter site or anything done or to be done on or in relation to the smelter site is an exempt document for the purpose of the Freedom of Information Act 1982.

This section has already been alluded to in some refusals that I received when I sought to get hold of documents ministers might have been considering in the planning, environmental and energy area. That creates an extraordinary difficulty, and I believe as we go through an examination of the bill, as we will for some hours yet, that time and again we will come up against this wall of secrecy.

The royalties are one of the many beneficial terms that Alcoa obtains. In debate a minute ago we heard the words 'competitive neutrality' being thrown around. There was no intention to do that in 1961 when this project came into being, and there is no more commitment to the idea of competitive neutrality 50 years later. Up until now Alcoa has been paying about 2.5 cents a tonne for its coal, which has never been adjusted for inflation. By contrast, Latrobe Valley coal-fired power stations pay around 50 cents a tonne, which is 20 times that amount. There are the energy supplies to the two Alcoa smelters that the Treasurer, Mr Wells, estimated will cost the state of Victoria around $800 million next financial year. We cannot find out the exact details and we do not know the precise figures because of those same freedom of information laws. That is in addition to the electricity provided by the Anglesea power plant.

The annual rent for the land at Anglesea is about $4500 for a 7000 hectare site. My electorate officer points out that is about two months rent on his family home. Alcoa also has the right to dispose of its mining waste into the Anglesea River, and even if future studies show that Alcoa's chemical waste pool is responsible for environmental damage downstream, it will have no liability under the old legislation and none under the new. The conditions placed on its waste disposal licence for the toxic chemical boron, which is in its EPA (Environment Protection Authority) licence, are in fact to be confirmed, and they have been sitting there with no real control over them for many years. Nor does Alcoa pay royalties for the disposal of tailings, unlike all other Victorian mining operations.

Because of this bill Alcoa will avoid any publicly accountable environmental impact assessment under state laws, and it is seemingly doing everything it can to avoid the same thing under federal law. It is exempt from the native vegetation protection and offset rules that apply to every other citizen and developer in the state, and because of the provisions of this bill we believe it will become extraordinarily difficult for the government to raise environmental protections for air emissions in regard to the local area.

There will be no public review right of any government decisions made in relation to the environmental assessment. The existing significant environmental impacts the company is having cannot be assessed. There is the right to sell and even export brown coal at a royalty rate of 38 cents a tonne and contractual restrictions on future governments introducing legislation or taking any executive actions that would be detrimental to the benefits and rights Alcoa enjoys under the agreement. These actions could potentially make the state government liable for damages under the contract.

It goes further, because the state of Victoria turns into a lobbyist for Alcoa whenever there are moves in the federal sphere that might detrimentally affect Alcoa. Those moves could be anything, including matters in relation to the commonwealth Environment Protection and Biodiversity Conservation Act 1999, decisions on carbon prices when they are floated in 2015, import and export duties, air quality health standards, renewable energy targets, the right to continue to graze stock over a nationally listed heathland and so forth. In short, it is the contractual entrenchment of protectionism for the aluminium industry in the state of Victoria. Let me go into some more detail on these matters.

The environmental values of Anglesea Heath as listed on the Register of the National Estate are considerable, so I need to spend some time explaining what they are. According to the listing in the Australian heritage database:

> The area contains a high diversity of vegetation types including riparian forest, damp open forest, heathy open forest, heathy woodland, two distinctive heath communities and closed shrubland. The area has very high plant species richness with approximately 500 species recorded in the area. The heaths contain the richest flora recorded anywhere in Victoria. Small-scale plant diversity is very high with 162 species per hectare recorded. This is a very high diversity

> internationally and is only exceeded outside rainforests by heaths in south-west Western Australia and in the Cape province of South Africa. The area has a very high diversity of orchids with 79 species, including 8 hybrid species being present. The area contains plant communities which are rare or uncommon in Victoria …
>
> The area contains nine plant species considered rare or vulnerable in Victoria including five orchid species. A recently described rare eucalypt species, eucalyptus *alaticaulis* occurs in the area. This species is restricted to this location and isolated populations in the Grampians. A vulnerable endemic species, grevillea *infecunda* … is restricted to the area.

It grows nowhere else on Earth.

**Mr Ramsay** — And your point is?

**Mr BARBER** — Mr Ramsay, who is one of the local members for this area, said, 'And your point is?'. I will go on and read a bit more so he can understand:

> Because of the high diversity and richness of plants in the area, an exceptional wildflower display is produced in spring. The occurrence of low, treeless heathland on the steep rolling topography of Bald Hills is a spectacular landscape found nowhere else in Victoria.

Yes, there are jobs involved. Yes, there is economic value to be created, but on the other side of the scale, there are important bits of biodiversity and other values, even if they are simply values of beauty, that allow me to get up here and make an argument as to why coalmining and coal burning should not be continuing indefinitely on this site.

**Mr Ramsay** interjected.

**Mr BARBER** — The listing continues:

> The Anglesea River is the habitat of the rare spotted galaxias. A relictual population of the mountain dragon … is found in the area. This is the only lowland occurrence of the species which is now restricted to the highland region.
>
> The area is used extensively for botanical research and teaching, particularly in the fields of plant taxonomy and ecology. It has also been used by researchers studying the regeneration of plant species and the changes in animal populations after fire events.

The citation goes for many more pages which I am not able to read onto the record. Mr Ramsay interjected and said it is only 6 per cent of the area. I say, and according to my personal statement of values — and members can think about only 6 per cent of the *Mona Lisa* — it is something that we here in Australia have a responsibility to protect. That is why the Victorian National Parks Association is calling for Alcoa to utilise the existing coalmine site and dig deeper for the coal rather than destroy heathland to expand the current site. The association says this should run for no more than 10 years — which the Greens believe is a time frame for alternative energy sources to be brought in — and that the rest of the current lease site, which Mr Ramsay says will be protected anyway, should be immediately added to the Great Otway National Park and managed by Parks Victoria.

You have to wonder why, if the remaining area of some thousands of hectares is not going to be mined, it is not being put into the national park. The Victorian National Parks Association is calling for no further heathland to be destroyed, for no sale or sublease of the coalmine area, which is permitted under the act, and for Alcoa to investigate renewable energy sources — alternative, less-polluting sources — on the way to phasing out coalmining in this area.

Make no mistake, this is an extraordinarily polluting coal-fired power plant. It is around one-tenth of the size of Hazelwood in megawatt terms, but in terms of certain key pollutants, those most injurious to human health, it dwarfs Hazelwood. We only need to look up the federal government's National Pollutant Inventory website to make this comparison. Alcoa, rated for about 160 megawatts, in practice generating about 140 megawatts, is one-tenth of the size of Hazelwood, but it produces 300 times as much sulfur dioxide ($SO_2$) and 1100 times as much fine particulate matter. These are two pollutants that have a direct, immediate and extremely well-understood impact on human health. That is why the World Health Organisation (WHO) is rapidly revising its standards in these areas and recommending much better standards than those Australia currently employs.

Australia currently, and this is reflected in the licence for Alcoa, requires that there be no more than 200 parts per billion of sulfur dioxide in the air, averaged over an hour. That is a maximum level which should not be exceeded at any stage. Under the World Health Organisation standard that level has now been brought down to 175, and that is 175 averaged over 10 minutes. That is because when people in vulnerable groups, particularly asthmatics, young kids or anybody who is exercising strenuously, get one of these pulses of sulfur dioxide they are likely to experience immediate effects. The effects will be felt immediately those concentrations are reached, and they include a whole range of problems with wheezing and irritation in the lungs.

When it comes to particulate matter, particularly the so-called $PM_{2.5}$ — particles below 2.5 microns — there are immediate as well as chronic effects. Australia currently has no enforceable standard for air quality in this area. It does have a monitoring standard, and I will

spend some time going into these impacts. I base my information on the WHO's *Air Quality Guidelines — Global Update 2005 — Particulate Matter, Ozone, Nitrogen Dioxide and Sulfur Dioxide*. In relation to particulate matter it says:

> The risk for various outcomes has been shown to increase with exposure, and there is little evidence to suggest a threshold below which no adverse health effects would be anticipated.

To put it very simply: no safe dose. Its objective is to minimise concentrations of particulate matter in the air. The WHO goes on to say:

> It is unlikely that any standard or guideline value will lead to complete protection for every individual against all possible adverse health effects of particulate matter.
>
> Rather, the standard-setting process needs to achieve the lowest concentrations possible in the context of local constraints, capabilities and public health priorities.

Alcoa and the government may argue that the current standards are pretty good, and the current standards may be okay for the average person, but they totally fail vulnerable people. We have a standard in relation to sulfur dioxide, which I will turn to next, that says 'tough luck for asthmatics'. It is as simple as that.

On sulfur dioxide the WHO says that controlled studies involving exercising asthmatics indicate that a proportion experience changes in pulmonary function and respiratory symptoms after periods of exposure to sulfur dioxide as short as 10 minutes. Based on this evidence it is recommended that an $SO_2$ concentration of 5 micrograms per metre cubed should not be exceeded over averaging periods of 10 minutes duration. That equates to about 175 parts per billion.

This is an important figure because Alcoa is required to monitor air quality at six different stations in Anglesea. It publishes the data monthly, but it publishes it in a particular format. It publishes it according to what the current standards require, and that is over an hourly average. The information I have been able to obtain, using data from the national electricity grid, is that more than 20 per cent of the time Alcoa has to turn down the production of its power station in order to avoid exceeding the 200 parts per million current Australian standard.

Month by month you can see many days when the power plant operates at 60, 90 or even 120 megawatts as the operator rapidly powers it down to avoid breaching the guidelines at those six monitoring stations across the Anglesea area. We do not have data based on a 10-minute period, but we see, using Alcoa's data, that it frequently comes close to exceeding 175 parts per billion on an hourly basis. It seems very likely, given the bursting nature of these pulses of sulfur dioxide, which appear very quickly in the operation of the power plant during certain types of weather conditions, that the plant could be exceeding what are currently the World Health Organisation standards.

When you read Alcoa's published materials, the environmental objectives it sets for itself and the environment improvement plan, what you find time and again is that Alcoa is doing exactly what it has to do and nothing more. Alcoa meets the requirements the EPA sets for it and meets the requirements the government sets for it and does not even disclose a lot of useful information about anything else, because all Alcoa is trying to prove to the world is that it is complying, and that is why we have this great responsibility as we scrutinise and deal with this legislation to ensure that the standards being set in this bill are the correct ones.

Interestingly, my analysis of that data shows that the air quality generated in the Anglesea area during these periods is not as adverse as air quality in the Latrobe Valley. However, there are multiple sources of pollution in the Latrobe Valley, whereas in Anglesea there is only one, so it is entirely possible to hold that one source of pollution responsible and to regulate it in such a way as to ensure air quality for the region.

The EPA licence, which I was able to obtain from the EPA and is not on its website — unlike many other EPA licences — states:

> By 25 May 2007 the licence-holder must submit to EPA for approval a sulfur dioxide management plan to ensure that sulfur dioxide emissions are managed in accordance with the requirements of the state environment protection policy (air quality management).

That is why I was so interested to ask the Minister for Health today in question time about his department's recommendation to the federal review of air quality standards — that is, that those standards needed to be improved because Victoria's standards would need to be brought in line. Through that federal process we can see that both Alcoa and the aluminium industry more generally are opposing improvements to those standards because they know — even better than I know, and possibly even better than the government knows, but certainly better than the citizens of Anglesea have been told — that they would immediately be in breach of tougher air pollution standards. That is why both aluminium producers and coal-fired power plants around Australia are going in pretty hard at the federal

level to oppose tougher air pollution standards that would feed into Victoria.

However, Alcoa did implement a sulfur dioxide reduction plan. It told us it looked at a large number of options for it and at the end of the day came up with a model to predict weather conditions and turn off or down the power plant — as simple as that. The company either did not find it profitable or was not willing to invest in other sorts of measures that might have improved it. Alcoa simply turns the power plant down — pretty rapidly actually — when the plant's warning system indicates the standard is about to be exceeded.

Those requirements were to be put in a plan to the EPA in 2007 but went further. By the same time Alcoa was also to produce an air emission management plan further detailing the nature of air emissions from the power plant. Condition 2.14 of the EPA licence states, 'The report referred to … must include an assessment of the emission(s)' of a number of different chemicals including, notably, $PM_{10}$ and $PM_{2.5}$ — the particulate matter. I have not seen that report. I hope it is available, because it contains the only publicly available information we would have about the impact of particulates on the local area. The licence states:

> The report referred to in condition 2.13 must include an EPA-approved monitoring program that will allow for the establishment of EPA licence limits for the compounds.

There are no EPA licence limits for those other compounds as we stand here, so someone has not done their job. The licence goes on:

> The report referred to … must demonstrate that the licence-holder is minimising any adverse environmental impact caused by air emissions from the power plant by the application of:
>
> (a) industry best practice for class 2 indicators and reduced to the maximum extent achievable for any class 3 indicators.

Class 2 and 3 indicators are those nasties that are in the air that are having the biggest impact on human beings. They are detailed in the schedule to the state environment protection policy, a document arising from the EPA act. There is no doubt that, as a condition of its licence, Alcoa was required to do these further studies and that the EPA at that point — when this licence was last amended in 2007, having first been signed off in 1997 — was going to legislate tough standards, but we have heard nothing. It is quite clear that Alcoa has strong influence.

The local community has written previously to the Minister for Health requesting that a health impact assessment be conducted. As far as the research connecting these levels of pollutants to human health goes, there is absolutely no doubt — you can get it from the World Health Organisation and a range of bodies around Australia and the world — but we do not know the level of some of these pollutants currently occurring, because if they are being monitored, they are being monitored by Alcoa, and since 2007 that information has been required but has not been forthcoming.

The local community has also raised the issue of the new Anglesea Primary School. Children have been attending the school since May. It is 1.3 kilometres from the Alcoa power station stack and 1 kilometre from the Alcoa open-cut coalmine. Both the mine, through its dust, and the power plant, through its stack, are sources of emission of these fine particulates — $PM_{2.5}$ — for which WHO says there is no safe level; you just have to reduce them as much as you possibly can back to background levels. The letter to the Minister for Health notes:

> Prior to building the school … and in the months prior to completion … the Department of Education and Early Childhood Development … requested air quality and noise assessments —

of the new school site. It continues:

> These assessments were completed by Synergetics …
>
> These assessments relied upon data supplied by Alcoa only.

They say there has been no independent monitoring. The only pollutant for which ground level concentrations have been supplied is $SO_2$. All other figures and estimates rely upon modelled data — modelling conducted by Synergetics — using Alcoa's estimates of emissions. Naturally they believed that was inadequate. The Synergetics report itself acknowledges:

> The literature consistently demonstrates that $PM_{10}$ and $PM_{2.5}$ in particular … exert consistent measurable adverse health effects on humans even below the current limits.

However, that report went on to say that Alcoa is complying with the limits — the inadequate sulfur dioxide limits and the unenforceable particulate matter limit. I requested some weeks ago that the Minister for Health respond to the community in relation to its request for a health risk assessment; the community still has not received it.

We are going to have to spend a considerable amount of time reviewing these matters during the committee stage of the bill. This is a bill with wide-ranging and significant environmental, social and financial impacts, and the government has avoided scrutiny in the area all

year long. I did consider moving a motion to refer this to a parliamentary committee — one of those upper house committees that in the Australian Senate routinely scrutinise legislation, and certainly would a bill like this — but it is clear from statements that are being made that that would not be supported. Neither Labor nor Liberal is willing to countenance any kind of delay here. The Minister for Energy and Resources says that for us to change the rules on Alcoa beyond these minuscule changes that he has managed to negotiate would be a form of sovereign risk.

In reality we can see when we look at the legislation that Alcoa has operated for 50 years under these conditions. It is now seeking to exercise another 50-year option and, by my reading of the bill, get another 50 years at the end of that. The government, with the Labor Party meekly coming along, is saying that the Parliament gets one look at this every 150 years, and all we can do is sign off on what the government of the day says. I do not believe we will be mining coal here in 150 years or even 50 years. I think the approach the government should have taken was to sit down with Alcoa and come up with a plan to phase out this coalmining operation over a period of years.

Alcoa produces something like 25 per cent of the world's aluminium. It is doing it with hydropower in Canada and geothermal and hydropower in Iceland. I have been there and seen it. This is a company so large that it is globally hedged against a whole range of political developments. It probably has more awareness of and has been on the radar of the climate change issue longer than many of us — decades in fact. It takes a long-term and global view, but this government does not do the same.

This government has not really sharpened up its pencil and tried to come up with a solution that protects the jobs in Geelong while minimising local impacts at the site of the mine. The Greens were certainly cognisant of Alcoa's Geelong operations when we negotiated the federal Clean Energy Future package. That is why emissions-intensive, trade-exposed industries such as Alcoa in Geelong are going to receive about 95 per cent of their carbon permits for free for a number of years. It is also so that we do not get what some have referred to as carbon leakage. However, when you are talking about Alcoa, the fact is it is in many countries around the world, so in some ways it is Alcoa competing with Alcoa.

The incentive we built into the federal carbon package gives Alcoa plenty of incentive to improve its emissions intensity while protecting the jobs in a smelter, and we are clear on that. But for the Victorian government to simply sign away our rights for another 50 or 100 years when the impacts of coalmining and coal burning are so well understood and so clear is a major betrayal of the thousands of residents in Anglesea, a good proportion of whom have actually signed a petition tabled in the house today.

It is extraordinarily unsatisfactory for the government to present this as a fait accompli. The government had many other options, and it still has many other options. There are many other ways for legislation to be constructed so that it could provide short-term relief to the Alcoa coalmining and coal-burning operation or be restructured in a form that would be more favourable to the broad interests of Victoria. At the very least the government could knock off a number of the most egregious examples in its own legislation of secrecy, locking out the community and constraining proper assessment of the environmental impacts. That assessment will still have to occur even after this legislation has passed, and we know it will pass because both the Labor and Liberal parties will vote for it.

This is far from the end of the matter. I am very well aware that Alcoa constantly monitors its strategies on a global level. I am very well aware that there will be future developments in the areas of health and environmental protection in relation to carbon emissions and emissions intensity that are going to be brought to bear on this particular project. Alcoa would not be under any illusions that its time spent coalmining in Anglesea is limited, but the government asks us to vote for a piece of legislation that maintains the illusion that there are no significant environmental impacts that anybody should worry about outside a limited footprint and that this operation will simply go on forever. Everything that is built into the legislation is there because it maintains the illusion that that is going to happen, even though in reality we know there is a limited time.

I have also got a limited time here, so I am going to have to stop there in my second-reading contribution and prepare to ask a series of detailed questions of the minister at the table in relation to these matters. I should say — and this is no reflection on Mr Hall, who is a very good minister — that I earlier tried to move a motion, but was denied leave to do so, that the Minister for Energy and Resources, Mr O'Brien, himself come up here from the other place to answer these questions. There is a provision for that in the constitution.

I have not been getting good answers from Mr O'Brien's department on a range of issues; questions on notice, as we know, are extraordinarily

delayed. Some of the mechanics of this bill cannot be fully explained. Answers were given in last week's debate on the feed-in tariff that I believe were demonstrably false, and this will be our one chance to debate the issue, due to the absolutely restrictive blanket of secrecy that comes down again after today under the Freedom of Information Act 1982 special exemption for Alcoa and its operations. If nothing else, that exemption should be removed so that Alcoa in its deep relationship with the state government has to explain itself in the same way that any other company doing business with the government would be expected to do.

Some of the provisions of this bill almost seem as if the government is trying to contract its way out of the Victorian constitution; they read as if that were a possibility. I certainly argue it is not, but the agreement stapled to the back of this bill that we are now expected to endorse really makes it look like Alcoa is the government and the Baillieu government is simply a client-cum-lobbyist, with all the obligations running one way — ultimately to the detriment of Victorians.

**Mr RAMSAY** (Western Victoria) — It gives me great pleasure to rise to speak to the Mines (Aluminium Agreement) Amendment Bill 2011. In doing so I would like to acknowledge that Labor is not opposed to this bill. However, as we have just heard, the Greens are — which is not unexpected, I might say. Of course the Greens will never be in a position to either govern or be financially accountable for their policies. That is why, I find, they continually fail to support anything that generates wealth, only putting forward socialistic policy across communities that is not supported by financial, governance or accountability measures. That is the way it is.

In response to Mr Lenders's comments in his contribution that this legislation is rushed, my understanding is that this was flagged to the Labor Party in 2008. I cannot see how Mr Lenders could be so rushed in a three-year time frame, but if that is so, perhaps there is a need for more time management for Mr Lenders.

This bill is not only good news for Alcoa, it is good news for the Geelong region, which I represent. It provides job opportunities from greater Geelong to the coast and along to the region of Colac, where I live. The bill amends the Mines (Aluminium Agreement) Act 1961 to provide amendments to the agreement in the schedule to the act to repeal the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005 and for other purposes.

In layman's terms it is the renewal of an agreement between the state and Alcoa which was entered into on 22 November 1961, and was ratified, validated and approved and given effect by the Mines (Aluminium Agreement) Act of 1961. Under that agreement Alcoa has an exclusive right to mine coal on the leased area identified in the agreement in the terms set out. The initial term of that 50-year lease agreement is due to expire on 1 February 2012, and the parties wish to extend the term and amend the agreement for a further 50 years.

The agreement protects 90 per cent of the leased land in its natural state, and the mining operation has a footprint of only 6 per cent of that said leased land. Alcoa was under no legal obligation to modernise the agreement but acted in good faith to negotiate good outcomes for the state, the environment and the Victorian community. The Anglesea coalmine and power station provide 40 per cent of the electricity used by the company's Point Henry operations, which employ over 1100 people.

Under the new negotiated arrangements any planned expansion by Alcoa will be subject to a very strict environmental review process. Alcoa also has to develop a mine plan which maps out future mining activities. As I said, under the agreement the mining operations, including the existing mine, are restricted to less than 6 per cent of the leased area — 665 hectares of the 7145 hectare site — which is a very small footprint of the total area. Alcoa has also agreed to prepare a cultural heritage management plan to manage any Aboriginal cultural heritage issues arising from its mining activities.

The renewal of this lease provides long-term security of energy supply for Alcoa's aluminium business in Victoria, particularly for Point Henry, and allows the Anglesea mine and power station to provide, as I said, 40 per cent of the electricity used by the Point Henry operations. Most importantly, this agreement secures the employment of over 1100 employees, despite the federal government and its representative, the member for Corangamite, Darren Cheeseman, imposing a new tax on Alcoa which could threaten those jobs — —

**Mr Barber** — What's the new tax?

**Mr RAMSAY** — The carbon tax.

**Mr Barber** — They're exempt from it.

**Mr RAMSAY** — Not direct tax, indirect tax.

It secures $154 million worth of wages and $45 million worth of service contracts and philanthropic support as

well as sponsorship support valued at over $1 million per year to over 100 likely organisations. Environmentally Alcoa is adhering to best practice. I would like to quote from the conclusions of an independent review into water quality issues in the Anglesea River. It states:

> Low pH waters result from natural processes in the catchment in which sulphides in coal and other pyritic materials are oxidised. There is no evidence of any significant input of acid from oxidation of sulfur dioxide emitted from Alcoa's coal-fired power plant.

Alcoa is seen as a good corporate citizen, a generous philanthropic provider, a supporter of community groups, a large and important employer in the region, a wealth creator and as adhering to good environmental practices and values. The company provides important value to the state economy.

I want to respond to a couple of comments that Mr Barber made. He mentioned the health of some constituents he talked to in relation to the coalmine. I make the point that many of my constituents are claiming that wind farms are not only imposing a significant impost on the livability of their areas but seriously affecting their health and causing a noise and social contamination not seen in regional areas since Federation. Mr Barber also talked about royalties, but when the agreement was first made there was a requirement to provide a reflective stimulant for the development of Point Henry or it would not have happened. With over $719 million of smelter and rolling mill annual sales out of Point Henry, obviously the government of the day thought it necessary to provide a stimulus for the development of Point Henry, which is a particularly important asset in my electorate of Western Victoria Region, and I strongly support this measure.

Mr Barber also talked about the Anglesea Heath plains and the importance of that vegetation to the environment. Alcoa has provided a $14 million bond for rehabilitation works on that leased land and has been a strong partner with the Department of Sustainability and Environment in making sure that the land is being managed appropriately under very strict environmental guidelines. Mr Barber then went on to talk about pollution from the air which is affecting neighbouring community assets, and he identified Anglesea Primary School as one such asset. The Environment Protection Authority has very strict guidelines in relation to the release of air pollution and contaminants, and Alcoa, like every other industry, is required to meet those guidelines.

In summary, I emphasise the point that this should not be unexpected legislation. In 2008 it was flagged to the previous government that Alcoa would exercise its right. Alcoa has negotiated with government in good faith for better environmental outcomes as part of the renewal of the lease for a further 50 years, which was under the original agreement. It has very strict guidelines in relation to the environmental, mining plans and water plans and has a very small footprint in relation to its mining activities. It is an extremely important employer in the region. It is a good corporate citizen; it provides significant support, sponsorships and philanthropic grants to communities and projects right around Australia. The Point Henry operations are also a very important industry in Western Victoria Region. They employ over 1100 people and produce nearly $800 million worth of sales. Point Henry is a very important asset for Victoria, and on that basis I strongly commend the bill to the house.

**Mr KOCH** (Western Victoria) — I look forward to making a contribution to the debate on the Mines (Aluminium Agreement) Amendment Bill 2011. I have known Alcoa since the company came to Australia. I was at school in Geelong in 1961 when Alcoa first came to Point Henry and offered great hope of employment and export opportunities for the region. That was followed up with the work undertaken by the then Honourable Digby Crozier in establishing the plant at Portland.

I was somewhat disturbed to hear the Leader of the Opposition indicate that the Minister for Energy and Resources, Michael O'Brien, was recently in Geelong ranting to the Geelong community. I can assure members that that is a fabrication of the Leader of the Opposition. Not one person raised that situation with me, and not one letter was printed in regional newspapers along those lines. It is a shame that we have to stoop to that level in a debate such as this, which is very important for Western Victoria Region, particularly Geelong.

We are very aware that the current lease taken up in 1961 had a life of 50 years with an option of a further 50 years. It is the right of Alcoa, as a large industry in Victoria, to have the opportunity to take up that option without further negotiation. I note that a media release dated Tuesday, 25 October, says:

> Alcoa was under no legal obligation to modernise the agreement, however additional important benefits have been secured through good faith negotiations.

It goes on to quote Minister O'Brien as saying:

> This revised agreement is a win-win which supports the local economy, strengthens environmental processes and conserves more of the Anglesea Heath …
>
> Through good-faith negotiations between Alcoa and the state, this new agreement delivers a great result for the people of Anglesea, Geelong and the whole state.

My colleague Mr Ramsay backgrounded the situation of the particular parcel of land that this lease pertains to and gave members a good indication of the undertakings that Alcoa has given to the government, which will be carefully watched by the Environment Protection Authority during this ongoing lease period.

In support of Minister O'Brien's comments, the Victorian Secretary of the Australian Workers Union, Mr Cesar Melhem, said that:

> The Greens need to get back in their box and allow the perfectly legal and properly arrived at agreement between Alcoa and the state government to go ahead …
>
> There are probably 1000 jobs and about $120 million for the local economy at stake here. Alcoa is running a best practice coal station and is seeking only to extend existing operations as planned for when the original licence was issued.
>
> …
>
> It is possible to balance environmental concerns and job security.

That is in direct opposition to the argument Mr Barber pushes on behalf of the Greens, but he also goes on to say that we should not have any commercial-in-confidence agreements between governments and industry and that they should be more along the lines of commercial neutrality. That would obviously undermine many opportunities given to industry in the state of Victoria in the roles they undertake employing many people, as we know Alcoa does, and also from the point of view of exports for Victoria.

I very much appreciated the briefing that took place not only for government members in western Victoria but also for opposition members, who were extensively briefed. I assume that the Greens had the opportunity to be briefed; whether or not they took it up is another thing. Not one phone call, not one letter and not one person representing the concerns raised by Mr Barber were received at my office during this whole process that Alcoa has been undertaking for the last 18 months in renewing this lease.

I congratulate Alcoa on the way it went about these briefings and the way it has consulted its own community not only in Geelong but also in Anglesea. I have to say that much of the unrest from the so-called Anglesea community came from non-resident parties. Mr Barber saying the unrest came from the thousands of people who reside permanently in Anglesea is another acknowledgement of the ignorance that is being shown in here by Mr Barber. That is not the case, and it was never the case. In fact Alcoa has much greater respect in the Geelong area than Mr Barber is prepared to give it here today.

I reside at a place called Mount Duneed, and I share the powerline running through my property. From my point of view Alcoa has been very generous in the management of that line and with anything that pertains to that line and the easement. That is generally the way Alcoa goes about handling its business on behalf of the parent company, the Portland smelter and itself.

With those few words, I concur with my colleague Mr Ramsay and totally support this bill. I know Alcoa will carry out all the undertakings that have been put forward and negotiated, not only to the best of its ability but also to meet the requirements that have been imposed on that lease agreement by the current Baillieu coalition government. I wish the bill a speedy passage through the house so that Alcoa can get on with its business and at the same time look after this precious piece of land.

**Mr O'BRIEN** (Western Victoria) — I rise to lend my voice and the voice of my party to supporting the Mines (Aluminium Agreement) Amendment Bill 2011. I will keep my comments brief given the large body of material already put forward by my very active colleagues in Western Victoria Region, Simon Ramsay and David Koch, the steady work that has been done by the Minister for Energy and Resources, Michael O'Brien, and his department, and the work done earlier by the Honourable Digby Crozier. The bill is important, and the Alcoa facility is an important provider of jobs all over the western region, in Portland, Anglesea and all through Geelong. The bill will strengthen environmental outcomes, as has been outlined in detail by Mr Koch. It is supported by the vast majority of our constituents in western Victoria; therefore it will also be good for the state. I commend the bill to the house.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I thank members for their constructive comments during the course of the debate, and I give a commitment to Mr Barber, who has indicated that he wishes to explore matters in committee, that I will respond to questions to the best of my ability.

**House divided on motion:**

*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 (*Teller*) | Ondarchie, Mr |
| Davis, Mr D. | Pakula, Mr |
| Davis, Mr P. | Petrovich, Mrs |
| Drum, Mr (*Teller*) | 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 | Tarlamis, Mr |
| Jennings, Mr | Tee, Mr |
| Koch, Mr | Tierney, Ms |
| Kronberg, Mrs | Viney, Mr |
| Leane, Mr | |

*Noes, 3*

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

**Motion agreed to.**

**Read second time.**

**Committed.**

*Committee*

**Clause 1**

**Mr BARBER** (Northern Metropolitan) — Both the government and Alcoa have said that Alcoa does not need more than 90 per cent of the 7145-hectare lease area for mining, and therefore there does not seem to be any legitimate rationale for the continuation of the lease over 6480 hectares of high conservation value heathland. Therefore I ask: why was the lease renegotiated to include that entire area when it could easily have been returned to or included in a national park as per the areas surrounding it?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I thank Mr Barber for his question. My understanding is that Alcoa has the right to roll over the current lease that has applied since 1961 under the same terms and conditions. What the government did was — and this process started under the previous government — attempt to renegotiate aspects of that lease agreement and seek variations to the lease that were seen to be of environmental benefit to the people of Victoria.

As explained in the briefings, the minister's second-reading speech and some of the comments by government members, the current government believes substantial gains have been made in respect of the environmental benefits of the new terms of the agreement and, as I understand it, specifically in respect of the reduction in the size of the area to which the agreement applies. There was no agreement from Alcoa to reduce that area, but it has agreed to significant matters regarding the better environmental management of the area.

**Mr BARBER** (Northern Metropolitan) — Alcoa had the right to do a lot of things under the existing agreement and legislation, but here we are changing that legislation. If the government is simply going to say, 'The answer to your question, Mr Barber, is that that was the outcome of the negotiation', we will be here for a long and boring time. The government is amending the legislation and claiming environmental benefits. I am querying the government as to those environmental benefits.

Given that Alcoa actually pays rent on the whole 7000 hectares but we are being told it will only use 600 hectares or so, what I want to know — and it is not an unreasonable question — is why is the remainder of that area, which is of international significance for its biodiversity, not being made into a national park? What possible reason can there be for Alcoa to maintain its access to the remaining 6000 hectares unless it intends to mine coal there?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am advised that in respect of this issue the government was able to amend the agreement only in areas where Alcoa would agree to do so. As I said, under the existing legislation it had every right to roll over this agreement under the same terms and conditions. In regard to the parts of the land area covered by the agreement and why it was not turned into national park, Alcoa did not agree to do that, and the variations to this agreement could be achieved only with the agreement of both parties.

**Mr BARBER** (Northern Metropolitan) — My response to the minister is that that is simply not true. The agreement forms an appendix to the 1961 act of Parliament. We are now amending an act of Parliament. That answer is tantamount to saying that this Parliament is subservient to a company. Clearly the Parliament, if it chooses, could amend legislation and make the other 6500 hectares part of the national park. With or without the support of Alcoa, the government could have determined that that was to be the outcome and this could have been a bill that not only amends the 1961 Alcoa act but also the National Parks Act 1975 to expand the Great Otway National Park. It is simply

false to say that the government had no choice. The government can bring whatever legislation it wants to the Parliament.

What I want to know is: what is the value to Alcoa of retaining the 6500 hectares? It is paying rent on land that the government's press release says it will not need to mine. All government speakers and the second-reading speech say that only an extra couple of hundred hectares will be mined on top of the 400 being mined now and that it is only going to be 6 per cent of the heath. I simply want to know what benefit to Alcoa there could be in retaining the ability to mine further and further into the Anglesea Heath. Alcoa is paying rent on the land.

The minister has said, 'Well, it was in the negotiation'. We cannot scrutinise this legislation if the minister simply answers everything by saying it was in the negotiation. This bill is the outcome of the negotiation. I have no way of knowing what happened in the negotiation, except by asking. The negotiation cannot simply be a black box where things come out but we get no reason why. The minister is asking us to endorse this piece of legislation, and I am entitled to scrutinise every aspect of it, including this particular aspect, which is mentioned in the government's press release.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — It is my understanding that Mr Barber is right to the extent that the government can bring in legislation on any matter at any time. I understand it might be theoretically possible for legislation to be brought into this Parliament to completely terminate this agreement. The impact of that would involve an issue of sovereign risk. It would place future investment in the state of Victoria in serious jeopardy and foster a reputation of this government completely disregarding matters that have been previously agreed to and provided for in legislation.

I would have thought that would be a terrible signal to be sending to anybody who wishes to invest in this state, whether it be a personal investment or a company investment. This is an issue in terms of sovereign risk, and the legal implications of bringing in legislation that terminates any such agreement would be horrific. This government was not prepared to subject the people of Victoria to some potentially extremely crippling liability if that course of action were chosen.

I say in response to further comments Mr Barber made that if there is a further expansion of operations within the prescribed areas of this particular agreement, there are processes that the company will need to follow to win the approval for works outside of the current works areas. In terms of the agreement and what has been negotiated, in all honesty I believe this is an outcome which balances the needs of the people of Victoria, from both an economic and social point of view, with the need to abide by agreements and not expose this state of Victoria to issues of legal liability relating to sovereign risk.

**Mr BARBER** (Northern Metropolitan) — First of all, nobody suggested that we should simply abolish Alcoa by legislation, but we are amending legislation with this bill, and it is absolutely clear that the Parliament has the right to pass whatever legislation it wants. You cannot contract out of the constitution; nor can you put forward the proposition that because the Parliament of 1961 decided something, the Parliament of 2011 has no choice. Here the government is putting in place another 50-year option at the end of the next 50 years, suggesting that a Parliament 150 years after the 1961 Parliament still has no choice in the matter. I simply do not accept that as a basic matter of constitutional law.

I certainly agree that governments should be aware of sovereign risk. Two weeks ago the government passed legislation that cut the subsidies offered on solar electricity in this state and in the process put at risk the business of hundreds of small solar energy businesses. The government, when it suits it, can change the rules on people but cannot do so, it would seem, in this case. I would like to know whether in this process the government has valued the total effective subsidies granted to Alcoa over the life of this 50-year or 100-year agreement? If so, what are the values of forgone mining royalties, tailings royalty revenue and any rental price versus market rental value?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Mr Barber asked whether the government has evaluated the effective subsidies granted to Alcoa over the life of this 50-year agreement to date and, if this legislation is successfully passed by the Parliament, the 100-year term of the agreement. The answer to that question is no, that analysis has not been undertaken. My advice is that it would involve a significant amount of time and resources to search for information going back 50 years to 1961.

**Mr BARBER** (Northern Metropolitan) — I was actually looking for a forward-looking estimate of the subsidies in relation to the favourable terms that are in the legislation the government is asking us to vote for today.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am advised that an analysis for the next 50 years has not been undertaken.

**Mr BARBER** (Northern Metropolitan) — The media release mentions the $13.94 million revegetation bond, but that is not in the bill, as far as I can tell. Can the minister tell me where it is referred to in the bill?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am informed that the process for determining the bond is undertaken through the Mineral Resources (Sustainable Development) Act 1990. As such, the quantum of the bond is not part of this legislation but part of the Mineral Resources (Sustainable Development) Act 1990.

**Mr BARBER** (Northern Metropolitan) — Which aspect of Alcoa's operation is subject to that other legislation, which the minister said has been used to derive this figure?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I have that information; it is just being got for me at this point of time. Can I hold that question? I will provide the member with an answer as soon as I get the appropriate advice to answer it.

**Mr BARBER** (Northern Metropolitan) — In the same vein I would also like to know how $13.94 million was arrived at as the correct figure for the rehabilitation of 200 or 600 hectares of internationally significant biodiverse heathland back to something resembling its original state.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Again, I will answer that question before the conclusion of this committee stage. If I am able to, I will also incorporate in my answer the way in which that bond amount was determined.

**Mr BARBER** (Northern Metropolitan) — It was in the minister's press release, which was issued some weeks ago. I would have thought the information would have been forthcoming. We are still on clause 1 of the bill. Perhaps I will move onto another topic under clause 1, and then we can come back to the issue of restoring the heathland.

Alcoa Anglesea also has a licence under the Environment Protection Act 1970. That licence put new requirements on Alcoa when it was signed off in 1997 and amended back in 2007. Despite what the government has been putting forward about it having limited options to negotiate with Alcoa, someone down at the EPA (Environment Protection Authority) was able to negotiate a licence over a power station that originally got its life back in 1961, before the Environment Protection Act 1970 actually existed. That act puts a number of requirements onto Alcoa.

As I said earlier, air pollution is monitored at six monitoring stations in and around the township of Anglesea. There is a requirement for Alcoa to have a community engagement plan. Certain amounts of that data are released to the public, mainly in relation to threshold levels of sulfur dioxide.

In short, I have been able to get hold of all Alcoa's monthly reports and look at, as far as it has disclosed them, what levels of sulfur dioxide are being experienced at Anglesea. The standard under its licence, which arises out of the state environment protection policy, is 200 parts per billion of sulfur dioxide in the atmosphere. Although a number of years ago Alcoa was on occasion breaching that limit, in the last year or so it does not seem to have breached the limit. Alcoa did a number of pieces of work around the issue of sulfur dioxide, and it implemented a number of protocols. The monitoring stations, I gather, are directly wired back to the power plant control room. A kind of predictive weather model has been developed that works out when particular weather conditions are likely to lead to its operations breaching the agreement.

I have also examined the actual output of the power station into the grid. It is quite clear, as we look at the levels of sulfur dioxide — even just looking at the first part of this year — that Alcoa often has to rapidly downshift its power plant in order to avoid exceeding 200 parts per billion. That standard is no more than 200 parts per billion averaged over an hour, and it is those levels as well as overall averages that Alcoa releases to the public. However, it has happened many times this year that Alcoa's sulfur dioxide pollution has reached 150 parts per billion averaged over an hour. We do not know whether that would have risen higher over a 10-minute period. The important point is that the World Health Organisation now wants to set a standard of 175 parts per billion.

I believe, looking at this information, that it is quite likely the Alcoa Anglesea coal-fired power station is frequently brushing up against that limit, if not exceeding it. If the government were to adopt that limit — and it is currently involved in a federal process around setting these limits, which I questioned the Minister for Health on before — then it may be that Alcoa's main alternative is actually to switch off the power station even more often than it does now. It is quite regular for it to operate at 60 or 90 or even well under 130 megawatts more than 20 per cent of the time.

Its main response to achieving compliance is to turn down the rate of output of the power station.

I am therefore particularly keen to find out more information about Alcoa's general performance with respect to sulfur dioxide and any other pollutants. That information is not available to me via Alcoa's published reports. I am hoping that the government had a look at that information before it signed off on this agreement. It is clear from the EPA licence that Alcoa is required to collect this information. For the minister's benefit, condition 2.15 says the report that is required:

> … must include an EPA-approved monitoring program that will allow for the establishment of EPA licence limits for the compounds.

Those compounds are $PM_{10}$ (particulate matter) and $PM_{2.5}$ — the small particulates — and a whole series of other compounds Alcoa currently does not report on. Can the minister tell me whether that information is being collected in accordance with the EPA licence of 2007 and whether the government has looked at that information and considered it?

**The DEPUTY PRESIDENT** — Order! I will call the minister, but in doing so, not having listened in detail to Mr Barber's second-reading debate contribution, I remind members that it is important that debate on clause 1, whilst wide ranging, not be a re-prosecution of the second-reading debate. I take it that this issue relates to some quite specific matters that arose in that debate.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I thank Mr Barber for his question, and I also thank him for the courtesy of bringing to my attention and giving to me prior to the committee debate a copy of the EPA licence and the amendment to the licence he referred to in his question.

In terms of a response to the question, yes, it is true that emissions from all coal-fired power plants in Victoria are covered by the Environment Protection Act 1970 and associated regulations to those acts administered by the Environment Protection Authority. He is absolutely correct when he says the policy sets standards for air quality across the state and may lay out protocols for generators to manage their emissions. The EPA licence to which the member referred contains air emission limits and air emission management requirements. More specifically, the licence requires Alcoa to monitor air emissions and manage emissions to ensure that standards are being met, and Mr Barber indicated the number of areas in which monitoring of air quality is done in the Anglesea area.

I am informed that the results are regularly reported to the EPA and to the community through Alcoa's community consultation network. I am further advised that the EPA is satisfied that Alcoa's air quality control systems are working well to achieve compliance with state air quality standards.

**Mr BARBER** (Northern Metropolitan) — That is a nice general statement in response to what was a very specific question. The minister is not going to lull me off to sleep over here. The fact is that data on the specific pollutants referred to in condition 2.14 of the EPA licence are not, as far as I am aware, available to the public. My question is a very specific one: has Alcoa complied with condition 2.13 of its licence, which refers to setting up an air emissions management plan, with the next condition, under which the plan must include an assessment of the emissions, and with the next condition, under which the plan must include an EPA-approved monitoring program that will allow for the establishment of EPA licence limits for those compounds? They do not currently exist in the licence; there are currently no standards for those compounds.

It is very important that we establish this in clause 1, Deputy President, because in the debate on later clauses we will hear that no government agency is allowed to do anything that could be to the detriment of Alcoa. We have already established that the current licence limit is causing Alcoa to switch off or decrease output from its power station quite frequently. It is pretty clear in my mind that if tougher standards were brought in by the EPA, it would be to the detriment of Alcoa's operations. I am simply trying to establish that the data that would allow us or the government to assess that has been provided to the government as per the conditions of the EPA licence. It says on the front of the licence:

> If found guilty of contravening a condition to which the licence is subject, you may be ordered to pay a fine of up to $257 832 …

I would have thought it would be fairly simple for the minister to give me some assurance that conditions 2.13 to 2.16 of the EPA licence have been complied with. My second question is: did the government get the data as a result of that compliance?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I will respond to Mr Barber's questions on conditions 2.13, 2.14, 2.15 and 2.16 of the EPA notice of amendment of licence. Condition 2.17 is also relevant to this. It says:

> The report referred to in condition 2.13 must include a community engagement plan and procedures to ensure the Anglesea community is appropriately informed about the air

emission management plan including community notification procedures for exceedence of state environment protection policy (air quality management) (SEPP AQM) environmental objectives.

The EPA has informed the Department of Primary Industries, which is responsible for this legislation, that it is satisfied that Alcoa is conforming with those provisions of this licence agreement. In terms of where that data is held, all I can say is — because it is a different department; it is an Environment Protection Authority responsibility — that the advice from the EPA to the Department of Primary Industries is that the terms and conditions of this licence are being met.

**Mr BARBER** (Northern Metropolitan) — If the report has been received, which the minister is assured by the advisers in the box who have been assured by the EPA that it has, what does it tell us about the levels of those pollutants in the Anglesea area?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The question we ask goes beyond the terms of this particular bill. Part of the operations of the generation facility at Alcoa require it to enter into certain licence requirements with the EPA, and all I can say is that again the EPA has agreed that the terms of those licences are being met. The exact data collected as part of this licence condition is not available to me today because it is not directly part of the legislation that we are debating currently.

**Mr BARBER** (Northern Metropolitan) — It is absolutely related to the legislation we are debating. The government is putting forward a proposition to the Parliament that we extend this coal mine and power plant for another 100 years. When we get to later clauses we will see the way the government has attempted to constrain and exclude the consideration of a whole series of environmental impacts and in fact to lock the government into not taking certain policy actions. It would be great if we could find out what the current environmental conditions are in Anglesea as a result of this before we even consider going forward.

I presume when I get back to condition 2.8 of the agreement in relation to sulfur dioxide reduction it also requires the company to demonstrate how the objectives of the SEPP air quality management will be met at all times under normal operating conditions — as we have heard here, 'normal operating conditions' means switching off the power plant 20 per cent of the time — and that a review of the load reduction protocol, including any proposed amendments that are necessary ensure the objectives of the state environment protection policy, will be met at all times. Has that review, under condition 2.8, been submitted to the EPA and has the EPA approved it?

**The DEPUTY PRESIDENT** — Order! Can I just get some clarity on this? Condition 2.8 of what? Is Mr Barber now ranging into — —

**Mr BARBER** — The EPA licence, which the minister has in his hand.

**The DEPUTY PRESIDENT** — Order! Mr Barber is not referring to something in the bill? Okay.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I can only repeat the answer — that is, that this is a licence condition with Alcoa in relation to the operation of the generation plant at Anglesea. All I can confirm again is that the EPA is satisfied that the terms of this licence are being complied with. I think Mr Barber is asking for particular details, for readings and for matters that are part of a licence agreement with the EPA. Yes, it is associated with the operation of the power station, but it is not precisely part of the content of the legislation before us. It is a reasonable assumption that this committee should not undertake a thorough examination of every particular item of data that might be part of a licence condition. At this point in time we have to accept that as legislators we rely on the competence of an organisation like the EPA and its advice to the government, and in turn I am advising the committee that the EPA is satisfied that the terms of these licence conditions are being met. I think it is reasonable that that be sufficient for the committee's consideration of this legislation.

**The DEPUTY PRESIDENT** — Order! I thank the minister. Just before we go on, the committee stage of a bill is to deal with the clauses of the bill, and whilst clause 1, which is the purpose clause, provides some wide-ranging opportunity, it is not like a committee of the Parliament, if you like, in terms of an opportunity to prosecute matters that might be of general interest to this topic. We are really quite restricted to the detail of the bill before the chamber. I appreciate where Mr Barber is going with this, but I need him to stay true to the requirements of our procedures.

**Mr BARBER** (Northern Metropolitan) — Absolutely, Deputy President, I will take your guidance on that. What I am trying to do is make a comparison between the government's press release and its second-reading speech and the actual provisions of the bill. There is what the government said when it announced this bill, and then there is what is in the bill. The government talked about environmental improvements and that there is no need to mine in most

of the area. If the minister were able to come back to me with some of that information about the revegetation bond and how it was derived, I would have some questions in that area; otherwise I am not really in a position to move off clause 1.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — If it is opportune, I am going to respond to a couple of previous questions, which I took on notice. My advice is that with respect to the question, 'How does the Mineral Resources (Sustainable Development) Act 1990 apply to the Alcoa lease area?', the advice is that clause 21 of the agreement provides that the Mineral Resources (Sustainable Development Act) 1990 shall apply to the agreement and to the mining operations of Alcoa on the leased area, the freehold land, prior land and the purchased land. The act applies with such adaptations as are necessary.

A question that was also asked was, 'How is the rehabilitation bond calculated?'. I am advised the answer to that question is that a formula is applied to calculate the rehabilitation bond which has been developed by the Department of Primary Industries. The formula is applied to determine the rehabilitation bonds for all mines in Victoria, and the requirement for a rehabilitation bond is contained in section 80 of the Mineral Resources (Sustainable Development) Act 1990.

**Mr BARBER** (Northern Metropolitan) — The purpose of the bond is to allow for the rehabilitation of the area that is to be mined should Alcoa decide to shirk its responsibilities. How can the minister responsible for that act, who is the same minister who is responsible for this bill, determine that $13.94 million is sufficient surety for the state of Victoria to rehabilitate, hopefully to its original state, an absolutely unique, internationally significant and biodiverse piece of heathland?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I can only advise the member that with the experience the department has in terms of setting what it believes to be appropriate rehabilitation bonds, this figure of some $13 million has been deemed by the department to be an appropriate bond level to restore the land to its previous environmental values if Alcoa were not to do it voluntarily.

**Mr BARBER** (Northern Metropolitan) — To follow up on the minister's previous answer, I ask: what has been the performance of Alcoa so far in terms of rehabilitating Anglesea Heath?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am advised this is a general question of: what has been Alcoa's record in respect of the rehabilitation of the heathland? My advice is that the Department of Sustainability and Environment has been very happy with the approach and corporate responsibilities that have been demonstrated by Alcoa. My colleague Mr Koch reminds me of Alcoa's involvement in local Landcare Australia projects and believes that in terms of the management of these lands Alcoa has demonstrated itself to be a good corporate citizen.

**Mr BARBER** (Northern Metropolitan) — The Department of Sustainability and Environment has been leaking like a sieve ever since this proposition was put before it. The proposition is — and we will see it very specifically in relation to later clauses — that Alcoa in Anglesea is exempt from the net gain and vegetation offset requirements that would apply to any other developer. The government's proposition that is supposed to reassure us in relation to those later specific clauses is that $14 million is enough surety for the state of Victoria to replace its asset — that is, the globally significant Anglesea Heath. That is why it is important that I get a specific answer in relation to my question about what Alcoa's performance has been in rehabilitating this heath.

Decades ago it planted any old native on the site, and people thought that was a good thing. In recent decades not only has public awareness grown but policies have been implemented. These policies are now being exempted because of various clauses in this bill. If Alcoa has done an incredible job in restoring an ecosystem which, as I said, is one of the most biodiverse in the world and extremely restricted in terms of its range — it is highly sensitive to issues such as fire, weed invasion, soil erosion and changes to surface water and groundwater — then that is fantastic. It is a good news story. I have not been able to find out when I have read any of Alcoa's documents or anything on the public record whether Alcoa has even managed to rehabilitate 1 hectare of formerly mined land to its original state. We should give the minister at least one more chance to reassure me on this, and then we will move on.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I can only say in response to Mr Barber that in respect of the licence agreement we were discussing a while ago, Alcoa is required to report those particular matters to the community through community engagement plans and procedures. Again, in respect of the revegetation of land and environmental performance — I say this for the sake of the

committee's deliberations today — members should consider the fact that a bond of the order of $14 million is not insignificant even for a company that is the size of Alcoa.

A rehabilitation bond is put there in case a company or mining licence-holder is unable to perform the functions and conditions of the licence requirements — that is, to undertake land rehabilitation as part of those licence conditions. While that bond has been set, which is in the order of $14 million, there is no evidence to suggest at this point in time that Alcoa is tardy at all. It is committed to its environmental values. All evidence seen by the government in respect of its performance in environmental management has been positive.

We could go on for ages about this particular matter, but the record shows that in terms of local communities and assessments done by the Department of Sustainability and Environment and the Environment Protection Authority, Alcoa approaches its responsibility to the environment with the seriousness that the issue deserves.

**Mr BARBER** (Northern Metropolitan) — It is a compliment to my electorate officer that I am often mistaken for a lawyer when grilling about this legislation, but I am a biologist and I have no legal training. I have a great deal of doubt that this ecosystem, let alone 600 hectares of it, can be restored. There is no information on the record that says it has been restored. The minister regularly refers to Alcoa's community engagement strategy. It does a very good job in relation to community engagement. When you look at its environmental success stories you inevitably find that what it has delivered is what the law requires it to deliver, and that is that. That is why it is very important that we understand something about its environmental record before we vote on this legislation, but in relation to this particular aspect I have not been able to do this. I am happy to move on to debating clause 9.

**Clause agreed to; clauses 2 to 8 agreed to.**

**Clause 9**

**Mr BARBER** (Northern Metropolitan) — Without a peep from members of the Labor Party so far on either the health or environmental impacts of this bill, we now move on to clause 9. Maybe this will get them going. I ask the minister: why is it that the powers of compulsory acquisition are still required by Alcoa — that is, why are they still in this version of the agreement? Why have they not been taken out as part of the negotiation?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am advised that, in respect of the need for the retention of compulsory acquisition powers, those powers may be necessary for easements in terms of transmissions between generators and smelters.

**Mr BARBER** (Northern Metropolitan) — We should have Mr Koch very interested, because he told us earlier that the powerline goes over his property. Is it the case then — and this has to come out of what was discussed in the negotiations — that Alcoa might need new transmission lines in the future and therefore we are giving it powers that the old State Electricity Commission of Victoria might have retained?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I do not want to make any assumptions about new transmission lines, but I am advised that, first of all, the changes made are preserved rights given to Alcoa under the 1961 agreement, and that agreement refers to powers of compulsory acquisition contained in section 26 of the State Electricity Commission Act 1958. That section has been repealed, and section 7A of the principal act in effect replicates what was previously in section 26 of the SEC act. The compulsory acquisition provisions for Alcoa under the new agreement are similar to those that electricity distribution, transmission and generation companies have under section 86 of the Electricity Industry Act 2000. In both cases the powers can be used for the purposes of erecting and maintaining transmission and distribution lines, and in both cases the powers can only be used with the prior approval of the Governor in Council.

**Mr BARBER** (Northern Metropolitan) — Thank you, Minister. I knew all that because I read the explanatory memorandum to the bill. It was the minister who first raised the idea of new transmission lines going to new generators. Are we saying here that if Alcoa decides it wants to compulsory acquire Mr Koch's property for a wind farm and wants to run a transmission line to connect to its old transmission line, it can go to the government and seek to have that happen? It was the minister who mentioned new transmission lines and new generators, so I ask: what specific purposes mentioned in the negotiations justified the continuation of this power? Alternatively, what complications does the government envisage if Alcoa does not have this power of compulsory acquisition?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I can only repeat that this is a replication of provisions that applied under section 26 of the State Electricity Commission Act 1986 and are now in

section 86 of the Electricity Industry Act 2000. I want to also add to my previous answer that the main difference between the provision in those acts and this bill is that Alcoa's agreement sets out a more detailed process for obtaining the Governor in Council's approval for an acquisition. Alcoa must first submit its proposal to the Minister for Energy and Resources, clearly specifying its interest in the land it needs to acquire and explaining the reasons for the interest. The minister then decides whether to recommend the acquisition to the Governor in Council.

As to why Alcoa would have a need for that, there may be circumstances where the route of a transmission line may change depending on other matters. This is a preserved power that was part of a rollover of provisions. It was deemed appropriate in the negotiations between Alcoa and government that the provisions for compulsory acquisition for the purposes I have described remain part of the agreement.

**Mr BARBER** (Northern Metropolitan) — Under the process the minister just described, does the public hear about it before or after the minister makes his Governor in Council recommendation?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Again so that we do not unnecessarily hold up the committee, I am seeking further advice on that. The only advice I have is that Alcoa does not have a direct right to compulsorily acquire land under the Land Acquisition and Compensation Act 1986 in the same way that many public authorities have. Alcoa must first obtain the approval of the minister and the Governor in Council. That, I think, is what I have already said by way of answer. But Mr Barber has asked specifically whether that process means the public knows about it before Governor in Council permission to proceed is sought. I am seeking advice on that, and I will provide Mr Barber with an answer before the conclusion of the committee stage of this debate.

**Clause agreed to.**

**Clause 10**

**Mr BARBER** (Northern Metropolitan) — This now relates to another piece of legislation that this Parliament once considered — that is, the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005, passed by the 55th Parliament but never proclaimed. Earlier the minister tried to put a semantic argument — that is, that the government negotiated under the terms of the agreement and did not have any choice in that matter. Now it has brought in a piece of legislation — the bill we are dealing with today — that reflects that agreement and the minister said that to do anything else would be a sovereign risk possibly leading to huge liabilities and the government being sued by Alcoa.

Apparently the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005, which passed through this Parliament in 2005, would have led to a dramatic increase in the amount of coal royalties that would have had to have been paid by Alcoa. That Parliament managed to significantly change the detail, but that act was never proclaimed. The bill we are dealing with is another attempt by the government to negotiate higher royalties — 10 times bigger than they used to be, but still half of what everybody else in the Latrobe Valley pays. Can the minister tell us — and put on record — what exactly has happened here?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — These particular provisions of the amendment bill we have before us have been reached with agreement between Alcoa and the government, and so it is that the amendments in clause 10 to the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005 are amendments that the company and the government have agreed to.

**Mr BARBER** (Northern Metropolitan) — Yes, but the Parliament previously agreed to put the royalties up, and it never happened. Now we have another proposition that they are being put up, but nothing like what the Parliament previously agreed to. In clause 20A of the agreement, not of the bill, a restriction is placed on the Crown causing any detriment to Alcoa under the agreement. Is that the reason the government has been unable to proclaim and bring forward the original royalties set out in the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The reason the previous government did not enact those provisions relating to 2005 is something that I will seek immediate advice upon. I should be able to get a quick answer.

With respect to the amendments to the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005, I am advised that at the time of their introduction Mr Theophanous, the responsible minister at the time, indicated to the Parliament that that legislation would not be proclaimed until such time as Alcoa agreed to it. I am advised that Alcoa has never agreed to it, therefore it has never been proclaimed, so there is still no agreement to the provisions of that particular act, which

is the subject of clause 10, and that is why it is being repealed.

**Mr BARBER** (Northern Metropolitan) — My second question was: would it be in violation of clause 20A of the agreement for that act of Parliament, which has already been passed by the Parliament, to be proclaimed by the government triggering the doomsday scenario Mr Hall seemed to allude to of Alcoa suing the state for untold millions or billions? This law is on the books now, and we are being asked to repeal it, so it is a very important question as to the functioning of this legislation.

**The DEPUTY PRESIDENT** — Order! If it is in the bill, I am very happy for this to be considered by the committee. I am concerned that what we are discussing does not appear to be in the bill.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Before I get advice on this answer, can I clarify that clause 20 of the agreement to which Mr Barber is referring relates to what is on page 40 of this amendment bill? Is that correct?

**Mr BARBER** (Northern Metropolitan) — We are dealing with clause 10, but I am referring to clause 20A of the agreement.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The advice I have in respect of the relationship between clause 10 and clause 20A of the agreement, which is on page 40 of the amendment bill, is that clause 10 does not breach clause 20A of the agreement nor the advice of the department. If there were not a repeal of that act, that provision would not be breached either.

**Mr BARBER** (Northern Metropolitan) — That is the best news I have had all day. It means we can safely leave this law on the books — the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005. It has never been proclaimed and never been signed off by the Governor. Through this clause the government is inviting us to repeal that legislation, but if we simply just leave it there, then it is open to a future government to raise the royalties for Alcoa to the levels envisaged by that 2005 act, which would put Alcoa in line with all other Latrobe Valley power generators. Whatever the various members of this Parliament's views are on this bill as a whole, they could certainly support me on this clause, because, as the government has just told us, it really will not harm anything. It has been there since 2005, does not operate and would not trigger any of the provisions, such as clause 20A of the agreement. Therefore when we come to vote on this clause I will vote against it.

**The DEPUTY PRESIDENT** — Order! Thank you, Mr Barber. I am not a lawyer either, but I know it cannot be an act if it was not signed by the Governor and given royal assent, so the proclamation is when it is gazetted.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I appreciate that we are going to have a difference of view on this clause, but I do want to come back to providing an answer regarding the issue of compulsory acquisition, which was discussed as part of this. The advice I have on this is that compulsory acquisition is only ever a last resort after negotiations with land-holders fail and after all other options are exhausted. Compensation would apply to any compulsory acquisition, so the land-holders would know about any plan in advance.

**Committee divided on clause:**

*Ayes, 37*

| | |
|---|---|
| Atkinson, Mr | Lenders, Mr |
| Broad, Ms | Lovell, Ms |
| Coote, Mrs | Mikakos, Ms (*Teller*) |
| 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 (*Teller*) | Pulford, Ms |
| Elasmar, Mr | Ramsay, Mr |
| Elsbury, Mr | Rich-Phillips, Mr |
| Finn, Mr | Scheffer, Mr |
| Guy, Mr | Somyurek, Mr |
| Hall, Mr | Tarlamis, Mr |
| Jennings, Mr | Tee, Mr |
| Koch, Mr | Tierney, Ms |
| Kronberg, Mrs | Viney, Mr |
| Leane, Mr | |

*Noes, 3*

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

**Clause agreed to.**

**Clause 11 agreed to.**

**Clause 12**

**Mr BARBER** (Northern Metropolitan) — I now refer to the agreement itself, and it is quite a long agreement. I am referring to clauses in the agreement now, not the bill. Clause 3(b) seeks to change the definition of 'the act' from the 'Mines Act 1958' to the 'Mineral Resources (Sustainable Development) Act

1990'. Will this mean that the provisions in this act now apply to the agreement?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I just need some clarification. Could Mr Barber explain the question again? It might be helpful if he could refer to the page numbers of the bill so I can follow exactly where he is going.

**The DEPUTY PRESIDENT** — Order! Is that paragraph (b) of clause 3 in schedule 2 on page 7?

**Mr BARBER** (Northern Metropolitan) — Yes. Under law a contract cannot oust a legislative clause unless the legislation itself specifically permits it, so what I want to know is: does the agreement have the effect of ousting the Mineral Resources (Sustainable Development) Act 1990 — let us call it MRSDA for short — because it is attached to legislation?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The advice I have received is that what clause 3(b) on page 7 does is change a reference in the agreement from the Mines Act 1958 to the Mineral Resources (Sustainable Development) Act 1990, so it is not as if we are changing those acts; what we are doing is changing a reference to an act in the agreement.

**Mr BARBER** (Northern Metropolitan) — Yes, and that is fine. Now what I am asking is: how does the agreement relate to the MRSDA? Are we legislating ourselves out of the provisions of the MRSDA when we vote for this bill?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — My understanding is that as we go through the agreement there will be provisions of the agreement which relate to processes under the Mineral Resources (Sustainable Development) Act 1990, so it is just redefining particular aspects of the agreement and the acts to which they apply.

**Mr BARBER** (Northern Metropolitan) — Well and truly, and this provision goes on for quite a long way. Will, for example, the government be legally entitled to collect royalties from Alcoa in respect of the disposal of tailings under subsection (4) of section 12A of the MRSDA?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — In respect of this specific question I can advise Mr Barber that substituted clause 21(2)(a) of the Mines (Aluminium Agreement) Amendment Bill 1961 states that sections 12 and 12A of the Mineral Resources (Sustainable Development) Act 1990 or any law relating to the subject matter of royalties will not apply to this agreement.

**Mr BARBER** (Northern Metropolitan) — My next question is: what are the practical effects of amending the definition of 'base index number' from December to June and from 1961 to 2010?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Thankfully I can answer this question. My advice is that the practical effect of amending the definition of 'base index number' is to bring the amended agreement up to date. There is no material change to how the royalty is calculated.

**Mr BARBER** (Northern Metropolitan) — What are the practical effects of the term 'former forest area' being deleted, and what was the reason for its deletion?

**The DEPUTY PRESIDENT** — Order! Has Mr Barber moved to a different page? I am trying to follow this too, and it would be helpful if I knew where he is in the bill.

**Mr BARBER** — We are still in that clause. We are just moving our way down through the definitions. It is on page 8.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I ask Mr Barber if the reference he made in his question is to freehold land or forest land.

**Mr BARBER** (Northern Metropolitan) — Forest land.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — At this point of time I do not have an answer to that question, so I think we are going to be going for a bit longer. Again I will come back to Mr Barber with an answer to it.

**Mr BARBER** (Northern Metropolitan) — The reason Mr Hall asked me about forest versus freehold is that he has got a list of my questions, which we sent to the minister earlier on. We have been asking these questions and still have not got answers. A large amount of the Parliament's time is now being taken up because we were not able to get answers to these simple matters when we previously asked about them.

I ask the same thing in relation to the definition of 'freehold land' — that is, areas on title. What are these actual areas, and what consideration was given in exchange for the title?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I do appreciate that the questions have been asked. For some reason I have not got that question about forest land, but as I said, I will endeavour to get an answer for Mr Barber.

With respect to the question about freehold land, that relates to the areas on title: what are these actual areas held as freehold, and what consideration was given in exchange for the title? The answer to that question is that the freehold land is described in amended clause 1, which contains the definitions of the agreement, as the land contained in:

(a) certificate of title volume 8230 folio 618 known as Lot 1 on the Title Plan, 408603H …; and

(b) certificate of title volume 8489 folio 766 known as Lot 2 on Plan of Subdivision 061660 …

**Mr BARBER** (Northern Metropolitan) — What was the consideration given for that land?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I hope we are on the right page here. The advice I have received in respect of the question 'What consideration was given in exchange for the title?', is that the title was exchanged for the purchase of the freehold land, and the purchase arrangements — for example, how much was paid for that freehold land — are not matters that would normally be made public. Indeed the purchase of the freehold land is a matter between the company and those from whom it purchased that land.

**Mr BARBER** (Northern Metropolitan) — In relation to this piece of freehold land that Alcoa got for a secret price and for which a minerals exemption was granted pursuant to section 293 of the Mines Act 1958 on 19 August 1985, can the minister describe the nature of this minerals exemption?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am told the definition of 'freehold land' in clause 1 of the agreement under the heading 'Definitions' provides that the freehold land is the subject of a minerals exemption granted under section 293 of the Mines Act 1958 on or about 19 August 1985. The exemption under section 291 of the Mines Act 1958 is in respect of brown coal in the freehold areas for a period not exceeding the life of the resource or the expiration of the agreement, whichever is the earlier. This means that the brown coal in the freehold areas is owned by Alcoa; therefore Alcoa is not required to pay a royalty to the state for the resource during the period for which the exemption applies.

**Mr BARBER** (Northern Metropolitan) — I thank the minister for his answer. What are the practical effects of the amendment proposed in this bill to the definition of 'leased area'?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I do not have an answer to that question. I understand the question was not foreshadowed. Notwithstanding that, I do not deny the right of Mr Barber to ask that question. Again, with the member's agreement, I will come back to the question later and provide an answer.

**Mr BARBER** (Northern Metropolitan) — In the definition of 'significant additional environmental impact', why was the word 'additional' included?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Again I cannot give Mr Barber an answer at this point in time, but I gather we will be going for a while. The dinner break may give me an opportunity to get an accurate answer to that question.

**Mr BARBER** (Northern Metropolitan) — Does the government contemplate cumulative impacts being considered by some third party such as a tribunal or court in the assessment, and is that why 'additional' has been inserted?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Again I will have to come back to that question.

**Sitting suspended 6.27 p.m. until 8.02 p.m.**

**Hon. P. R. HALL** — Mr Barber asked some questions before the dinner break to which I was unable to provide answers. As promised, I have sought further advice and can respond to the three questions to which answers were sought. The first question was: why has the definition of 'former forest area' been deleted? I am advised that this definition has been deleted as it is no longer relevant to the agreement. The removal of the definition was done in consultation with Alcoa and Parks Victoria. There are no licences and agreements in existence under the land act.

The second question was: what is the impact of the changes that have been made to the definition of 'leased area'? Amendments were made to bring the definition of 'leased area' up to date. The actual impact is that the leased area is slightly smaller than the area granted in 1961. The smaller area is the result of changes to land use that have occurred during the past 50 years.

The third question asked was: why has the word 'additional' been added to the definition of 'significant additional environmental impact'? I am advised that the reference to 'additional' reflects the recognition that the Alcoa mine is not a new development but is a mining operation that has been in existence for 50 years and has already had impacts as a result of its activities. The

focus must therefore be on those additional significant environmental impacts that are identified as part of Alcoa's future mining proposals.

**Mr BARBER** (Northern Metropolitan) — There are additional impacts and then there are cumulative impacts. Is the effect of the insertion of the word 'additional' to make it impossible to look at the cumulative impacts of all the existing mining alongside the new mining proposal?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I thank Mr Barber for his question. No, my understanding of this is that the word 'additional' does not preclude, therefore, a look at the cumulative effect of a number of matters.

**Mr BARBER** (Northern Metropolitan) — Everything hangs off this definition, because when you read the definition it says:

> "significant additional environmental impact" means a significant impact on —

I note the tautology there before we even start —

> (a) species of fauna or flora or ecological communities or their supporting habitat;
>
> (b) beneficial uses of surface and ground waters; or
>
> (c) the amenity of adjoining areas,
>
> that is in addition to the impacts that already exist by virtue of the company's existing mining operations at the time the mine extension plan is submitted …

There is already an extraordinary amount of case law in relation to significant impacts. This definition constrains what could be considered. Firstly, it says 'significant' only relates to those impacts to which it has referred. Secondly, it only looks at additionality. What we are seeing here is already a considerable narrowing of the possible scrutiny of the impacts of continued mining. As we go through these provisions we are going to see that this definition, which ultimately becomes the definition on which all environmental assessment hangs, has been constrained in a whole series of other ways. Therefore I ask: how does 'beneficial uses of surface and ground waters' differ from 'surface and ground waters' — that is, what has to be beneficial about them?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I thank Mr Barber for his question and can respond in this way. Beneficial use is a concept from the Environment Protection Act 1970, and the state environment protection policies made pursuant to that act. The concept is used in the regulation of land and groundwater contamination to define when contamination has reached a level that is considered pollution and must be cleaned up because it is impacting upon the existing or potential beneficial uses of that land, groundwater or surface water. The existing and potential beneficial uses will vary depending upon the location of the impacted area. They include the following range of uses that are protected by the act and groundwater contamination policies:

> (a) maintenance of natural ecosystems, modified ecosystems and highly modified ecosystems;
>
> (b) human health;
>
> (c) buildings and structures;
>
> (d) aesthetics; and
>
> (e) production of food, flora and fibre.

**Mr BARBER** (Northern Metropolitan) — Are there any unbeneficial uses? What would be excluded by putting this word into the agreement?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Every aspect of the use of water I can think of would be beneficial.

**Mr BARBER** (Northern Metropolitan) — Moving on to clause 4 of the amended agreement, it deals with what would happen if Alcoa assigned its rights under the agreement. Subclause (3), on my reading, releases the company from any liability once that assignment is complete. I find that to be a fairly large regression from clause 4(b) of the original agreement. My question for the minister is: if a problem caused by Alcoa is discovered after the assignment, would the assignee be liable? A natural reading of this subclause leads me to the conclusion that Alcoa would escape liability.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am advised that clause 4 is not about liabilities; it is about the assignment of responsibilities under the agreement.

**Mr BARBER** (Northern Metropolitan) — That is right, and, as the provision says, the company has a number of obligations and conditions. In many ways the company has been released from many pieces of legislation that would otherwise apply, and its main responsibilities are really those contained in the agreement. The agreement contains requirements to at all times comply with modern standards. It even says if Alcoa follows modern standards for the operation of its facilities, it cannot be found to be liable for nuisance. If the rulebook for the company is what is in the agreement and this provision says it is released from the

terms of the agreement, then what residual responsibilities — I called them liabilities, but let us call them responsibilities under the agreement — would the company have after it has shot through? If the answer is it is a clean slate, Alcoa is gone — so be it.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — In response to the question about who would therefore be required to meet such responsibilities on assignment, I am advised that the assignment must be approved by the minister in the first instance and that the person or organisation to whom that assignment has been directed, with the minister's approval, would be required to accept responsibility.

**Mr BARBER** (Northern Metropolitan) — So the answer is yes, the person the agreement is assigned to then becomes responsible for meeting each of the obligations and conditions.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Yes, that is a good way of putting it.

**Mr BARBER** (Northern Metropolitan) — Clause 7 of the amended agreement, which is headed 'Extension of agreement', mirrors the existing provision — the so-called option for Alcoa to extend the agreement for another 50 years after the 50 years it has just had. Does that mean that at the end of 2061 another 50-year option will be granted to Alcoa, taking it up to 2111?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — As I thought, I have been advised that this particular clause does not give Alcoa an automatic, as-of-right extension for a further 50 years, but it does not prevent Alcoa from asking for such an extension, after which the minister would make a decision. The conditions relating to extending the contract or creating a new contract contain no rights for the rollover of existing provisions and would be completely open to negotiation.

**Mr BARBER** (Northern Metropolitan) — In relation to clause 10 of the agreement, are the amounts in rent and royalty rates adjusted for inflation?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The amounts are adjusted for inflation as per clause 10(4) of the amended agreement.

**Mr BARBER** (Northern Metropolitan) — So there is a formula in the agreement involving a base index rate versus a current index rate. Does that have the same effect in terms of calculating inflation as that of other acts — for example, the Mineral Resources (Sustainable Development) Act 1990?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The answer to the question is yes. I am advised that the formula in the agreement for calculating the inflated rate payable in a financial year has exactly the same mathematical effect as that under section 12A of the Mineral Resources (Sustainable Development) Act 1990.

**Mr BARBER** (Northern Metropolitan) — Why has the royalty threshold amount changed from 100 000 tonnes to 101 600 tonnes?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am unable to answer that question. There is no advice. I understand this is a new question that was not foreshadowed. As I said before, notwithstanding the right of any member to ask a question, without that information I am unable to provide an answer at this point in time.

**Mr BARBER** (Northern Metropolitan) — Why is there a two-tiered royalty rate whereby the more the company mines the less it pays?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I can only assume that this, again, is a matter agreed to by Alcoa and the government in the striking of this new agreement.

**Mr BARBER** (Northern Metropolitan) — Generally Alcoa has been mining over that quantity, which is to say it has incurred that second tier of royalties. So there must have been a reason for making a small adjustment. The outcome of that negotiation has led to this bill. It is not enough for the minister to say he does not know why it is in the bill, because it was part of the negotiation. It is very clear that this bill is the outcome of the negotiation, and it is what we are being asked to sign off on.

Newly inserted subclause 10(1)(c) sets the royalty rate when Alcoa is exporting energy into the grid — that is, when it is not using it for its own purposes — to be the same as that in the Mineral Resources (Sustainable Development) Act 1990. How would the government go about differentiating between coal that has been dug up for the purpose of generating electrons which go to the smelter and that which goes elsewhere in the grid?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am not sure whether this question is exactly the same question submitted by Mr Barber earlier. If this is an interpretation of that question, good and well; if it is not, then I may have to again take it on notice. If the question was: if the newly inserted subclause 10(1)(c) sets the royalty rate when Alcoa is exporting energy into the grid to be the same as that in

the Mineral Resources (Sustainable Development) Act 1990, does the Mineral Resources (Sustainable Development) Act 1990 formula apply — —

**Mr Barber** — No, it is not about the inflation formula; it is about the different royalties.

**Hon. P. R. HALL** — I thought the question was different to the one that had been foreshadowed. At this point in time, again I do not have that information at hand to be able to answer that question exactly.

**Mr BARBER** (Northern Metropolitan) — Clause 10(1)(d), which allows Alcoa to sell the coal, conceivably for export through the port of Geelong, has been retained from the old agreement. Given this bill is supposed to be about jobs in Geelong, local manufacturing and so forth, what was the purpose of retaining a clause that would allow the company to actually sell coal to someone else, quite possibly for export purposes, rather than use it itself?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — In inquiring about clause 10(1)(d) of the agreement and seeking advice on this particular matter I have been told that Alcoa has never actually sold coal, that all the coal it mines is used for generation purposes. I am also told that there has been no foreshadowed intent to do so. Therefore it does beg the question why this particular provision has been left in the agreement. The only advice I have on that is again that Alcoa sought to retain this provision in the agreement even though it is a practice it has not undertaken before and there has been no foreshadowed intention to undertake it in the future.

**Mr BARBER** (Northern Metropolitan) — The people at Alcoa are not the only people who might have the idea of selling export coal. The Alcoa mine, like some others, is pretty close to the port of Geelong and economically is within trucking distance. Would the government be seeking to readjust the royalty rates if Alcoa started selling or exporting coal at a disadvantage to other coalminers who might like to do the same thing and pay, roughly, a 50 cent royalty rate, or would that be sovereign risk?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The only advice I can offer in terms of the question asked is that if Alcoa, like any other company, sought to export a product like coal, then it would need to obtain an export licence from the federal government to do so. In those circumstances I would have thought that the Victorian government would have a view about that and may wish to talk to Alcoa in terms of what royalty it might pay.

**Mr BARBER** (Northern Metropolitan) — That is all very unclear. I will just move along a little bit. Most of clause 13 has now been omitted from the new agreement, but we still have subclause (c), which states that the company shall not:

> use or occupy or permit the leased area to be used or occupied for any purpose other than the exercise of the rights herein granted or for the pasturage of stock of or as garden ground for employees of the Company …

I am not aware that they have ever grazed cattle on the Anglesea Heath. I am pretty sure it is not happening right now. Why has the government omitted all the other subclauses but retained the right to graze cattle on the Anglesea Heath? Is this some kind of revenge for the fact that you cannot graze your cattle in alpine areas any more?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I will ignore the last part of the questions, which I think was a bit flippant, but I will seek some advice on the first part to see if there was any specific reason for the retention of this particular part of the clause.

To answer the question, I am informed that clause 13 of the agreement is headed 'Use of leased area' and it provides that the company shall not do a number of things. With respect to that it states:

> The Company shall not —
>
> …
>
> (c) use or occupy or permit the leased area to be used or occupied for any purpose other than the exercise of the rights herein granted or for the pasturage of stock …

It very clearly says that Alcoa is not allowed to use the heathland for the grazing of stock. I understand that subclauses (a), (b), (d) and (e), which have been omitted, related to mining methods that are no longer used by Alcoa and are therefore irrelevant to this particular clause within the agreement.

**Mr BARBER** (Northern Metropolitan) — I think someone has read the clause wrongly. I can read it again:

> The Company shall not —
>
> …
>
> (c) use or occupy or permit the leased area to be used or occupied for any purpose other than the exercise of the rights herein granted or for the pasturage of stock …

In other words, it cannot occupy or use the leased area for any purpose other than the exercise of the rights or pasturage of stock or as garden ground for employees of the company. Those are the three things the company can do. It cannot use or occupy the leased area for any other purpose. You cannot build a golf course on it, for example. We are clear on that. Alcoa can exercise its rights herein granted — that is, in the agreement — or it can use it for the pasturage of stock or it can use it as garden ground for employees of the company, but for no other purpose.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I understand the point Mr Barber is making. I have not had training in the use of terminology that is the practice of the law, but I am informed that the words and expressions in clause 13(c) of the agreement specifically prevent Alcoa from using the heathland for the pasturage of stock. As I said, Mr Barber and I might interpret those words differently, but the local interpretation, as I said I am advised, prevents it from doing so.

**Mr BARBER** (Northern Metropolitan) — Got to work those commas; commas can be important. I want to move on to clause 20A of the amended agreement. This clause restricts the Crown from doing many things. Of particular concern to me is a restriction on the state to take or cause to occur any action which derogates from the rights and enjoyment of the agreement.

Earlier today the minister tried to mount the argument that if this Parliament with clear intent changed the rules on Alcoa, Alcoa could sue Victoria. I think that is absolutely wrong, but what this clause seems to suggest to me is that Alcoa could very well sue the government for damages if the government took a number of actions — that is, as the definition says, to take or cause to occur any action which derogates from the rights and enjoyment of the agreement. I need to ask about this in detail. Does this mean that no future minister of the Crown can present legislation to the Parliament that will cause to occur any action if it directly or indirectly affects this agreement detrimentally or else the government will be up for damages?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — My advice is that this particular provision would not prevent governments in the future, if they so chose, bringing in amendments to Victorian statutes. In a similar vein Theo Theophanous, a former Minister for Resources, brought amendments to the brown coal royalties legislation, even though that was not proclaimed. The minister moved such amendments on that occasion, and this provision would not prevent a minister from doing so in the future. A government would, however, need to think very carefully about the implications of bringing forward a bill which amends an act that impacts on this particular act of Parliament. I offer that advice in response to the member's question. I do not believe this particular provision prevents a minister in the future bringing before this Parliament a bill to amend something which might impact on this agreement.

**Mr BARBER** (Northern Metropolitan) — The minister says that and then says the government should think very carefully. I hope governments always think carefully when they bring legislation before the Parliament. I certainly think very carefully before I vote on legislation.

Earlier today the minister was suggesting that if the Parliament had amended this legislation in a way other than to reflect the outcome of a negotiation his government has had with Alcoa, we could be up for damages. I am thankful that the minister has now said it is very clear that you cannot contract out of the constitution. It would be a grave threat to parliamentary sovereignty if the Crown became liable for damages for changing the law in a whole range of areas — and not just those limited to the agreement. In the case *Port of Portland Pty Ltd v. State of Victoria* the Supreme Court of Victoria's Court of Appeal held that a similar clause was an executive act that purported to bind a Parliament, which was beyond the state's power, and was void. That part of that judgement was not overturned by the High Court. It would therefore be extraordinarily bad form for the government to be bringing in a bill containing a provision we already knew was unconstitutional.

Short of that, there are a whole range of other no-noes for the government of the day. I think I should probably just read the relevant short part into the record. Clause 20A of the amended agreement says:

> The State shall —
>
> (a) not impose nor take nor (insofar as it is competent to do so) permit nor authorize any of its agencies or instrumentalities or any local or other authority or Minister of the Crown or public statutory corporation of the State to take or cause to occur any action or combination of actions, including without limitation, the imposition of any taxes, rates or charges of any nature whatsoever, which —
>
> (i) has the effect of modifying or subtracting from the Company's rights or adding to any of its obligations under this Agreement or any other agreement relating to the smelter at Point Henry;

(ii) is discriminatory to, or has a discriminatory effect on, or is directed at the smelter at Point Henry or the Company; or

(iii) discriminates adversely between the Company and other industrial or commercial enterprises in the State —

well that is a laugh; we already know this bill gives a huge free kick to Alcoa —

in respect of the income, titles, property or other assets, products, materials or services used or produced by or through the operation of the smelter at Point Henry and the disposal of aluminium and waste products produced in the smelter or is discriminatory to the aluminium industry or is directed at the aluminium industry …

It is not just Alcoa but the whole industry now. For the sake of completeness and for the sake of further questions I will read a further paragraph:

(c) make such representations as may be necessary to the Commonwealth with respect to, and use its good offices in relation to, the remedy or amelioration of or removal by the Commonwealth of any adverse effect on the progress or cost of the construction and operation of the smelter at Point Henry or on that smelter, the Company, this Agreement or any other agreement relating to the smelter resulting from Commonwealth Government policies including, without limiting the generality of the foregoing, the imposition of import duties, as soon as practicable after the occurrence of such effect.

To my mind the reading of that shows it is left completely open-ended, meaning the government or any part of the government — and a local authority is included in there as well — is unable to take or cause to occur any action which reduces the company's rights under this agreement or the benefits of this agreement for it.

This in effect turns the state government into Alcoa's lobbyist. That means that rather than working with a federal government — for example, in the area of higher standards for air quality — the state government is legally required to join a push against those things that might impact on the company. That requirement could also apply in relation to decisions of the federal government, such as a decision to trigger the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. There is also a series of issues in there relating to the imposition of import duties. That presumably could only mean, if the companies were being affected, some sort of raw material or input was being impacted on. This seems like an extraordinarily wide clause. Is that the intent of the legislation?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The Victorian government's position in respect of this whole agreement is that it achieves a balance between the social, environmental and economic needs of the state of Victoria. Therefore my understanding of this particular provision, clause 20A, is that it seeks to recognise that in striking an agreement each party will be obliged to do what they are able to do in terms of maintaining that agreement. The way I understand this particular clause is nothing more than that. It is a clause which says: given that the state in its agreement with Alcoa has struck an agreed balance between those competing needs — economic, social and environmental — from Victoria's point of view, its obligation is to do what it is able to do to maintain its side of this agreement. I see this clause as nothing more and nothing less than that.

**Mr BARBER** (Northern Metropolitan) — I thought the point of signing a deal was that you had a deal, but apparently another clause has to be added on the end that says that even with this deal having been signed into law, the government cannot take any action which has the effect of modifying or subtracting from the company's rights or adding to any of its obligations under this agreement. There are any number of areas where a government, through its executive action, could add to the obligations — sure, not through amending legislation; that is the exact thing we are doing here today. The clause refers to agencies, instrumentalities, a local or other authority, a minister or a public statutory corporation taking or causing to occur any action that either reduces the rights or adds to the obligation of the company.

For example, the government has already banned wind farms on the Bellarine Peninsula. The company's transmission lines run straight through that area. It is an ideal place for Alcoa, if it wanted to green up its power supply, to build some wind farms and plug them directly into its transmission line, but that action of the government has taken away an option for the company. I am not quite sure what the distinction is between my characterisation of the government's responsibilities, which says that outside of the agreement it has to avoid a whole range of other actions, and the minister's characterisation, which is that, 'It does not mean anything; it is just restating the fact that we have a deal and this is the deal'.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I just want to make this comment in reply to Mr Barber's questions: this agreement is about Alcoa's rights to mine and in respect of power supply. There is nothing in the agreement that prevents Alcoa

from supplementing its energy supply, if need be, with energy from other sources, including renewable energy.

**Mr BARBER** (Northern Metropolitan) — We know that; it already gets 60 per cent of its power for the Point Henry smelter from other power stations. But, as I have stated, this is a completely open-ended clause that refers to taking actions that have the effect of modifying or subtracting from the company's rights or adding to any of its obligations under this agreement.

I will just move on to clause 21A of the amended agreement. It is my understanding that the government has already received the work plan, and this clause deems it to be an approved work plan. Will it be available on the register and therefore publicly available as per section 74 of the Mineral Resources (Sustainable Development) Act 1990?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I am advised that the work plan will be made publicly available when it is placed on the mining register in accordance with the usual practice and section 69(1) of the Mineral Resources (Sustainable Development) Act 1990.

**Mr BARBER** (Northern Metropolitan) — I thank the minister for that assurance; I appreciate it.

Clause 21B of the amended agreement says that the Aboriginal Heritage Act 2006 only applies 'as far as reasonably practicable'. Normally when there is a law, you comply with that law. There is a law that sets speed limits for motorists and you comply with those speed limits under that law. You do not then pass another law that says, 'You know what? You should follow that speeding law as far as is practicable'. Why is it not the case that this simply says that Alcoa must comply with the Aboriginal Heritage Act 2006, with a full stop at the end?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — This question was raised by the member for Richmond, Richard Wynne, in the debate in the Legislative Assembly, and a letter of reply to the issue in question was provided by the Minister for Energy and Resources to Mr Wynne. I am more than happy to put it on the record if the member wishes me to. I am quoting directly from the letter to Mr Wynne from the Minister for Energy and Resources, Mr O'Brien, dated 18 November 2011. It states:

> I refer to your request for clarification during the recent Legislative Assembly debate on the Mines (Aluminium Agreement) Amendment Bill as to the meaning of the phrase '… as far as reasonably practicable …' which appears in clause 21B(1)(a) of the agreement in schedule 2 of the bill.
>
> In 2008, Alcoa exercised their option to extend the agreement during the term of the former government, and having done so, was then under no obligation to negotiate beyond the limited extent conferred on the state by the agreement. The wording of this clause was developed in consultation with Alcoa and Aboriginal Affairs Victoria.
>
> In clause 21B of the agreement, the phrase 'as far as reasonably practicable' is intended to assist on a case-by-case basis, the tension of application between the Mines (Aluminium Agreement) Act and Alcoa's exclusive right to mine and the Aboriginal Heritage Act 2006. The meaning of the words and how they would apply would ultimately be determined by a court in the event of a disagreement between the state and Alcoa as to how the Aboriginal Heritage Act applies to the Anglesea mine. The phrase has received much consideration by both the courts in Australia and the key principles of interpretation involve adopting the ordinary meaning of these words and making a value judgement in light of all the facts. The phrase means something narrower than 'physically possible' or 'feasible' and must be judged on the basis of what was known at the relevant time and to balance the likelihood of the risk occurring against the cost, time and trouble necessary to avert the risk.

**Mr BARBER** (Northern Metropolitan) — Yes, I know the words 'reasonably practicable' have been reviewed by the courts, but that has usually been when they are being reviewed within an act. Here we have this 'reasonably practicable' test, and it is a test of whether you have to comply with another law that you would normally have to comply with. What the minister is really saying is that the 1961 agreement said you did not need to comply with an Aboriginal heritage act that did not even exist at the time — in fact, I am not even sure that Aboriginal people were treated as full citizens at the time — but the world has moved on and the Parliament has brought in the Aboriginal Heritage Act 2006 and reviewed it a number of times.

I believe the government has the entire act, or at least some parts of it, before a parliamentary committee, but here when it had the opportunity to treat this particular applicant like every other land-holder and developer in Victoria the government said it had negotiated with the company and the company did not want to do it so they split the difference. They split it in such a way that the reasonably practicable test, as the minister has told us, relates purely to the degree of inconvenience caused to Alcoa.

There is nothing in there that looks at the significance of Aboriginal heritage. The Aboriginal heritage in question could be basic; it could be the type of Aboriginal heritage that is found all over Victoria. There were hundreds of thousands of people living in this state for tens of thousands of years before any white fellas got here, and they left a lot of Aboriginal heritage behind. Aboriginal heritage can be found all over the place. On the other hand, the Aboriginal

heritage could be of an extraordinary value and something that no-one has ever encountered before. But the only test in this case will be the reasonably practicable test.

From Alcoa's point of view, is it inconvenient for Alcoa to protect or in some way preserve this heritage in the middle of its mine? Because the act itself does not actually operate in relation to Alcoa, I guess Alcoa will not be going out and looking for Aboriginal heritage. In some respects we are seeing what actually happened in the negotiation between Alcoa and the government. Alcoa said, 'We would rather not comply with too many bits of legislation that you crazy parliamentarians have thought up since 1961. We will just keep going as we are, thank you very much, for another 50 years'.

I am happy to move on to clause 21D of the amended agreement. Is the options analysis for the mining extension plan — that is, whether to dig deeper or further laterally into the heathland — likely to be available to the public, and will the public know when the government is considering this mining extension plan?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — The member asked if Alcoa wants to expand the mine and what opportunities there are for the community to have knowledge of the processes involved if they want to be involved. I am advised that under the new agreement any future expansion of Alcoa's Anglesea mine will, for the first time, be subject to environmental requirements that are broadly equivalent to the process in section 42A of the Mineral Resources (Sustainable Development) Act 1990, which applies to other Victorian mines. Alcoa will be required to identify whether there are any additional significant environmental impacts. If there are, it is to show how they would be mitigated. If the government is not satisfied with that mitigation plan, it can undertake its own work to assess risk and mitigation options.

I am advised that the main difference in relation to MRSDA is that should Alcoa plan to expand the mine within the agreed area, then it will not be required to complete an environment effects statement as is sometimes required for significant mining developments. Nevertheless, all the normal requirements for mine extension or expansion under MRSDA will now be applied for the first time so that any significant additional environmental impacts are mitigated.

**Mr BARBER** (Northern Metropolitan) — As the minister has said, they have attempted to import the process from another act into this bill rather than simply make the company comply with the Mineral Resources (Sustainable Development) Act 1990. That leads to a number of interesting little sections. For example, in relation to clause 21D, the minister who is normally responsible for the Environment Effects Act 1978, but who in this situation is not allowed to call for an environment effects statement, can have regard to a number of things, including any relevant ministerial guidelines made under the Environment Effects Act 1978 but only insofar as the guidelines relate to significant additional environmental impacts that have been identified as being likely to result because of the proposed mine extension.

Members will remember there was a definition of 'significant additional environmental impacts' earlier that constrained things somewhat. The guidelines that that minister usually deals with are 36-pages long and include a hell of a lot of things. They will now only include those things that the government and Alcoa have agreed to put into this bill.

The minister has a further objective though, and it is a doozy. It is the objective of minimising any significant additional environmental impacts of the proposed mine extension in the context of enabling coal extraction. Unlike the minister's role under the Environment Effects Act 1978, there is no actual option to refuse. There can be minimisation, but coalmining would go ahead. There is a further objective that the minister must consider in this bill in clause 21D(7)(c), and that is:

> the objective of limiting consultation on the EIMR —

that is, the environmental impact and management report —

> to sections of the public that have a material and established interest in the significant additional environmental impacts that have been identified as being likely to result from the proposed mine extension …

When it comes to environmental impacts and who gets standing to participate or have a say on a government decision, the law of standing has been pretty well established. It does not stop governments from trying to knock people out on the basis of standing anymore, but it is well established in case law. What the government is doing in relation to this is having its own crack at defining who might have standing — that is, sections of the public which have a material and established interest in the significant additional environmental impacts that have been identified as being likely to result from a proposed mine extension.

The significant additional environmental impacts in the earlier definition did not include the emissions of

greenhouse gases, so if your interest in this matter concerns the huge amount of greenhouse gases that will be emitted as a result of mining and burning coal, then this new clause attempts to knock you out. It also says you have to have a material and established interest. There are two definitions of 'material' in that copy of *Macquarie Dictionary* right next to the minister's left hand. One is material in the sense of large enough to be important and the other is material in the sense of materialistic — a physical or financial benefit — so we need to ask some questions about exactly who is in and who is out as a result of this new clause.

It is a great comfort that projects such as the north–south pipeline were considered under the Environment Effects Act 1978 because that does not have these types of restrictive provisions in it. We would have all been screaming if the previous government had tried to amend the Environment Effects Act 1978 in this way in relation to that proposal or any other, but in the case of this legislation we have yet another example of a special deal for Alcoa. I therefore ask the minister: in relation to a material and established interest, does an Anglesea family with an asthmatic child qualify for this privilege of being consulted?

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — Clause 21D in its various parts sets out a process by which approval for the extension of the mine is sought. I am quickly trying to thumb through those particular parts of clause 21D to see whether part of that consultation process would involve notification of members of the local community. I am going to check that particular provision. As part of the work plan for an extension to the mine there needs to be a consultation plan approved by the minister. As such, it would be up to the minister whether that consultation plan, as proposed by the proponents of the mine extension, includes the general public.

**Mr BARBER** (Northern Metropolitan) — I am not talking about what conditions might be put on the company in its consultation process; I am talking about clause 21D(7), which says:

> If an EIMR is required —

that is, required by the minister responsible for this act after considering the advice of the minister administering the Environment Effects Act 1978 in relation to an earlier clause —

> the Minister administering the Environment Effects Act … must promptly specify the scope for the EIMR …

One of the objectives that minister must consider in deciding the scope is clause 21D(7)(c), which states:

> the objective of limiting consultation on the EIMR to sections of the public that have a material and established interest …

The bill as much as says that the minister must — it does not say must but it is pretty clear that minister is going to — limit the scope of the EIMR and consultation on it to sections of the public who have a material and established interest. If this was being done under the Environment Effects Act 1978 and there was any question over standing, we would be back to the case law. Standing has always been argued about, but standing in Australia on environmental matters is fairly wide.

I would have no problem gaining standing in respect of the Environment Effects Act 1978 or another matter that was being appealed to the Victorian Civil and Administrative Tribunal. Senator Brown got standing in his case of *Brown v. Forestry Tasmania*. I have no doubt that the Geelong Environment Council or even a newly-arrived-on-the-scene group like Anglesea Air Action would get standing, but here the standing is being limited to a material and established interest in the extension of the mining and the significant additional impacts which were listed in the definition. There is nothing in there about greenhouse gases. There is something kind of vague in there about amenity. Hopefully that applies to air pollution. Therefore I am urgently seeking clarification as to what sections of the public are likely to have a material and established interest in relation to the extension of the mine.

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — In pondering this question one might therefore think about who are those persons and sections of the public who have a material and established interest in the significant additional environmental impacts that have been identified. The minister of the day would have to make a judgement about whether a person who lives in my electorate in Gippsland might have a material and established interest as opposed to somebody who lives locally in Anglesea with its significant additional environmental impacts, so it is a question of judgement.

I cannot answer Mr Barber's specific question about an extension to a mining operation. It would be dependent upon the nature and size of that extension and whether the minister of the day, a current or future minister, would have to make that judgement about who would come under those particular provisions of clause 7(3) in this agreement. I can only answer in this way — that is, that at any one point in time the minister of the day would need to make a judgement on who has an established and material impact given the nature of the proposed extension.

**Mr BARBER** (Northern Metropolitan) — Clause 21D(9) of proposed schedule 2, which is headed 'Amendment Agreement', removes any possibility of a public hearing being held. Despite references to the Environment Effects Act 1978 throughout this section, it is nothing like that act. Generally speaking procedural fairness, including the right to be heard, is seen as a defendable common-law right. It is pretty clear that the government here is legislating away that right. When it comes to the impacts of mining we know that one of the reasons there are such high levels of particulates — particularly those dangerous particulates, the 2.5 microgram and smaller particulates — is that we have not only a coal-fired power station but a mine right next to it, and those fine dust particles come from both sources. You would hope that someone who was breathing that dust would have standing to have some role in this particular assessment. They will not be heard publicly.

I think it is extremely unlikely that further downstream environmental impacts and the more general public interest could be heard in this process. In environmental case law there has been, in addition to who has got standing, a lot of discussion about further and downstream impacts of proposals.

In the Nathan Dam case, for example, the government wanted to build a dam, and it wanted to see an assessment of the environmental impacts on the site of the dam. The environment groups went in and argued that the water from the dam was going to be used to expand cotton irrigation, which was going to put dirt into the rivers which would wash out to sea and affect the Great Barrier Reef Marine Park. The Federal Court backed the view of the environment groups that you could not simply look at the immediate on-site localised impacts of a proposal; you had to look to some extent downstream, or in this case in the air shed or even wider. It is pretty clear to me that the government is setting this up so that only the narrowest set of impacts upon only the narrowest group of people will be considered.

Make no mistake, I think aluminium is good stuff. It is light, easy to work with and very versatile. I support aluminium and the production of aluminium, but I do not support the burning of coal to power that aluminium, and that is why we have spent so much time trying to understand what it is that the government intends with this legislation. Despite all the hype, there has not been any environmental improvement from this exercise. Rights of citizens, if anything, have been limited. The government's thinking has not progressed over the years from 1961, and the company has had its way. Unfortunately shortly there will be a vote where the Labor and Liberal parties will be lined up on one side of the chamber, with The Nationals, and the Greens on the other side.

**Clause agreed to; clause 13 agreed to; preamble agreed to.**

**Reported to house without amendment.**

**Report adopted.**

*Third reading*

**Hon. P. R. HALL** (Minister for Higher Education and Skills) — I move:

That the bill be now read a third time.

I again thank members for their contributions to the debate on the bill and their patience while various interests of members were explored during the committee stage.

**House divided on motion:**

*Ayes, 36*

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

*Noes, 3*

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

**Motion agreed to.**

**Read third time.**

## INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION BILL 2011 and VICTORIAN INSPECTORATE BILL 2011

*Second reading*

**Debate resumed from 10 November; motions of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).**

**Hon. M. P. PAKULA** (Western Metropolitan) — I am pleased to rise to make a contribution to the Independent Broad-based Anti-corruption Commission Bill 2011 and the Victorian Inspectorate Bill 2011. I think it is sensible that we debate these bills cognately because, frankly, if we dealt with them separately, there would be very little to talk about.

The opposition will not be opposing the bills. We are going to seek to amend both bills, but again there is not much to oppose because what is being presented by the government is not the Independent Broad-based Anti-corruption Commission. It is certainly not the IBAC that was promised — the one that was going to be up and running on 1 July 2011, fully functional and fully operational.

It is not even the legislation that will give form and substance to IBAC. It is merely a piece of shell legislation — in fact, two pieces of shell legislation — that was rushed out during the last sitting week in the lower house in a failed attempt to draw attention away from the Office of Police Integrity report, *Crossing the Line*. Rather than a fully formed piece of legislation that outlines the powers of the commission, outlines a definition of corruption and outlines a start date for IBAC, what we have is a piece of legislation that simply creates a shell to give the impression that the government has met its second commitment, which was to have legislation in the Parliament before the end of this sitting year.

The first commitment has already gone by the wayside — the one about having an IBAC up and running by 1 July. The former government, in the last term, said over and over again that the Liberal Party's commitment to have an IBAC up and running by 1 July was a commitment it could never adhere to. The then Leader of the Opposition, Mr Baillieu, and the member for Kew in the Assembly, Mr McIntosh, time and again accused the Brumby government of being deceptive and of telling untruths about the then opposition's policy, and insisted that the coalition would indeed have an IBAC up and running by 1 July. The Labor Party always said it was not doable. The Labor Party always said the Liberal Party had grossly underestimated the complexity of doing it. But during the election campaign the Liberal Party chose not only to ignore but also to dispute the contentions of the then government. The Victorian community has been expecting to have an IBAC for the last five months, but it now looks like it will not get one for many months to come.

Having said that, the bill is not opposed. We are seeking to amend it. There are gaping holes in the bill. There are delays which continue to hinder the creation of IBAC. There are examples accruing by the day which demonstrate why an IBAC is needed sooner rather than later. A further example was brought to the public's attention today, with the dodging, weaving and prevarication from the Minister for Environment and Climate Change during question time in the Assembly when he was asked simple questions about whether he was in the cabinet room when a $50 million grant was made to a company that he holds shares in. Two and a half hours went by before a carefully crafted, carefully worded statement was put out by the government that said the minister is not on the cabinet committee which dealt with that particular issue, ignoring the fact that decisions of cabinet committees are always returned to the cabinet for endorsement.

Still we have no answer on whether the minister who holds shares in a company that received a $50 million grant from the government was in the room when cabinet made that decision, or on whether he declared a conflict and removed himself from the cabinet room. Instead of a straight answer to those questions what we had was 2½ hours of silence followed by a very carefully worded statement put out by central casting. It is the same pattern we have had over and over again when ministers of this government have been presented with difficult questions.

The government has had a year now to get this legislation right, and not just a year, because that is just the time members opposite have had in office. They have also had all those months and months before they were elected when they were supposedly developing their IBAC policy, and when, we were led to believe, they were developing the legislation. There has been at least a year, more like two years, during which those opposite have had the opportunity to develop a fully formed piece of legislation to bring to this Parliament, complete with all the detail and information that would be necessary to actually start up the Independent Broad-based Anti-corruption Commission.

If you look at the state budget, which allocated $85 million over five years for IBAC, it said, in budget paper 3 at page 67:

> The government is committed to fighting corruption across the public sector in Victoria and raising transparency to the highest standard and accountability.

I am not going to use this opportunity to go over yet again my arguments about the way in which this government, rather than improving transparency, has shut it down at every turn. I have been over those before, but I will provide the house with some of the highlights.

We have seen the centralisation of freedom of information decision making in the office of the Premier, with the review of FOI decisions undertaken not by an independent departmental officer but by the Premier's chief of staff. When Don Coulson makes an FOI decision and someone objects to it, the person who reviews that decision is Michael Kapel, the Premier's chief of staff. We have seen the refusal of the Deputy Premier to answer questions about his discussions with Mr Tilley, the member for Benambra in the other place, in relation to the Office of Police Integrity report. We have seen the failure of the government to bring forward its government advertising review panel bill and the failure of the government to bring forward its FOI commissioner bill. There are dozens and dozens of examples.

Just today I received more answers to questions on notice from the government. Specific questions were directed to specific ministers about the issuing of transport tickets, the issuing of parking spaces and the number of departmental officers working in their offices. The answer I received was, 'You will get a whole-of-government response'. Last week I raised this with the Leader of the Government and asked, 'Where are the whole-of-government responses?'. Still no appearance, Your Worship. This is a government that in the budget said it was 'committed to raising transparency to the highest standard and accountability'.

Again, in this legislation not one of the primary functions of the Independent, Broad-based Anti-corruption Commission is created. There is no capacity to investigate corruption provided by this bill. There is no definition of corruption and no definition of corrupt conduct. It is a bill which falls a long way short of meeting the Premier's election commitments. At best it is a start, but it is a start that fundamentally fails to deliver on very significant election commitments. Some would say they are the most significant commitments made by Mr Baillieu when he was in opposition.

We are still waiting for the ministerial code of conduct. We are still waiting for any form of codified powers of investigation. We are still waiting to see a clear jurisdiction for IBAC and for the inspectorate. In the form in which they have been created in this bill none of the checks, balances or accountabilities promised by the government have been created.

We have seen ongoing campaigns by people connected with this government that have had the effect of eroding confidence in incredibly significant public offices in the state — the office of the Chief Commissioner of Police, the office of the Director of Public Prosecutions (DPP). These are not trifling matters; these are incredibly serious matters, particularly for a government that prides itself on making law and order and community safety amongst its highest priorities.

Given the diminution of confidence in those offices, given the undermining of the DPP, given the undermining of the chief commissioner and given the refusal of ministers to answer simple questions that would lend more transparency to what they do and provide more accountability as the government promised it would, it is more important than ever that this IBAC has clear powers and is up and running if not by 1 July, because that time has now passed, then within six months of that date, which I think most people would have expected and which would be a reasonable target for this government to aim for. But given that we have only a shell of a bill before the Parliament today the government will not achieve that date either. We certainly will not have an independent, broadbased anticorruption commission by 1 January. Will it be up and running by 1 July 2012? We do not know yet, but on current form it looks highly unlikely.

Ms Hennessy, the member for Altona in the other place, spent a great deal of time going through the mechanics of the bill and all the things that the bill does. Given the hour and given the fact that as I understand it the Leader of the Government will require us to remain here until debate on this bill is concluded, I think, Acting President, you may agree with me that it would be productive for the house if I did not go through all that detail again.

**The ACTING PRESIDENT** (**Mr Finn**) — Order! Far be it from me to take a position on this from the Chair, but I would not argue with the member.

**Hon. M. P. PAKULA** — As I said, Ms Hennessy went to the detail of the question of IBAC's powers,

functions and roles. Whilst it is true that the objects of the bill refer to the investigation and exposure of 'corrupt conduct', the bill does not give us any insight into the promised powers of investigation. The government says that those powers will be set out in bills that will be introduced in the remainder of 2011. I do not know whether that will be tomorrow or in the next sitting week, but clearly the Parliament will not get a chance to debate or pass those bills before the end of the parliamentary sitting for 2011.

The bill does confer a general power upon IBAC to do all things that are necessary or convenient to be done in order to achieve the objects of the bill and the performance of its duties and functions. Again they are incredibly general powers. Frankly, how they will ultimately be used is anybody's guess and I am not going to hazard a guess, but as it currently stands, even if this bill passes tonight, the focus of IBAC until we see more detail is going to be confined to educative and preventive activities rather than any enforcement of anticorruption activities.

I want to spend a bit of time talking about the Independent Broad-based Anti-corruption Commission Committee. IBAC is not subject to the control or direction of the minister, but as the bill currently reads the first IBAC Commissioner is able to be appointed without the requirement for consultation with the IBAC joint house committee. This is a very important point that goes to the substance of the opposition's amendment in regard to IBAC.

There was a very clear commitment made by the now government in the lead-up to the last election that there would be a joint house committee that would in effect have the power to oversee or veto the appointment of the IBAC Commissioner. This first Commissioner will be appointed for five years, so for the life of this Parliament and halfway into the next one, the government has given itself a get out. On the appointment of the first IBAC Commissioner the government says, 'We didn't mean for that provision to apply to the first Commissioner. We will appoint the first Commissioner. We will consult with the Leader of the Opposition'.

I know what that means: 15 minutes before an announcement is made the Leader of the Opposition will get a call telling him who the appointment is. That will be the consultation. It is not as if the Leader of the Opposition will have any real say or any real input; it will be a courtesy call just before the Premier and the Minister responsible for the establishment of an anti-corruption commission, Minister McIntosh, front the media to make their announcement.

In its current form the bill gives the IBAC Committee a veto power on the second and subsequent appointments of the Commissioner. That is as it ought to be for the first Commissioner and that is what was promised by the government for the appointment of all commissioners — not for the appointment of the second and subsequent commissioners, but for the appointment of all IBAC commissioners. Whilst we will go through the amendment in more detail when we get to the committee stage, that is the substance of our amendment. The substance of our amendment is: what is good for the second and subsequent commissioner ought to be good for the first commissioner.

It is not as if there is a hurry. There is no structure in place, there are no powers defined and there is no definition of corruption. It is not as if the government can argue that it needs to appoint someone in a hurry and that there will be no opportunity for the committee to meet because this has to be done now or tomorrow. The fact is that none of the real apparatus of this commission is being put in place by this bill. All that is being created by this bill is a shell, and so there is no reason whatsoever why the government cannot apply to this appointment exactly the same rules that it will apply to the second and subsequent appointments.

I could go on and on. Again the structure of IBAC was covered in detail by the member for Altona in the other place, and given that there are going to be a range of questions raised during the committee stage along with an amendment that will be moved by me and which no doubt will also be the subject of debate, I will take this opportunity to move on briefly to the Victorian Inspectorate Bill 2011, which is the other element of this cognate debate.

Before I leave discussion of the IBAC bill itself, I wish to say that this bill really does nothing more than create a statutory framework for a body that can undertake some educative work and potentially some prevention activities. It can do no more than that. Given the delays we have seen in the year that the government has had and given that the government had a commitment to have not just a bill introduced but the commission fully functioning and up and running by 1 July, it was the expectation of the opposition that when the bill finally came to the Parliament we would see more detail and more grunt than we have in fact seen.

**Mrs Peulich** interjected.

**Hon. M. P. PAKULA** — Mrs Peulich, that is my point. Why do we have a piece of legislation that is just a framework? Why do we not have the bill that has the detail? Why even bring to the Parliament a piece of legislation that only provides a framework? This framework could easily have been included in the bill that is still to come, which actually fills in the colour, which actually provides us with the definitions and which provides the inspectorate with its powers. I will tell the house why. It is because a couple of sitting weeks ago the government wanted to create the illusion of action on an IBAC Committee to deflect attention from other matters before the Parliament, including the Office of Police Integrity report.

**Mr O'Brien** interjected.

**Hon. M. P. PAKULA** — Mr O'Brien from The Nationals clearly believes the resignation of the Parliamentary Secretary for Police and Emergency Services, Bill Tilley, a member of the Liberal Party, is nothing. I reckon that some of Mr O'Brien's coalition colleagues have a slightly different view from his view that it is nothing.

**Mr O'Brien** interjected.

**The ACTING PRESIDENT** (**Mr Finn**) — Order! It would be most helpful to the Chair and to the house if Mr O'Brien were to cease interjecting. It would also be most helpful to the house if Mr Pakula did not take up interjections, which are most unruly.

**Hon. M. P. PAKULA** — As you know, Acting President, it is always my intention to avoid responding to interjections where I can, no matter where they come from. I am just making the point that some persons might want to apprise the member for Benambra of the views of his colleagues.

I move on to the Victorian Inspectorate Bill 2011. Again, we are not opposing this bill, but we are going to move an amendment that is almost identical to the one we will move with regard to the IBAC legislation. The appointment process for the inaugural inspector is different to the appointment process for the second and subsequent inspectors, and again we see no reason for that. We see no justification for the fact that the Inspector should be appointed by the government and the government alone, when there is a separate process put in place for the appointment of subsequent inspectors. We will be moving that amendment during the committee stage, and I imagine that it will be a complex committee stage given that the bills are being debated cognately.

As members are probably aware, this bill establishes the Victorian Inspectorate, which is about providing some oversight for IBAC. It is an important oversight body. You do need someone effectively watching the watcher, and the inspectorate that is being created as a consequence of this bill effectively mirrors models that are operating in New South Wales and Western Australia. The Inspector will oversee the functions and operations of IBAC, will be able to look into its internal policies and procedures and make sure it is adhering to its enabling legislation, and will generally have a remit of ensuring that the IBAC staff are conducting themselves appropriately in terms of the pursuit of IBAC's overall objectives. Again, it is an important accountability step.

Of their nature, anticorruption commissions can be like any other statutory authority to the extent that they have a budget, they have a remit and they are populated by human beings; nobody is infallible — even those people who work for an organisation such as an anticorruption commission. Having an inspector with an oversight role can ensure that those very significant powers, which I have no doubt will ultimately be provided to IBAC when we get the detail, should not be abused. People's reputations and careers are on the line and sometimes people's liberty might be on the line. To have an inspectorate that ensures that those very significant powers are not overstepped and are not abused is an important part of the overall accountability framework.

The inspectorate will be led by the Inspector, an independent officer of the Parliament not subject to ministerial control. You have to have someone eligible to be appointed as a judge, a person who has not previously held a senior role within IBAC. Importantly, unlike the IBAC Commissioner, the Inspector can be reappointed for a second term. That may well help in terms of providing some continuity of oversight regardless of which individual is in the chair as the IBAC Commissioner, but, as I have indicated, in relation to the first appointment the only obligation on the government is to consult with the Leader of the Opposition. I fully expect that consultation will take the form of a phone call just before the Premier is about to make an announcement about who the Inspector will be. Again, we do not know when that will be. We do not know when more detail or more legislation will be provided, but hopefully it is not too far away.

**Mrs Peulich** — You did not ask for a briefing.

**Hon. M. P. PAKULA** — Mrs Peulich has asked me whether I have had a briefing on it. The shadow

minister, Ms Hennessy, the member for Altona in the Assembly, has had a briefing.

**Mrs Peulich** — Why don't you have a briefing?

**Hon. M. P. PAKULA** — Mrs Peulich, I get briefed on those bills — —

*Honourable members interjecting.*

**The ACTING PRESIDENT** (**Mr Finn**) — Order! I say to Mrs Peulich, Mr Pakula and Mr O'Brien that it would be very helpful to the chamber if we kept our conversations to a minimum, and if a conversation needs to be had, please have it outside the chamber. Mr Pakula can continue with his contribution unassisted.

**Hon. M. P. PAKULA** — Through you, Acting President, let me say that I get briefed on lots of bills, as I am sure Mrs Peulich knows. No-one has introduced more bills to this Parliament than the Attorney-General, and in my capacity as shadow Attorney-General and shadow Minister for Gaming I have attended many bill briefings with officials from the Department of Justice. Ms Hennessy, as the shadow minister for the anticorruption commission, was provided with a departmental briefing on this bill. Mrs Peulich says Ms Hennessy offered me a briefing. I have had many discussions with Ms Hennessy about this, and I can tell Mrs Peulich that Ms Hennessy was provided with no more detail at the briefing than the detail that I am providing to the house today.

The government has not been able to give the opposition an indication of when the legislation that colours in this black-and-white drawing — that provides the definitions, powers, limitations on powers or any of that other detail — will be brought to the Parliament. It is not a question of whether someone goes to a briefing, it is about whether the government is ready to give us the answers, and so far it is not.

**Mr Leane** — It would have been a very brief briefing.

**Hon. M. P. PAKULA** — Indeed, Mr Leane, it would have been. Yet again, the legislation says the appointment of a second or subsequent Inspector — and members should remember that the first Inspector can be reappointed, so we might be talking about 10 years from now or even later — will be subject to veto by the IBAC joint house committee. Again, there is no pressing urgency; it is not as if the Inspector has to be appointed tomorrow. If it is good enough for a second or subsequent Inspector to be the subject of a veto power by the IBAC Committee and to encumber a future government with that obligation, why is the government not prepared to encumber itself in the same way? Why is the coalition trying to weasel out of its commitment that this would not just be an appointment at the government's fiat?

Now that the legislation has been brought before the Parliament we have a situation where the government says, 'We will give to ourselves the absolute authority to appoint the IBAC Commissioner and the Inspector without any oversight or veto from the parliamentary committee, but when future governments have to make appointments they will be subject to a standard that we are not prepared to apply to ourselves'. That is what the government is effectively doing with the way it has structured the bill, and that is what the opposition will seek to rectify when we move our amendments in the committee stage.

In conclusion, the amendments we will seek to move are important. For the community to have confidence in IBAC and the Inspector, they need to be assured that the process, the Commissioner and the Inspector will be rigorously independent. They will have that confidence if the government agrees to amendments that say the government should apply the same test, rules and standards to the appointment of the first Commissioner and Inspector as it proposes to apply to those who will be appointed 5 or 10 years from now. If the government is not prepared to apply that test and provide these officers with the same level of independence — engendering the same level of public confidence in them through the application of an unimpeachable process — the public is entitled to ask why and to draw its own conclusions.

Given all the secrecy we have seen and the government's failure to implement the transparency and accountability agenda it made so much of when in opposition — whether it is about freedom of information, government advertising, the government's refusal to answer questions in Parliament or outside Parliament, or the government's practice of dodging and weaving around important issues of probity and accountability until it has had time to sit down with its spin doctors and craft statements where the words are chosen very carefully — the public is entitled to ask why neither the Commissioner nor the Inspector will be provided with the level of independence the coalition promised before the election and to ask what the government has to hide.

We will not oppose these bills, but if the government wants these authorities to have the level of public

confidence they deserve, it must support the opposition's amendments.

**Ms PENNICUIK** (Southern Metropolitan) — The Greens' first ever motion in general business in the Parliament of Victoria was moved on 22 August 2007. It was a motion moved by Mr Barber calling on the Attorney-General to refer the establishment of an anticorruption commission to the Victorian Law Reform Commission. That motion was supported by the coalition and subsequently adopted as policy. It was opposed by the previous government, which for two more years continued to resist calls from both the Parliament and the community for the establishment of an independent commission against corruption.

When faced with the possible establishment by Mr David Davis of a Legislative Council select committee the government suddenly decided to set up its own inquiry. In November 2009 it requested that the public sector standards commissioner, Mr Peter Allen, and special commissioner, Ms Elizabeth Proust, review the efficiency and effectiveness of Victoria's integrity and anticorruption system, including the Auditor-General, the Local Government Investigations and Compliance Inspectorate, the Office of Police Integrity, the Ombudsman and Victoria Police. That report was tabled on 31 May 2010.

Unsurprisingly the Proust review found that there were gaps in the existing system and that it needed to operate as a more collective and cohesive system. The Proust review recommended that the rights of people involved in investigations, both members of the public and officials, be explicitly enshrined in legislation. That goes to a point made by Mr Pakula — that is, that when we are setting up standing commissions of inquiry we need to be careful that people's reputations are not unnecessarily and unjustly impugned. The Proust review also recommended that the Local Government Investigations and Compliance Inspectorate should be independent of the executive government, but currently it is not, and it is also very secretive about its operations and reports.

The Proust review recommended that the Office of Police Integrity be maintained and that its jurisdiction be extended to include unsworn officers and to improve its oversight. That is not the policy of the current government. However, in its document entitled *Victorian Liberal Nationals Coalition Plan for Integrity of Government* the current government states that an independent, broadbased anticorruption commission (IBAC) will be based on the New South Wales system — although from the bill in front of us we are not quite sure.

Under the New South Wales system the Independent Commission Against Corruption was established in 1989 and there was no Police Integrity Commission, but seven or eight years later the Police Integrity Commission was established in New South Wales. As I have mentioned in this house many times before, the two organisations exist together. I suggest that the New South Wales government found that that was a better model. Initially the Independent Commission Against Corruption operated without a Police Integrity Commission, and then one was established later.

My view of the Proust report is that it contains a lot of good ideas. It is a very interesting document to read, but perhaps the proposed model is too siloed and complex. We have waited a long time to debate the establishment of IBAC. Today we are engaged in a cognate debate on the IBAC bill and the Victorian Inspectorate Bill 2011. However, I concur with Mr Pakula's view that the bills we have before us are somewhat shallow: there is not much to them. They have been described as 'framework bills' and 'enabling bills', but they are really bills without much substance whatsoever. I have to concur that a possible reason for that is so the government is able to say it introduced legislation that sets up the Independent Broad-based Anti-corruption Commission as it said it would, but it is worth noting that the bill will not actually commence until July 2012, so the statement is not accurate.

Ms Hennessy, the member for Altona in the other place, talked a lot about how the government's promise was that it would have IBAC up and running by July. Nobody really expected that to happen, because if you are going to introduce legislation to establish a broadbased anticorruption commission plus an oversight body, fit it within the integrity bodies that already exist in Victoria and make sure it works with those bodies and ensure that the powers, functions and roles are set out correctly, it is not going to be possible in six months. I was never in the camp that was critical of the government for taking its time in setting it up and getting it right. The opposition has made a lot of that, but it is a bit rich of the opposition to make that point given that when it was in government it was dragged kicking and screaming into setting up a review to look at the anticorruption system in Victoria two years after we asked the then Attorney-General to do so in August 2007; it was not until November 2009 that that happened.

I am not in the camp that says we needed to rush this legislation. I am disappointed to see that we have a bill before us that really does nothing. As the Law Institute of Victoria wrote in its letter to the Minister responsible for the establishment of an anti-corruption commission, it would have been preferable to see the whole package. It is a bit difficult for us to judge this bill in terms of — —

**Business interrupted pursuant to sessional orders.**

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I move:

That the sitting be extended.

**House divided on motion:**

*Ayes, 20*

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

*Noes, 18*

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

*Pair*

| | |
|---|---|
| Kronberg, Mrs | Darveniza, Ms |

**Motion agreed to.**

**Ms PENNICUIK** (Southern Metropolitan) — Alas, Acting President, I am still going. We have just extended the sitting so that we can deal with these two bills in a cognate debate. We opposed the extending of the sitting because there is nothing urgent about the bills we have in front of us now. The bills will not commence until July 2012, or that is the date they will commence if they are not proclaimed beforehand. There is no rush; they do not have to be proclaimed by 31 December. There is no reason why we should extend the sitting of this house unless there is an urgent reason to do so. There is no urgent reason in front of us now. The bills are not substantial bills. They are just bills with a shell around them and nothing inside. They are non-bills.

However, there are still questions to be raised about the bills. We raised the issue about the establishment of an anticorruption commission several times during the last Parliament. For example, on 5 December 2007 I raised it in debate on the motion on police corruption which followed the annual report of the Ombudsman, who was at the same time director, police integrity, at the OPI (Office of Police Integrity). He stated that there was a picture emerging of corruption in Victoria Police which involved relationships between police and criminals. I pointed out then that the OPI had no jurisdiction beyond sworn police and that that needed to be amended.

I also raised the issue of the establishment of an independent commission against corruption on the debate on the Police Integrity Bill 2008 in May and June 2008 and on the Major Crime (Investigative Powers) Bill of October 2008. I raised the issue when I was speaking on my own motion about political donations, particularly from property developers, and my request on 25 November 2009 that both major parties desist from accepting them. I also raised it in response to Mr Dalla-Riva's motion regarding documents about the OPI's prosecution or failure to prosecute a former deputy commissioner of police on 24 March 2010, at which time the opposition — now the government — seems to have gained its mystifying animosity towards the OPI, which persists to this day.

Turning to the bill, Mr Pakula mentioned that Ms Hennessy had gone into the provisions in the bill. As we have said, they are rather light on, but they are worth going through. Mrs Peulich said it is a framework. As I mentioned earlier, I think we should have had the whole package before us. I do not see why we have a framework. Clause 3 of the bill contains the definitions of the bill, but as Mr Pakula pointed out, there is no definition of corruption in the definition section in the bill. There is also no definition of corrupt conduct. I note that the Liberal Party's document has a definition of corruption, which it could have included in the bill.

It is interesting that the other crime and misconduct commissions — for example, the Crime and Misconduct Commission in Queensland, the Independent Commission Against Corruption in New South Wales and the Corruption and Crime Commission in Western Australia — have extensive definitions of corruption. In fact the definition in the ICAC goes to about two pages, as to what corruption is.

My point is that clause 4 provides the objects of this bill, which are to prevent corrupt conduct and to prevent corruption. I am not sure how the provisions of that clause could actually be implemented without the definition of what corruption or corrupt conduct can be. In effect this bill cannot operate because it cannot prevent something or educate the public service about it if it is not defined.

Clause 4 says that one of the objects of the commission is to educate the public service and the community on the prevention and detrimental effects of corrupt conduct. I wonder how that is going to cross over with the current role of the public service commissioner, which is in fact the same thing: to educate the public service about corruption and how to avoid it. The other missing definition in the definitions clause, clause 3, is a definition of misconduct. We are not quite sure whether this commission, even though it is called 'broadbased', is actually going to look at misconduct as well as corruption. That is an important question that the government needs to answer.

Clause 9, which outlines the functions of the Independent Broad-based Anti-corruption Commission, should be one of the most important provisions in the bill, and presumably it will be amended when the more substantial bill is introduced. For now it says:

> The IBAC has the functions conferred on the IBAC under this Act or any other Act.

The clause then lists IBAC's preventive and educational functions. All anticorruption commissions have those preventive and educative functions. They are essential functions of such a body; however, it is unclear how they can be carried out given the way this bill is structured.

According to the bill IBAC is independent of the minister and reports directly to Parliament, and the Commissioner will be an independent officer of the Parliament, which is crucial. Mr Pakula proposes to move some amendments that will address clause 15, which deals with the appointment of the Commissioner. In the first instance that appointment will be by the Governor in Council on the recommendation of the minister. My question about that is: how will a commissioner appointed by the Governor in Council on the recommendation of the minister be, both actually and in perception, independent of the executive government?

Earlier this year I moved a motion in the Parliament for the establishment of an independent commissioner for public appointments as exists in the United Kingdom. I suggest that Victoria could lead the way in this regard and that appointments such as the IBAC Commissioner, the Inspector, the Chief Commissioner of Police and the heads of major statutory authorities could be appointed by this commission, which is what happens in the UK. That would keep the appointments completely at arms-length from government. If the minister recommends who should be appointed, and if that person is appointed by the Governor in Council, that is not independent of the executive.

On the oversight and veto function of the parliamentary committee, I will be asking the minister in the committee stage what will be the make-up of the oversight committee. The committees around the country differ. The New South Wales oversight committee, for example, is made up of six Liberal-Nationals members, three ALP members and a Christian Democrat, so it is a government-controlled committee. The Queensland Crime and Misconduct Commission oversight committee has four ALP members, two Liberal-National members and one Independent member, so it also is a government-controlled committee. In Western Australia the Corruption and Crime Commission oversight committee is an evenly balanced committee, with two Liberal and two ALP members. The Tasmanian Integrity Commission oversight committee has two ALP members, one Greens member, two Liberals and one Independent, so again it is a balanced committee.

This is an important issue that the government should turn its mind to. Obviously this bill provides the structure that allows the committee to be set up under the Parliamentary Committees Act 2003, but who is going to be on the committee is an important matter. Clauses 14 and 15, to take an example, refer to the appointment of the Commissioner and the role of the oversight committee, including a veto, in that process. If the committee is government controlled, it is unlikely to veto a recommendation by the minister. That is why I go back to what should happen — that Victoria should modernise its system and enhance the integrity system it is trying to set up.

Victoria is trying to set up an enhanced integrity system to improve upon what currently exists, which needs improving upon. We all agree on that; it was outlined in the Proust report, and I have mentioned it many times in the Parliament, as has Mr Barber. We need to improve the system, as I say, and one of the ways to improve it would be to remove the responsibility of appointing these types of independent officers and statutory authority heads et cetera from the government

of the day and have them appointed by an independent commission. It has worked well in the UK, it is something that can work well in a Westminster system such as we have and it is something we should adopt. I urge the government, before it brings back further legislation, to rethink the way in which the Commissioner, the Inspector and other major office-holders in the state are appointed.

The bill also provides that IBAC will report directly to Parliament on an annual basis; it will be required to do that. As it wishes it can also table other reports on particular issues. The opposition proposes to move amendments to clause 15 of the bill which, if we are going to go down the road of the appointment process outlined by the bill — including a veto power of the committee — would provide that the veto power applies from the first appointment.

In a practical sense that would not be difficult to achieve. The way to achieve that would be to ensure that the first thing to be set up would be the parliamentary committee. That could be done with passing of this bill, because clauses 39 and 40 in division 2 of the bill allow for the establishment of the joint house committee. That could be done straightaway so that the opposition's amendments could easily be accommodated. That certainly would be an improvement on the model currently proposed, according to which the first Commissioner would be appointed by the Governor in Council on the recommendation of the minister. As I said, that is not independent of executive government in any way, shape or form.

It is really important if we are setting up the Independent Broad-based Anti-corruption Commission that it is and is seen to be independent of the government of the day. I think these are seminal issues that probably have not been thought through enough.

The bill sets up the terms of the roles of Commissioner and deputy commissioners. The Law Institute of Victoria has written to the government suggesting that the positions do not expire at the same time. The Inspector could be appointed for a non-renewable term of seven years instead of five years so that he would continue on past the time of the first Commissioner. It would allow someone to have some experience in the role, and when the second Commissioner commences the five-year term there would be an Inspector already in place. That could expire two years into the term of the next Commissioner et cetera, so there would be an overlap, which would be a good thing.

There are some other issues that I would like to raise, such as the openness and transparency of the consultation process and the drafting process for IBAC, which has basically been non-existent; it has not been open and transparent. There was a consultation process conducted by the Honourable Stephen Charles, QC, which was done in secret. I am at a loss to understand why that was, because the structure, functions and powers of integrity commissions across the country are well known and there should be public input into the process we are going through in Victoria. It is disappointing that the government has been going through this process for the last 12 months in secret and it has now just popped out this bill in the second-last week of this parliamentary sitting. I suggest that the establishment of IBAC should be totally open and transparent.

I am not sure whether we will see follow-up legislation this year or early next year, but whenever it happens I suggest that the government should allow the public sufficient time to consider any further bill that outlines the functions, the scope, the jurisdiction and particularly the powers of IBAC and that it does not try to rush it through, particularly this year; it is too important for that. As I said before, I am not in the camp that says this has to be rushed through. I have not criticised the government for not having the bill before us now. I would rather see the bill presented with the details about the powers — and the coercive powers in the bill are the important parts of the anticorruption commission. The public as well as members of Parliament should be given enough time to scrutinise and digest it, because it is important to get it right in the first place. I do not think you can do that by rushing things through.

I mentioned in the debate we had on the Office of Police Integrity report, *Crossing the Line*, that I thought the private meeting between the minister responsible for IBAC and Sir Ken Jones, as outlined in the report, was questionable. I think it was unwise and disappointing. Again, unfortunately it undermined the process of setting up an IBAC to have a minister approach somebody in such a way. I think, as I mentioned earlier in my contribution, appointments to these types of roles should be completely open and transparent. That was disappointing, and it is ironic that we are talking here about setting up the Independent Broad-based Anti-corruption Commission when its establishment has been surrounded by secrecy and private meetings. It is contrary to what should be happening with its establishment. I am really at a loss to understand why the government is being so secretive, and I encourage it to publish the report of the Charles

inquiry and any other documentation on its website so the public of Victoria can have a look at what it is proposing.

The government says in its document *Victorian Liberal Nationals Coalition Plan for Integrity of Government* that any member of the public will be able to raise issues with IBAC, so they should be familiar with the process for its establishment and how it will work et cetera. In the document, and I have to rely on this document because the bill does not give me any detail, the government says IBAC will be a one-stop shop, fighting corruption across the entire public sector'.

Again, it does not mention misconduct; that is missing. It says it will include local government, the judiciary, the police, ministers and members of Parliament and their staff, and I hope the government will address the issue of its staff. Will it include ministerial advisers and chiefs of staff, for example? It also says it will include public servants. I raise the issue again of whether and how the educative process will cross over with the public service commissioner.

On page 8 of the document it states:

> To protect Victoria's other integrity bodies a Liberal-Nationals coalition government will:
>
> > establish a joint standing committee of the Parliament dedicated to the Ombudsman, the privacy commissioner, the commissioner for law enforcement data security and the Liberal Nationals coalition's proposed FOI commissioner.

They are also parts of the integrity system that need to be enhanced. We have not seen the freedom of information commissioner, and we have not seen the joint committee to oversee the Ombudsman, the privacy commissioner or the commissioner for law enforcement data security either. In the last Parliament I moved that there be a committee to oversee the Office of Police Integrity and also that the Electoral Matters Committee oversee the electoral commissioner; none of those things has happened either. The document also states that the coalition will:

> ensure that the Auditor-General has the right to report to Public Accounts and Estimates Committee at any time of its choosing.

That is also a good recommendation, but it is yet to be seen.

If we are looking at integrity and misconduct and making sure the public has faith in the police, another outstanding issue is the establishment of an independent investigation into deaths associated with police contact as recommended by the Office of Policy Integrity this year and as moved by me in the previous Parliament. The current situation where the ethical standards department, which is internal to the police, investigates the circumstances surrounding the death or injury of people or abuse of their human rights at the hands of police is not satisfactory. The government should take the opportunity it has before it now to look at the whole integrity system.

There are some other questions that the bill raises. If we look at the parliamentary library's current issues brief on the Independent Broad-based Anti-corruption Commission Bill 2011, which is an excellent document — and again, I commend the parliamentary library for its work — one of the issues that is raised, which is only covered by the Queensland Crime and Misconduct Commission, is the issue of witness protection. That is an issue of great concern in Victoria, because we already know that certain police witnesses who were supposedly in the witness protection system have lost their lives recently. I am not sure whether the government has looked at that issue, but it certainly needs looking at in Victoria. The Crime and Misconduct Commission in Queensland is responsible for witness protection and operational support, and they are part of the structure, role and functions of the CMC. There is still a lot to think about and do in Victoria in regard to the whole integrity commission.

There was a report in the *Herald Sun* that IBAC will be made up of 300 staff and that it has a budget of $170 million, but a document released earlier by the government suggests that there is $10 million to set it up. I do not know whether that $10 million will be spent to establish the commission in 12 months.

An issue that was raised by the Law Institute of Victoria in its letter of 14 November to the minister was the function of IBAC in examining systems and practices in the public sector. There are concerns that any power, including the right to enter premises, examine and copy documents, take witness statements and consider the appropriateness of specific powers associated with the examination function, might differ from those associated with the investigation's function. The institute also raised the issue of the merit-based review and said that it should not be part of any subsequent legislation.

I turn quickly to the Victorian Inspectorate Bill 2011 which establishes the inspectorate and specifies that it is a corporate body that will operate independently from the minister. But again there is the same appointment process involving the Governor in Council making the

appointment on the basis of the minister's recommendation in the first instance. The Victorian Inspectorate will be also overseen by the parliamentary committee — I was concerned about that, but it seems that is the case in other jurisdictions as well — but there seems to be a slight conflict of interest, because it will oversee IBAC and the officer that oversees IBAC.

The inspectorate has wide-ranging powers in terms of investigating complaints made against IBAC. It can make recommendations to IBAC both in private or in public. It seems that if the Inspector has a belief that IBAC has not responded to any recommendations regarding complaints made to the Inspector, it would then make those recommendations public. If it is satisfied that the conduct of any IBAC personnel, who have been the subject of a complaint, investigation or other findings, should be subject to further investigative or enforcement action, the inspectorate can make a recommendation to Victoria Police, the Director of Public Prosecutions, the Australian Federal Police or the Auditor-General. The powers of the inspectorate are not clear because the IBAC function is not clear. It is not clear what powers the Inspector will need to oversee the powers conferred upon IBAC. We still wait to see that.

There is also the issue of the interaction between the roles of the Inspector and the public interest monitor. Hopefully we will know more about that when we see more substantive bills. The role of the Inspector in relation to the coercive powers of IBAC is unknown but it will be extremely important. Again the Law Institute of Victoria is concerned that presently the powers of IBAC, the inspectorate and the IBAC Committee could be interpreted to extend to an administrative review of the merits of an IBAC decision. That should not be the case in the interests of the finality of an IBAC decision.

It is not clear how and when the role of the Inspector will subsume the role of the special investigations monitor (SIM). I read the latest SIM report of 4 November regarding the Surveillance Devices Act 1999. That report suggests the bodies that the SIM was overseeing in relation to surveillance devices had basically complied with the acts they were meant to comply with. That is good news.

The important issues include the appointment of the commissioner and Inspector. I urge the government to look again at the processes and set up an independent commission for public appointments. The Greens will be supporting the proposed amendments that will be put forward by the opposition.

**Mr O'BRIEN** (Western Victoria) — It is a great pleasure to rise to speak on the Independent Broad-based Anti-corruption Commission Bill 2011 and the Victorian Inspectorate Bill 2011 in this cognate debate. These are both important bills. They establish Victoria's first ever anticorruption commission. There has been a long wait for such a commission to be established in this state. It is something the coalition parties have consistently called for for a long time, including the time before the coalition was in government and the Greens were in this chamber. I reject any suggestion of the Greens leading the charge on this particular issue. Each of the coalition parties now in government have for a long period called for the establishment of this important commission.

We are, however, appreciative of the sensible concession from the Greens that this is important legislation that should not be rushed. That is why this is the first stage of this very important cornerstone of the coalition's policy to restore integrity and provide an independent broadbased anticorruption commission.

In relation to the long wait for this bill, since 2004 Labor has effectively refused to bring in such a bill. That is why I was astounded to hear Mr Pakula's closing remark in relation to the inspectorate suggesting that the government will apply a standard to the opposition that it is not prepared to apply to itself. This is an instance of the Labor Party applying no standard to itself. He also used a classic phrase related to corruption bodies, 'Who will watch the watchers?', or perhaps it was, 'Who will guard the guards?'. It certainly was not the Labor Party for 11 years. It did not have any guards at all, let alone a guarder of the guards, a watcher of the watchers or a proper independent broadbased anticorruption commission such as this government is bringing in with the introduction of this bill into this chamber.

I will not use an unparliamentary word like 'hypocrisy', but when a party advocates doing something it refused to do when in government and then suggests that it be rushed through in the same way that it rushed through its failed projects and cost the state billions of dollars, making a mockery of so-called transparent processes, it is worth putting those matters on record.

We are very pleased to be restoring integrity to government, increasing transparency and removing the culture of secrecy that has prevailed under Labor for the last 11 years. This commission has been a key priority of the government and is the cornerstone of our integrity reforms. In relation to the budgetary allocation and for the information of the Greens, the cost will be

$170 million over four years. This is a significant allocation of funds, and we are committed to getting the model right.

IBAC (Independent Broad-based Anti-corruption Commission) will be responsible for investigating, exposing and preventing corruption across the entire public sector from police to local government and from public service to members of Parliament. This will be broader than the system that was proposed when Labor, kicking and screaming in the dying throes of the failed regime of the Brumby government, finally decided to accept the recommendations of the Proust report and try to cobble together an integrity regime that somehow kept its existing systems in place but also fulfilled the required outcomes of the Proust report.

It was a proposal described by learned commentators as a 'spaghetti bowl' of independent bodies. It would have involved a Victorian integrity and anticorruption commission (VIACC) consisting of a public sector integrity commissioner, a deputy of police integrity and a chief municipal inspector, who would take it in turns to be chair. Alongside VIACC would have sat the integrity coordination body, which would have included the Ombudsman, the Auditor-General and the public sector integrity commissioner.

That sort of spaghetti bowl approach is not what is to be introduced in this bill. We are introducing IBAC, which will be a broadbased independent anticorruption commission. In those three words — broadbased, independent and anticorruption — is to be found the purpose of the body that will be established. It will in effect be a one-stop shop. Such an IBAC model has not necessarily been introduced in the independent anticorruption commissions in other states. Briefly, there has long been a call in other states for independent anticorruption commissions, and over successive years we have had the progressive introduction of a number of those commissions.

In New South Wales the Independent Commission Against Corruption was established in 1988, but it has a separate Police Integrity Commission. Queensland and Western Australia have one-stop-shop models. They are the Queensland Crime and Misconduct Commission of 2001 and the Western Australian Corruption and Crime Commission of 2003. Tasmania also has the Tasmanian Integrity Commission of 2009. Only Victoria and South Australia are left, and I understand that in South Australia there is a proposal to introduce such a body. With this bill, I am very pleased to say, we will see the important foundation and establishment of an anticorruption commission in Victoria. The Victorian Inspectorate will also be put into place, assuming that bill passes through the house.

In relation to the IBAC bill, the powers of IBAC are set out in clause 10 of the bill, which states:

> 10 Powers of the IBAC
>
> The IBAC has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of this Act and the performance of its duties and functions.

They are the powers of IBAC, as broadly stated. This is a broadbased anticorruption body. In this bill the functions of IBAC are initially — and these are very important functions — educative and preventive. They are outlined in clause 9 of the bill, which reads:

> (3) Without limiting the generality of subsection (2), the IBAC has the following functions —
>
> (a) to examine systems and practices in the public sector and public sector legislation;
>
> (b) to provide information to, consult with and make recommendations to, the public sector;
>
> (c) to assist the public sector to increase capacity to prevent corrupt conduct by providing advice, training and education services;
>
> (d) to provide information and education services to the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct;
>
> (e) to publish information on ways to prevent corrupt conduct.

It is hardly an inactive IBAC that has initially been established. Those educative and preventive roles will be very important. We all know prevention is in general terms better than a cure, but the other powers are coming. Work has been progressing. As outlined in the second-reading speech:

> Preparation of the legislation outlining IBAC's investigative role is well progressed and will follow before the end of the year.

I can advise the house that that remains the government's intention. It is important, as the Greens acknowledge, for these very important powers not to be rushed in the race to seek to fulfil a spin-type pledge, which would have been how the previous government conducted itself.

Returning to the bill, it is important that the commission and the Commissioner be independent. That is an important aspect of this anticorruption body. That independence is established and maintained in

clauses 12 and 13 of this bill. Briefly, clause 12 establishes that IBAC is not subject to the direction or control of the minister in respect of the performance of its duties and functions and the exercise of its powers.

Clause 13 sets out the independence and the role of the Commissioner as an independent officer of the Parliament. That very important independent office will be established and maintained. The IBAC bill also establishes a parliamentary oversight committee. It is important in guarding the guards that the Parliament and the parliamentary oversight committee can not only have oversight of IBAC as appropriate but also interact with the inspectorate to perform that oversight role.

Turning briefly to the Victorian Inspectorate Bill 2011, which is in a sense the primary guardian of the guards, being IBAC, the inspectorate will play a strong oversight role. The bill provides that the inspectorate will undertake a range of functions relevant to the IBAC's initial education and preventive functions. For example, the inspectorate will have a role in assessing the IBAC's policies and procedures and will monitor the IBAC's compliance with the IBAC act and other laws. The inspectorate may investigate IBAC either on its own initiative or in response to a complaint. As with most anticorruption commission inspectors across Australia, the inspectorate's role will be overseen by the parliamentary IBAC Committee, which can consider any failure of IBAC to action the recommendations of the Victorian inspectorate.

I note that there are oversight roles and interactions between the Public Accounts and Estimates Committee, of which I am a member, the Victorian Auditor-General's Office, which has had an independent role since the Victorian Parliament was established, and the Parliament itself, and of course all the government departments that the Auditor-General audits. With these two bills we have the very important framework and the ability to appoint the initial persons to fill these very important roles. One should not forget that the criteria for appointment to these roles will be that of a very senior judicial officer as provided in clause 14 of the IBAC bill as a Governor in Council appointment.

I wish to commend the IBAC consultation panel's work to date, which has included a wide-ranging consultation conducted by: the Honourable Stephen Charles, QC, a former Supreme Court judge; His Honour Gordon Lewis, AM, deputy chair and former County Court judge; Peter Harmsworth, AO, former departmental secretary; and Gail Owen, OAM, the first female president of the Law Institute of Victoria. The wide consultation process has included a range of bodies, including the law institute, the International Commission of Jurists, the Victorian Bar, the Media Entertainment and Arts Alliance, the Federation of Community Legal Centres, Liberty Victoria and the Municipal Association of Victoria.

Those consultations have been extensive, and I commend the minister and the department on their work. This will be a very important bill that will watch over all of us as members of Parliament, and other public sector people will be brought under its investigative powers. This bill will restore integrity, faith and confidence in the very democratic processes we have in Victoria. Victoria has only a small amount of corruption in comparison to other jurisdictions, so it is important to keep perspective on these things. However, where corruption does occur it is important that it be thoroughly investigated by appropriately resourced and structured bodies.

I commend the minister and the government for bringing this bill to the house in a timely manner, within the first year of the Baillieu government. Yes, it has been introduced a bit later than we would have liked, but better than 11 years late or not at all. This bill is here to stay. There is no basis for the assumption that it will not be the Baillieu government which will be making the next appointment of the IBAC Commissioner after the next election in 2014. We will see what the Victorian public's judgement is of us. Members of the Victorian public will be our ultimate guards as a government, and we look forward to that day when it comes. Until then, I commend the bill to the house.

**Mr SCHEFFER** (Eastern Victoria) — I rise to make some brief remarks on the legislation relating to the establishment of the Independent Broad-based Anti-corruption Commission. The details of the bill have been thoroughly worked through by my colleague the member for Altona in the Legislative Assembly, Ms Hennessy, and also by Mr Pakula earlier this evening, who indicated that the opposition will not be opposing the legislation even though we will seek to strengthen it by way of amendment, and I support the amendments that Mr Pakula has circulated.

I guess the first thing to be said is that the government initially committed to having its anticorruption commission up and running by July this year but announced as early as May that it was bogged down, and at that time it refused to put a commencement date on record. The bill before us is a start, but it lacks the detail, as previous speakers have indicated, that

Victorians clearly have a right to expect from a government that has been in office for a full year and which has had the resources of Victoria's public service at its disposal. The reason for the delay must be the result of the government being unable to make up its mind as it ducks and weaves around the many principles and legal technicalities that underlie the establishment of an anticorruption commission.

The bill goes so far as to establish the commission to prevent corrupt conduct; to assist in the education of the public sector about the impacts of corrupt behaviour; and to provide for the investigation and exposure of corruption. The bill also creates a joint parliamentary committee to oversee the operation of the commission. And that is it for this bill that serves to basically tick off the government's obligation to have something in place before the end of 2011.

There is of course an irony that all speakers on this legislation are bound to observe, and that is that, sadly, at the end of its first year in office, this government, which trumpeted its tough on crime law and order agenda, is now widely seen to be vulnerable on that score. This is not something that brings anyone any joy, because we all want a government with which we can debate public policy; we do not want a government that lowers public trust in the state's leadership. For example, the fallout over the matters revealed in the report of the Office of Police Integrity during the last sitting week is in the end a cause of sorrow and disappointment. While I hope there is nothing more to the tawdry events in the OPI's report to the Parliament, I suspect that there is still some way to go.

In the lead-up to the last election the coalition told Victorians that it was time to lift the veil of secrecy that it said had descended on the then government and its ministers, and it promised at that point to establish an anticorruption commission that would get to the bottom of corruption allegations. The provisions in the bill before us this evening, and the other bills that accompany and will follow it, will progressively give the government the tools that it says it needs to honour its promise to Victorians to get to the bottom of corruption allegations and lift the veil of secrecy.

The contents of the OPI's report, *Crossing the Line*, will provide fertile material for the government to contemplate. Ministers will also have cause to reflect in a deeper way than they may have imagined when they were in opposition on what they really meant back in 2010 when they said that the relationship between the Victorian public and the government must be based on trust. Of course that trust needs to be earnt and the wise words 'we know them by their deeds' will resonate more and more keenly as we go forward.

When you go through this bill the thing that is most striking is that nowhere does it specify the jurisdiction of the commission or what its investigatory powers are. The commission's tasks, according to this bill, are confined to preventive and educative activities. Neither does the bill define what corrupt conduct is or give the commission the capacity to investigate corruption.

It has also been noted in the debate so far that Victorians continue to wait for the government's ministerial code of conduct. When the coalition was in opposition and when the world was simpler and the prospect of government elusive, Victorians were promised that a ministerial code of conduct that would cover ministers and their staff and would provide guidance on fundraising, gifts and hospitality was a priority. The coalition's code of conduct was going to give greater clarity, but of course it did not materialise owing to a fracas within the Liberal Party which was widely reported in the media last July.

Without ministerial engagement, fundraising in the Liberal Party is in the doldrums. High principles from the pure and lofty heights of opposition are one thing, but delivering from government is another.

The centre of this bill is the establishment, constitution, function, power and delegation power of the Independent Broad-based Anti-corruption Commission, and the bill focuses on the appointment of the Commissioner, the Commissioner's independence and his or her duties and functions. Given the current government's track record, it is a deep concern that the appointment of the inaugural Commissioner will be made on the recommendation of the minister. The Premier having to consult with the Leader of the Opposition over the appointment of the inaugural Commissioner is no more than a gesture, as the opposition leader's agreement is not required.

As Mr Pakula said in his contribution, if the Premier calls the Leader of the Opposition 15 minutes before an announcement is made, that satisfies the provisions in this legislation. Frankly, that is not good enough. The inaugural appointment of the Commissioner is in effect an appointment of the government; the consultation is no more than a nicety. As I said earlier, everything in the bill goes to the creation of a framework for a commission that undertakes educational and corruption prevention activities. It does not provide any details concerning the scope of the commission's investigatory powers.

This is a beginning but only a beginning. Owing to the bill's sparseness many of us are left wondering what the year of thinking, planning, devising and consulting with eminent persons was really all about. In typical fashion the government does not seem to be able to make up its mind about where it is going, what the risks are and how it can protect itself. What the OPI *Crossing the Line* report revealed for all to see was that this nervousness and reluctance to act, to choose or to move ahead is not just the weakness of a shallow government. Rather it is a consequence of a government being up to its neck in all sorts of problems. For all we know the contents of the OPI report might just be the tip of the iceberg.

The problem for the government with this Independent Broad-based Anti-corruption Commission and its big budget is that it may turn out to be independent, broadbased and focused on investigating corruption with more enthusiasm and dedication than anyone on the opposite side expects. In summary, this is truly a *Seinfeld* bill — it is a bill about nothing, or at least very little.

**Mr ONDARCHIE** (Northern Metropolitan) — I rise tonight to speak on the Independent Broad-based Anti-corruption Commission Bill 2011 and the Victorian Inspectorate Bill 2011. The IBAC bill establishes an anticorruption commission for Victoria. It also establishes a joint house committee, known as the IBAC Committee, to oversee IBAC. I start by commending Mr O'Brien on his contribution to this debate tonight. Those who were in the chamber and listened will know it was a substantial contribution that summed up what this is all about.

The establishment of IBAC is a keystone of the government's integrity reforms. The government is committed to restoring integrity in government, increasing transparency and removing the culture of secrecy that existed under Labor for over 11 years. Establishing IBAC is a key priority for this government. As a keystone of its integrity reforms, the government has committed $170 million over four years to the establishment and operation of IBAC.

The government is committed to getting this model right. IBAC will be responsible for investigating, exposing and preventing corruption across the entire public sector, from police to local government and from the public service to members of Parliament. IBAC will replace Victoria's current, creaking anticorruption system, which was rushed through by the Labor government and is full of holes, outdated and out of touch with the rest of Australia.

Let us get this straight. For 11 years the Labor government did nothing — that is, for 11 years it failed to introduce a comprehensive anticorruption commission. After years of denying the need for an anticorruption commission, Labor was shamed into developing a proposal that was so complex and bureaucratic that it was designed to fail. It was a Clayton's proposal.

The Victorian Inspectorate is a key feature of the government's integrity reforms and will ensure that IBAC is subject to robust oversight. Together with a joint house committee of Parliament to be established under the IBAC bill, the Victorian Inspectorate will ensure that IBAC's use of powers is both appropriate and proportional. The establishment of the Victorian Inspectorate at the same time as the establishment of IBAC will enable the Victorian Inspectorate to monitor IBAC from the outset and to develop an integrated integrity model for Victoria's strong checks and balances. Let us be clear on what this is all about. Labor failed to introduce a broadbased anticorruption commission in 11 years in government. Anticorruption bodies with strong powers require robust oversight. That is why we have created the Victorian Inspectorate. The coalition government is committed to getting the model right, and I commend both bills to the house.

**Mr ELASMAR** (Northern Metropolitan) — I, like my colleagues, will not oppose the Independent Broad-based Anti-corruption Commission Bill 2011 or the Victorian Inspectorate Bill 2011 and will support the amendment to be moved by Mr Pakula. The coalition government has lived through some fairly torrid times recently with regard to public perceptions of transparency and probity. The previous Labor government sought to institute practices and procedures to eradicate or at least minimise inappropriate mishandling of government resources. This was done by way of appointment of the independent Ombudsman and the establishment of the Office of Police Integrity. Unfortunately the OPI has gone by the wayside, and the great pity is that its effectiveness in investigating police corruption will be forgotten and it will be remembered for the shame and humiliation of a fine and decent man who served Victoria as Chief Commissioner of Police to the best of his ability, which was substantial.

The Independent Broad-based Anti-corruption Commission Bill 2011 and the Victorian Inspectorate Bill 2011 are not properly fleshed out. They do not clearly define collusion or corruption, and they provide no powers to operate an effective and efficient monitoring system to safeguard Victorian taxpayers money. In fact they are skeletons without meat. One of

the fundamental principles of public service independence is the ability and capacity of an individual to act without fear or favour, but the major flaw of this legislation is that it provides a mechanism to ministerially appoint the Commissioner. In my opinion this position should be totally free of political preferment. The Commissioner should be appointed by Parliament and answerable to Parliament alone.

In the very recent past we have all seen the public demise of good people. Their careers and reputations have been dragged through the mud, and the national press has had a field day. They were not equipped to deal with political intrigue, nor should they have been. Their positions within the Victorian public service framework were very senior, and their roles were clearly defined in regard to the delivery of services to the people of Victoria. They ought to have been separate from and above the political fray. With those words, I advise that we will not oppose the bills.

**Mr RAMSAY** (Western Victoria) — I rise to speak on the Independent Broad-based Anti-corruption Commission Bill 2011. This bill is both historic and important given that it will, if supported, establish for the first time in Victoria's history an independent, broadbased anticorruption commission. The bill also amends the Parliamentary Committees Act 2003 to constitute a joint house committee of the Parliament of Victoria to oversee the Independent Broad-based Anti-corruption Commission (IBAC). This was an election commitment of the Baillieu government that was supported by the Victorian community, which under Labor's rule lost faith in Labor's ability to provide a system of integrity and investigation of corruption of all forms in Victoria.

The Baillieu government has been methodical and meticulous in its preparation of this bill. While the opposition has crowed for its early introduction, the days of speed and spin with no detail stopped on 27 November. A more practical, well-researched, properly funded policy with key transparent outcomes was born on 3 December when the Baillieu government started to govern. This bill is in line with good governance as it is the first stage of the establishment of IBAC. It provides for the appointment of the Commissioner and for the educative and preventive functions of the commission. It also provides for an office of public interest monitor, who will provide the checks and balances on applications for the use of covert investigative and coercive powers.

Labor sat in denial for 11 years as the integrity systems that had both investigative and watchdog powers failed to provide the comfort, respect and transparency the Victorian people were crying out for. While we had the Ombudsman, the Auditor-General, the public sector standards commissioner, Victoria Police, the Office of Police Integrity, the special investigations monitor, the Local Government Investigations and Compliance Inspectorate and a register of members interests, only the Ombudsman, the OPI and the Local Government Investigations and Compliance Inspectorate were primarily responsible for combating corruption in the public sector.

Former Premier Steve Bracks established the OPI in 2004 as the debate about police corruption and links to organised crime raged, and later Premier John Brumby established the Local Government Investigations and Compliance Inspectorate in 2009 following the stench of alleged corruption in the Brimbank council. Labor's denial continued, as it rested on its laurels, claiming these new bodies would provide the appropriate integrity to identify and respond to corruption in the state of Victoria.

To the credit of the Liberal Party at that time, with the smell of corruption and secrecy in the air and a loss of trust in the Brumby government's ability to control law and order in Victoria or even provide public safety, not to mention to clean out corruption in all its forms, in 2006 the then opposition called for an overarching IBAC modelled on other jurisdictions.

Even in 2009 and 2010 when former Premier John Brumby commissioned the Proust review and indicated the government would agree to its recommendations for an integrity model, in typical Labor fashion that model was complex, bureaucratic and lacked the power to properly scrutinise the public sector or members of Parliament or their staff. A multilayered, multi-agency integrity system with no teeth is symptomatic of Labor's approach to governance. Labor's acceptance of an integrity model with no real integrity, which did not provide confidence to the Victorian public that those responsible for corruption would be held accountable and that corruption would not just be swept under the carpet, was one of the reasons I believe it lost government.

In summary, this bill provides for a fundamental shift in the integrity regime in Victoria. Intensive consultation has been undertaken by the government in the development of the legislation. The government has provided over $170 million in funding over four years for the establishment and operation of IBAC. The Baillieu government has delivered on its promise of establishing an IBAC. It has given the commission

powers in both an educational and a prevention capacity, but in the second tranche of legislation it will provide investigative powers into corruption. For 11 years the Victorian public has waited for a government with the will, the fortitude, the determination and the commitment to create an independent anticorruption commission with integrity. I am proud to be here tonight supporting the delivery of that promise to the Victorian people.

**Ms BROAD** (Northern Victoria) — I rise to speak tonight on the Independent, Broad-based Anti-corruption Commission Bill 2011. As members are aware, the opposition does not oppose the bill; however, the bill before the Council suffers from major limitations that Victorians should be made aware of, and I intend to point out just a few of the bill's limitations tonight. The objects of the bill are to assist in the prevention of corrupt conduct, to facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and the ways in which corrupt conduct can be prevented, to assist in improving the capacity of the public sector to prevent corrupt conduct and to provide for the investigation and exposure of corrupt conduct.

However, despite these laudable objects, the bill fails to explain the jurisdiction of the commission and the investigatory powers of the commission, and as well as that the bill fails to define what corrupt conduct actually is. Significantly, one of the agencies that will be replaced by the commission, the Office of Police Integrity, has recently had cause to consider very carefully and thoroughly the matter of corrupt conduct.

In the OPI's October 2011 report to the Parliament, *Crossing the Line*, the director, police integrity, refers to his statutory obligations under section 8(1) of the Police Integrity Act 2008. I think it is important to consider those obligations in the context of the bill before the Council tonight. Those statutory obligations are:

> … to ensure that the highest ethical and professional standards are maintained in Victoria Police; and
>
> … to ensure that police corruption and serious misconduct are detected, investigated and prevented; and
>
> … to educate Victoria Police and the general community regarding police corruption and serious misconduct, including the effect of police corruption and serious misconduct.

Of course it is the government's intention that the statutory obligations referred to by the director, police integrity, will be subsumed by the objects set out in the Independent Broad-based Anti-corruption Commission Bill 2011.

It is also important to consider in the context of the bill before the Council tonight that in addition to setting out the statutory obligations of the OPI, *Crossing the Line* also considers the definition of 'serious misconduct' in relation to a member of Victoria Police in section 3 of the Police Integrity Act 2008 to mean:

> (a) conduct which constitutes an offence punishable by imprisonment; or
>
> (b) conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
>
> (c) disgraceful or improper conduct (whether in the member's official capacity or otherwise).

Further, *Crossing the Line* considers the matter of misconduct in public office and reference is made to the elements of the offence of misconduct in public office according to the view of the Court of Appeal. The director, police integrity, refers to the view of the Court of Appeal in which all the members of the court agreed that the elements of the offence of misconduct in public office are:

> 1. a public official;
>
> 2. in the course of or connected to his public office;
>
> 3. wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his duty;
>
> 4. without reasonable excuse or justification; and
>
> 5. where such conduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.

The director, police integrity, goes on to observe:

> It is clear from discussion in the judgement that abuse of power — actual and incidental — attaching to an office is capable of constituting misconduct.

After considering all these matters, the director, police integrity, found in relation to Mr Tristan Weston's conduct that it constituted serious misconduct within the meaning of section 3 of the Police Integrity Act 2008; constituted improper conduct within the meaning of section 69 of the Police Regulation Act 1958, which is also discussed in the report; may have involved the commission of the offence of misconduct in public office; may have involved the commission of an offence or offences under section 127A of the Police Regulation Act 1958;

constituted improper conduct within the meaning of section 4 of the Public Administration Act 2004; and for good measure constituted a breach of his contract of employment.

The question is where the Independent Broad-based Anti-corruption Commission (IBAC), which is to be established by the bill before the Council tonight, will set the bar in relation to the conduct described so thoroughly in *Crossing the Line*. The conduct described in the OPI's report clearly indicates that all those involved believed they were beyond the reach of the OPI and free to act with impunity to abuse the power entrusted to them and to corrupt government merit-based appointment processes. Mr Weston, the former ministerial adviser to the Minister for Police and Emergency Services, confirmed this when he was reported in the *Herald Sun* of 27 October as saying:

> On the basis of the legal advice available to me the OPI did not have the jurisdiction to investigate my work as a ministerial officer …

Will IBAC have the jurisdiction to investigate? The parliamentary library has very helpfully produced a current issues brief that is relevant to the OPI and the body with which the Baillieu-Ryan government will replace the OPI in accordance with the bill before the Council tonight. In that brief there is a discussion of the definition, the effects and the control of corruption — matters which the bill before the house fails to deal with. I think it is important, given the utter silence of the bill in defining any of these matters, to consider what the excellent current issues brief from the parliamentary library research service has to say on this subject. It says:

> It is widely acknowledged that the meaning of the term 'corruption' is difficult to state with precision. Corruption in the public sector is, however, generally understood to entail the abuse of entrusted power for personal or political gain. It is conduct that violates the public trust placed in those in public office to operate in the public interest. When decisions are made for private interests rather than the public interest, public funds can be misused and the award of contracts and appointments can deviate from merit-based processes. Corruption can also enable organised crime to flourish. Additionally, as retired Supreme Court judge, the Honourable Tim Smith, QC, writes, 'Corruption damages the reputation of all in government, including those who are not corrupt. It also damages the democratic system by fuelling cynicism and causes members of the community to disengage from the political process'.

Any reasonable person would conclude that the conduct described in the OPI's report fits the description of corruption referred to in the parliamentary library's background brief. The OPI's report also emphasises that the investigation was not able to investigate all conduct, including conduct that may meet the description of corruption referred to in that background brief.

A key test of the body that the Baillieu-Ryan government will replace the OPI with is whether the new body will be able to investigate not only the conduct of those whom the OPI had the jurisdiction to investigate but also the conduct of the Premier, the Deputy Premier, ministers and all their staff, which clearly the OPI did not have the jurisdiction to investigate. The bill before the Council tonight raises a lot more questions than it provides answers on these matters. Given the extensive delays on the part of the government in bringing the bill before the Council, I think Victorians are entitled to question the government's motives in relation to the delays.

In speaking to the bill before the Council tonight members on the other side have been keen to refer to matters relating to the Brimbank council. I put to the Council that any reasonable person reading *Crossing the Line* would agree that the corruption and misconduct referred to in that report puts anything that has occurred at the former Brimbank council well and truly in the shade.

The fact that government members considered that it was within their authority to go out and dispose of a Chief Commissioner of Police in the manner they did when they had available to them the perfectly legitimate course of action of terminating a contract and dealing with it in a way that any government has the right to do where it wishes to dispense with the services of anyone it employs under contract — in an aboveboard, open, transparent and decent way — and that they chose not to do that but to conduct themselves in the way that *Crossing the Line* describes so eloquently, to the extent that the OPI was able within its powers to investigate, absolutely beggars belief.

The government still has under consideration implementation of not only the bill before the Council tonight, assuming that the bill will be passed in due course, but the bills that we have been promised will be brought before the Parliament sometime soon. We have no dates as to when that will actually occur, and unless and until that does occur we have very little idea of many things to do with the new body the government intends to put in place after it has dispensed with the services of the OPI, which has done such an outstanding job in uncovering the corruption it has. It is reasonable to postulate that it has suited the government to have as many delays as possible whilst it goes about the things it wants to do without the scrutiny of IBAC.

We do not have a date as to when that will come into effect either.

Those are the issues and questions I wish to place on the record in speaking to the bill this evening. With those comments, I conclude my contribution.

**Mrs COOTE** (Southern Metropolitan) — It gives me great pleasure to stand here tonight at this historic moment to debate the Independent Broad-based Anti-corruption Commission Bill 2011 and the Victorian Inspectorate Bill 2011. This has been a long time coming. I would like to put on the record my acknowledgement of the excellent contribution made by my colleague Mr David O'Brien, who has put the government's position on this in an articulate way. I will not go into all the details aside from saying that with the exception of South Australia and, until now, Victoria, every other Australian state has an independent anticorruption commission. The only other state without one, South Australia, has recently announced that it will be forming one.

The first two states to create an independent anticorruption commission were Queensland and New South Wales, and they did so 20 years ago. This is an important policy that the coalition committed to while in opposition, took to the election and is now implementing. Part of restoring integrity and accountability in government is about increasing transparency and removing the culture of secrecy that existed under Labor.

It is really important that we get this model right, and it is very interesting to hear the debate from the Labor Party members, who spent 11 years avoiding this. But it is not just the Liberals who felt that the Labor Party was dragging its chain on this — for example, it was very interesting to read comments made by the former special investigations monitor (SIM), retired judge David Jones, who said he did not know why the Labor government rejected his request for greater powers. On 3 July 2010, Mr Jones told the *Weekend Australian*:

> I made it clear at that time that I did not consider that oversight (of OPI) was adequate because the function of the SIM is narrowly defined in relation to oversight …

Distinguished public servant Elizabeth Proust, who was hired by the Labor government to review the Victorian integrity system, said on 3 June 2010 in the *Australian*:

> We think that that's a tiny body — it's about a six-person operation. We think that (oversight) needs to be strengthened … It's one of the issues where there has been a gap and where there has (been) less effective oversight than there might have been.

The Labor Party did nothing about this. It had 11 years in which to do something and it did nothing, so it is important that we get this right. We have been committed to getting the model right, and that is precisely what we are doing. The Independent Broad-based Anti-corruption Commission will have wide-ranging powers and be responsible for investigating allegations of corruption across the entire public sector, including MPs and their staff, public servants, police and local government officers, so it is important that it be set up correctly. The government is committed to ensuring that an IBAC operates effectively, and it is providing funding of $170 million over four years for the establishment and operation of the commission.

This bill will establish a joint house parliamentary committee to oversee the operations of the commission, with the role of the committee being to monitor and review the exercise of powers and functions of an IBAC, to examine any reports made by the commission, and to report to both houses of Parliament on any matter connected with the exercise of its powers and functions that requires the attention of the Parliament. IBAC's investigative functions and powers will be added through further legislation which will follow by the end of the year. I repeat for the benefit of Labor Party members, who have been critical of this bill: IBAC's investigative functions and powers will be added through further legislation which will follow by the end of this year. As I said in my introduction, this is a historic moment in Victoria's history, and it is a giant leap towards restoring integrity in government in our wonderful state.

**Sitting suspended 11.28 p.m. until 12.02 a.m. (Wednesday).**

**Mr EIDEH** (Western Metropolitan) — I rise to make a brief contribution on the Independent Broad-based Anti-corruption Commission Bill 2011. The opposition does not oppose this bill, because the opposition is committed to fighting corruption and to ensuring that justice is always done. Our history is firmly entwined with justice, with fairness and with community, but that is where this bill falls down, and that is why Labor is expressing a number of concerns and will be seeking to move some amendments.

If government members were sincere in their commitment to justice, fairness and the broader community, they would wholeheartedly agree to our amendments, but they have opposed holding a full and transparent inquiry into how the Deputy Premier and his staff deliberately undermined the former Chief

Commissioner of Police, Simon Overland. If ever there were a case with which it would be perfect to baptise the new Independent Broad-based Anti-corruption Commission, that matter is most certainly it, but of course the government will never agree to investigating its own — with a one-seat majority it has far too much to lose.

We look at this bill and note that it has more shortcomings than there are spikes on an echidna. In so many ways this bill is an empty shell and arguably the most unprepared bill ever to be brought before this house, as I shall explain. Is the jurisdiction of the commission clearly spelt out? No. Do we know its investigatory powers and processes? No. Does it at all define 'corruption' or 'corrupt conduct'? No. That would appear to let the Minister for Police and Emergency Services off the hook, although we on this side of the house reserve the right to lodge that matter before the commission when it is launched.

Is there a ministerial code of conduct? No. Again, that helps to save Minister Ryan, at least for the present. What we have is a body that will be very limited in everything other than maybe being totally at the whim of the minister, because I sincerely fear that this body will go the same way as others and give the minister discretion as to what it investigates. Technically it is not the minister who will be in charge but a joint committee, but it will be dominated by government members, so the end result will be the same.

Other members on this side have referred to a range of government shortcomings and biases and have explained that the Independent Broad-based Anti-corruption Commission Bill 2011 will do nothing to make the situation any better. Do not get me wrong: the opposition supports the objectives of the bill. What we do not and could never support are the empty spaces that tell us nothing and that do not inform the community at all. The coalition made so many promises before the state election. As with most of its promises, this promise was meaningless, valueless and worthless.

I express deep concern that the Baillieu government seeks to exempt the commission from the jurisdiction of the Victorian Ombudsman. Possibly worse, it will also be exempted from the Whistleblowers Protection Act 2001. How many individuals will speak up about corruption if the protections of that amazing legislation are withheld? How in any culture could such exemptions be deemed to support justice?

Then there is that aspect of the legislation which allows the deputy commissioner to appoint consultants virtually at whim and with no compulsion for such consultants to take an oath in relation to their duties. This is yet another slap in the face of open and transparent investigations. Justice should be paramount in these investigations, but under these conditions I have my doubts.

Having just read the annual report of the Victorian Ombudsman, on which I will soon speak, I am concerned that there is a long list of areas that should automatically be a part of such legislation but that have been deliberately or incompetently ignored.

Democracy is a concept born from the people. Justice is a concept created to ensure fairness and equity without discrimination. Openness and transparency were developed to strengthen democracy and justice. While the intent of this bill is worthy, the actual document before us reads more like a comic book draft. It would be far better if it were taken back and completed before being presented to the house again. However, what we have here is pretty much all that we can expect from this particular state government.

The Victorian Inspectorate Bill 2011 is not significantly better and indeed raises questions regarding how well the government has considered the documentation before us. 'Substandard' is the word that I would use to describe both bills, but that is standard for this government.

**Mr P. DAVIS** (Eastern Victoria) — I join this cognate debate on the Independent Broad-based Anti-corruption Commission Bill 2011 and the Victorian Inspectorate Bill 2011. I am cognisant of the amount of time taken by an earlier debate, during which a good deal of indulgence was provided to members of this chamber to explore all the issues they chose to explore.

I note the criticism that there has been of the government progressing its legislative agenda, but those making that criticism should remember who absorbed most of the time for debate in this chamber today. The debate I have heard this evening in relation to these bills raises the question of the way in which both the Greens and the ALP — the opposition parties in this place — perceive the construction of the legislative framework. It is a little bit like somebody contracting to build a house and deciding they will put the roof on before they have built the foundations and the walls. As is quite clear and as has been acknowledged by most of the speakers from the opposition parties, including the

Greens, this legislation is indeed a framework. Some have used the word 'shell'. Indeed it is a framework or shell to provide the mechanisms by which the process of implementation of the Independent Broad-based Anti-corruption Commission can be achieved.

In leading the opposition's arguments, Mr Pakula strongly made the case that an IBAC was needed sooner rather than later. Those were the words used by Mr Pakula. What I say is that we have the bill here, and the opposition and the Greens have indicated that they are not opposing the bill, but they have taken a good deal of time to get to that point. Here we are as I speak at 10 past midnight, because what we have heard has been speaker after speaker repeating ad nauseum the same commentary, which is in effect, 'What we'd like is to see this done quickly, but not now'. That is essentially what the argument is.

What I will put during the course of my contribution to this debate is that this legislation has been a long time coming. Indeed, because I have been here for a bit longer than the Greens who have been trying to claim some credit for this legislative policy, I can say with absolute authority that the then opposition was arguing the matter and putting a case in this place back as early as 2004, which is as far back as I can find after a quick search of *Hansard*. Ms Pennicuik tried to appropriate the credit, asserting that the Baillieu government had adopted the Greens policy from the previous election. I have to say that that is inaccurate and highly misleading and I need to correct the record.

My point is simply this: the history is worth having a look at. I note that, in relation to the Ombudsman (Police Ombudsman) Bill 2004, as early as 25 May 2004 the then opposition members, including me, were calling for the establishment of an anticorruption commission. Further, on 27 May 2004, Mr Forwood, then a member of this place, repeated those suggestions. It is quite clear that this matter was of significant public interest when, on 2 June 2004, as a matter of public importance in the Legislative Assembly, the then Leader of the Opposition, Robert Doyle, moved the following motion:

> That this house notes the growing allegations of corruption within Victoria Police with links to 27 gangland killings and calls upon the government to establish immediately a permanent and independent crime and anticorruption commission to investigate the crisis of organised crime in Victoria.

Interestingly, that was followed a week later by my leading a debate in this house on support for terms of reference for a royal commission in relation to the establishment of a permanent and independent crime and anticorruption commission in Victoria. That motion was moved on 9 June 2004.

I looked to see what were the positions of the parties in this place at that time. What is particularly interesting about that debate is that those who voted against this motion were the members of the then government, including Ms Broad, Ms Darveniza, Mr Jennings, Mr Lenders, Ms Mikakos, Mr Scheffer, Mr Somyurek and Mr Viney. They all voted against a proposal to establish a broadbased anticorruption commission.

So it goes on. On 15 September 2004 in the Legislative Assembly, Peter Ryan, the then Leader of The Nationals — not then part of the coalition — put a separate position and came to a view after noting the debate in the Parliament. He is reported as saying:

> We have been very active in public commentary and in debates in this place in arguing for more powers to be vested appropriately in the right entities, individuals and authorities to combat corruption and crime.

He further said:

> To make the position of The Nationals very clear, it remains our view that a standing commission on crime and corruption should be established in Victoria. It should be run by a person with the demonstrated competence to undertake that task — a Tony Fitzgerald or his equivalent … We have had plenty of other debates and plenty of other commentary about the structure of that sort of entity. We believe that is what should happen.

So Mr Ryan was leading to that point. I note the credit that Ms Pennicuik was trying to claim for the Greens. Three years later, in August 2007, as Ms Pennicuik said, finally the Greens woke up and joined in, and Mr Barber moved a motion to — —

**Mr Viney** interjected.

**Mr P. DAVIS** — I do not know what that jabbering across the chamber is about, but it seems rather irrelevant to me right at this point. Mr Barber's motion was that this house call on the Attorney-General to send a reference to the Victorian Law Reform Commission to examine the most appropriate legal model for the anticorruption commission in Victoria. What was the position at that time? Surprise, surprise! The then government members Ms Broad, Ms Darveniza, Mr Eideh, Mr Elasmar, Mr Jennings, Mr Leane, Mr Lenders, Ms Mikakos, Mr Pakula, Ms Pulford, Mr Scheffer, Mr Somyurek, Mr Tee, Ms Tierney and Mr Viney, who are still in this place, amongst others who are not, voted no. Fortunately the wit and wisdom

of the then opposition and the Greens at that time combined, and we carried the day: 21 to 19.

**Mr Barber** — Don't they like the law reform commission?

**Mr P. DAVIS** — I do not know what they like and do not like, and I am not too worried at this point because I notice a rather intriguing aspect, which was somehow picked up on 9 November 2007. I see that the Labor Party position at that time was reflected in a headline that appeared in the *Australian* of that day: 'Corruption body a waste, says Brumby'. The first paragraph of the article reads:

> John Brumby has dismissed as a 'waste of taxpayers money' a standing royal commission into corruption on the same day that one of the state's top officers has been grilled by investigators for leaking sensitive police information.

The consistency of the ALP is clear to observe. It seems to me that the consistency in all of this is that the ALP, under pressure over a period of time, has been dragged kicking and screaming to a position that has been espoused in this place and in the public domain by the Liberal and Nationals parties for years. I am pleased that the Labor Party has now seen some sense, but because it finds it extraordinarily difficult to concede that it has been dead wrong in the past, it is trying to make a pathetic argument about the process of introducing this legislative framework.

I want to go directly to the construct of the case that is being put by the ALP. The ALP and indeed the Greens have suggested that everything should be done at once — that is, all of the mechanisms should be put in place at one time. The bills before this house enable the government to put the wheels in motion to set up the framework to establish the structures and corporate entities that will enable the appropriate scrutiny to occur. Importantly, a commissioner has to be appointed so that the commissioner can appoint the staff.

**Mr Barber** interjected.

**Mr P. DAVIS** — If Mr Barber, who prides himself on being a parliamentarian, would take a closer look at it in relation to his comments about the parliamentary committee, he would see that the Parliamentary Committees Act 2003 does not deal directly with the appointment of the Auditor-General. We need to understand how these mechanisms work. The Audit Act 1994 does not deal with the appointment of the Auditor-General. That is actually dealt with in the Constitution Act 1975, which provides that the existing parliamentary oversight committee — that is, the Public Accounts and Estimates Committee — makes a recommendation to the Governor in Council.

That is the mechanism by which the Auditor-General is appointed, but presently we do not have an independent broadbased anticorruption commission committee of the Parliament. Therefore the hypothesis that is being posited by the opposition and the Greens that somehow there should be a committee that appoints the inaugural commissioner involves delaying the creation of IBAC further, because after the passage of the legislation it will inevitably take some time to appoint a parliamentary committee and have that parliamentary committee go through a process of considering nominees.

The mechanism that has been provided for in the IBAC bill is to enable the Victorian model to reflect what occurs in some other jurisdictions where there is consultation with the 'leader of Her Majesty's loyal opposition'. I have to say the opposition is loyal in many respects, most particularly to the Crown, and I am sure most ALP members would agree. I believe the model of consultation between the Premier and the Leader of the Opposition is simple and transparent. If the Leader of the Opposition has a serious problem with the nominee that the Premier suggested and invited comment upon, then the Leader of the Opposition can quite clearly make that case.

Importantly, the resourcing of the structures of IBAC, the Victorian Inspectorate and the parliamentary committee is well provided for in the tranche of funding in the forward estimates and in the policy commitment which was made at the election. I congratulate the government, the minister responsible for IBAC, the Honourable Andrew McIntosh, and the Premier for bringing forward this legislation and ensuring that by the end of the first year in government the framework for the establishment of IBAC, proper oversight by the Inspector and proper parliamentary oversight are all in place.

I therefore conclude my remarks by urging the opposition and the Greens to abridge their remarks and to get to the point. As I understand it they have a simple proposition to put, which the government clearly does not agree with. The government has made the case that the bills are about a framework to facilitate the establishment of an IBAC. The government has previously announced that a further bill will be introduced which will deal with many of the issues that have been discussed or canvassed during the course of this debate.

**Mr Lenders** interjected.

**Mr P. DAVIS** — I think Mr Lenders is out of his place and his interjections are disorderly, but I am sure you can deal with that, Acting President. I conclude my remarks by urging the house to support the bills.

## INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION BILL 2011

*Second reading*

**Motion agreed to.**

**Read second time.**

**Committed.**

*Committee*

**Mr Lenders** — Deputy President, I draw your attention to the state of the chamber.

**Quorum formed.**

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

**Leave granted.**

**Clause 1**

**Ms PENNICUIK** (Southern Metropolitan) — My question on clause 1, or one of my questions, is if this bill establishes a framework for IBAC (Independent Broad-Based Anti-Corruption Commission), what will the next bill do and how will they interact? Will the next bill amend this bill or will it establish a different framework? Will they be two separate acts? Is there only going to be one act at the end with two bills forming the one act? Will it all commence on 1 July 2012?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I thank the member for her question. I understand she provided some questions beforehand, so I will endeavour to answer those as we go through the clauses. As we heard in the second-reading debate, there was much discussion about the establishment of the Independent Broad-Based Anti-Corruption Commission and the independent Victorian Inspectorate that will oversee it. It is known that the legislation is the keystone of the coalition government's integrity reforms. Together these bills represent the most far-reaching and fundamental reforms to the anticorruption and integrity system in Victoria's history. This bill will establish the commission and the position of the Commissioner as an independent officer of Parliament; it will outline the important education and prevention functions to be undertaken by; it will establish the parliamentary committee overseeing the IBAC's role and functions; and it will set the IBAC's reporting mechanism to Parliament.

This is obviously an important first step in the rollout of the government's much-publicised establishment of an IBAC. The preparation of the legislation outlining IBAC's investigative role is well progressed and will follow before the end of the year. This further legislation will vest IBAC with investigative functions, powers and safeguards. IBAC will be given significant powers in order to combat public sector corruption. The further legislation will include details of the IBAC's jurisdiction; its own-motion powers and its receipt of complaints and referrals; its general investigation powers, including a range of coercive powers; provisions dealing with the conduct of examinations; and additional powers for the Victorian Inspectorate to reflect the IBAC's expanded powers and functions. The second stage of the legislation will be about, as I said, granting it investigative powers, and will follow before the end of the year. This was announced in a press release in October.

**Ms PENNICUIK** (Southern Metropolitan) — I am not sure if the minister entirely understands my question. We have the IBAC bill. I presume we are going to have another bill with a different name. I presume this bill is going to turn into the IBAC act 2011. What is the other bill going to turn into, or does it amend the act that is going to be proclaimed at some stage?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I indicated before, and it is reflected in the second-reading speech, the second stage of the legislation granting IBAC its investigative powers will follow at the end of the year.

**Ms PENNICUIK** (Southern Metropolitan) — I have just one more question regarding the structure. The bill before us does not give us any structure except to appoint a commissioner and a committee. But if you look at the issues brief, or anywhere else you care to look for the structure of the integrity commissions around the country, you can see the different divisions within those integrity commissions are quite detailed.

In my contribution to the second-reading debate I asked whether this IBAC was going to be dealing with

misconduct as well as corruption, and Mr Philip Davis in his contribution mentioned that prior to the last Parliament certain members of the Liberal Party and The Nationals talked about something called a crime and corruption commission, even though it was not their official policy at the time.

The Queensland crime and misconduct commission looks at crime and misconduct and has particular divisions that look at crime. It has a crime division, a misconduct division and a witness protection division, as I said. My question is: is this commission going to be looking at crime? Is it a crime commission and a misconduct commission as well as an anticorruption commission?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The role of the bill is to establish the broadbased anticorruption commission; it is not specifically a crime commission, in the sense that, as outlined in clause 9, it will have a range of other functions. Clause 9 states:

> (2) The IBAC has education and prevention functions for the purpose of achieving the objects of this Act.
>
> (3) Without limiting the generality of subsection (2), the IBAC has the following functions —

and they are outlined there. It goes through a whole series of functions, but it is also about providing advice, training and education. It is about providing information and education services to the community. It is about providing information, consulting with and making recommendations to the public sector examining systems and practices in the public sector and public sector legislation, and so forth, as outlined in clause 9.

**Ms PENNICUIK** (Southern Metropolitan) — I will go to clause 9 when the committee gets to it, but basically I think we all accept that this bill does not outline the functions of IBAC at all, even in clause 9. My question is: if it is broadbased, does it deal with crime and corruption as the Western Australian commission does, does it deal with misconduct and crime as the Queensland commission does, or is it just an anticorruption commission like the New South Wales commission?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I think we need to reflect again on clause 9 and also on clause 4, which sets out the objects of the bill:

> (a) assist in the prevention of corrupt conduct;
>
> (b) facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and the ways in which corrupt conduct can be prevented;
>
> (c) assist in improving the capacity of the public sector to prevent corrupt conduct;
>
> (d) provide for the investigation and exposure of corrupt conduct.

**Hon. M. P. PAKULA** (Western Metropolitan) — I wish to clarify something. The minister said there would be another bill which would fill in the rest of the details this year. Is he saying that that bill will be introduced into the Parliament either this sitting week or next sitting week? Is that what the minister is saying — that it will be introduced into the Parliament?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I think it is important to reflect on and read out the media release put out by the coalition, entitled 'Coalition delivers on next stage of integrity reforms'. The third paragraph says:

> The second stage of the legislation —

I mentioned that earlier —

> granting IBAC its investigative powers, will follow before the end of the year.

**Hon. M. P. PAKULA** (Western Metropolitan) — I understand that is what it says, and I do not think that is clear. That is why I am asking the minister to clarify: will that legislation be introduced into the Parliament this year?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Before we start moving ahead of ourselves, can I just advise the house that we are actually talking about the Independent Broad-based Anti-corruption Commission Bill 2011, which is before the chamber? It is about establishing Victoria's first ever IBAC and an independent Victorian Inspectorate to oversee IBAC. As I said, the legislation is the keystone of the coalitions government's integrity reforms and, as I also indicated, a further, second stage of the legislation, granting IBAC its investigative powers, will follow before the end of the year. I am happy to discuss that bill when it is before the chamber, but we are dealing with this bill and not any other bill that may be proposed.

**Hon. M. P. PAKULA** (Western Metropolitan) — I am not asking the minister to discuss that bill. I am asking him to clarify the statement he has just made.

The statement the minister has just made was about legislation — and remember that legislation cannot be dealt with anywhere other than in the Parliament — and he spoke about legislation before the end of the year. Unless I am mistaken, there are only two sitting weeks left: the one we are in and the one beginning in the first week of December. Will that legislation be introduced in one of those two sitting weeks? It is a very simple question, and it is a pertinent question with respect to this bill, because — —

**Mrs Peulich** — But we're dealing with this bill.

**Hon. M. P. PAKULA** — We are dealing with this bill, and in discussing this bill the minister has made undertakings about when the detail will be provided. I am simply seeking clarification as to what the minister means when he says that legislation will be brought forward this year. Does that mean it will be brought forward into the Parliament? It is a simple question. If the answer is no, just say no!

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I again reiterate that the bill before the house as reported in the media and in the second-reading speech — this bill — is the first stage of the establishment of IBAC, allowing the appointment of the Commissioner and the commencement of the IBAC's vital education and corruption prevention functions.

The second stage of the legislation granting IBAC its investigative powers will follow before the end of the year. I can also read out page 4 of the second-reading speech of the responsible minister. Under the heading 'Further legislation', it specifies what I outlined to Ms Pennicuik. In the first part it states:

> Preparation of the legislation outlining IBAC's investigative role is well progressed and will follow before the end of the year.

**Hon. M. P. PAKULA** (Western Metropolitan) — I am now asking the minister to explain what he means by 'will follow'? Does that mean there will be a media release with some details or will the legislation follow by being introduced into the Parliament? What does the minister mean when he says 'will follow'?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Again, I have sought advice and the advice is, as outlined in a media release of 27 October and also in the second-reading speech — and I think it is very clear — that it will follow before the end of the year. We are in 2011, so before the end of the year.

**Hon. M. P. PAKULA** (Western Metropolitan) — This is going to make fascinating reading tomorrow in *Hansard* and I can tell the minister that it will be read by lots of people. I understand the minister is saying that it is clear, but I am saying that it is not clear to me, and I do not think it is clear to a number of other members of the chamber. We understand what this year is — it is 2011 — but we do not understand what the minister means when he says it 'will follow'. Does that mean it will be introduced; or will there be an exposure draft; or will there be a media release; or will there be a drop to the papers? What does the minister mean by it 'will follow'? Will legislation be introduced into the Parliament this year? We can do this all night!

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I take up the comment by Mr Pakula that we can do this all night. I remind the chamber that in fact Labor had 11 years to get this right, and we know that Labor failed to introduce a broadbased anticorruption commission. Anticorruption bodies with strong powers require robust oversight. The coalition government is committed to getting the model right. We are committed to restoring integrity in government, increasing transparency and removing the culture of secrecy that existed under Labor over the past 11 years. Establishing IBAC is a priority for the government. As a keystone of the government's integrity reforms, the government has committed $170 million over four years to the establishment and operation of IBAC. The government is committed to getting the model right.

As I have indicated, IBAC will be responsible for investigating, exposing and preventing corruption across the entire public sector — from police to local government, from the public service to members of Parliament. IBAC will replace Victoria's current creaking anticorruption system, a system that was rushed through by the former Labor government, a system full of holes and which is outdated and out of touch with the rest of Australia.

Let us get this right and get it straight. For 11 years Labor did nothing. It had 11 years to introduce a comprehensive anticorruption commission, and after years of denying the need for this anticorruption commission Labor was shamed into developing a proposal that, was so complex and bureaucratic that it was designed to fail. The coalition government is focused on getting the model right. Therefore I reiterate that the second stage of the legislation granting IBAC its investigatory powers will follow before the end of the year.

**The DEPUTY PRESIDENT** — Order! I was about to try to move things on to ensure that we will not be here all night asking the same question, but I suspect the minister's contribution has invited a response from Mr Pakula, who is on his feet.

**Hon. M. P. PAKULA** (Western Metropolitan) — It is my intention to keep asking the question until I get an answer. The minister's most recent answer would have been more interesting to the committee if it had been something other than a setpiece diatribe written for him by somebody else. In his recitation the minister talked about the culture of secrecy. My question is: why is the minister being so secretive about a very simple matter? We could move on right now if the minister would answer my question in one of three ways. I do not want to tell him how to suck eggs, but he could answer it in one of three ways. He could say, 'Yes, it will be introduced into the Parliament before the end of the year' or 'No, it will not' or 'I do not know'. I will accept any one of those three answers — yes, no or I do not know. Can I have one of those three responses?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I thank the member for his question, and I am very pleased that as a government we are introducing this legislation after 11 years of neglect and indifference to the issue around the establishment of an independent, broadbased anticorruption commission. As I indicated, this bill, and the discussion around it in this house tonight, is to establish IBAC. Further on in the bill the Parliamentary Committees Act 2003 is also amended.

I will say again to Mr Pakula that the preparation of the legislation that outlines IBAC's investigatory role is well progressed and will follow before the end of the year. Further legislation will vest IBAC with the investigatory powers, functions and safeguards that are all listed in the second-reading speech. As it says, the government is clear about the importance of getting IBAC's investigative powers and oversight arrangements right. The government has also been clear about the importance of ensuring that the model we introduce in Victoria is the best model for Victorians. I reiterate that the second stage of the legislation granting IBAC its investigatory powers will follow before the end of this year. I am happy to talk about the bill and what it will achieve.

**Hon. M. P. PAKULA** (Western Metropolitan) — I will just ask one more question on this.

**The DEPUTY PRESIDENT** — Order! I will allow a final question.

**Hon. M. P. PAKULA** — Maybe I will put it to the minister in this way: if I were to continue to ask the minister from now until dawn whether or not that next piece of legislation will be introduced into the Parliament this year, would he be determined to refuse to answer that question directly? Because if he is determined to refuse, then I will stop asking.

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

**Hon. M. P. Pakula** interjected.

**The DEPUTY PRESIDENT** — Order! Mr Pakula! I will hear the point of order.

**Mr P. Davis** — Like all members, I have a right to listen and to engage in this debate, including taking a point of order. The point of order is in relation to the matter before the committee. I have been listening intently to the points that Mr Pakula has made, and the point he is trying to engage the minister on is in relation to matters that relate to proposed legislation that is not before either house of Parliament — —

**The DEPUTY PRESIDENT** — Order! I ask Mr Davis to come to his point of order.

**Mr P. Davis** — It is legislation which is presently not before either house of Parliament and about which we are not aware of the detail. It seems to me that the issue here is that Mr Pakula's questions should relate to the bill that we have before us and not to a bill that does not exist at this point.

**The DEPUTY PRESIDENT** — Order! There is no point of order. Mr Pakula is pursuing a question in response to comments from the minister and is entitled to do so. I was about to advise the minister that this is not a second-reading debate and he should desist from treating it as such. Mr Pakula should recognise that we cannot require the minister to answer the question in any particular way. The minister has answered and been relevant to the question that he was asked, and we cannot continue until dawn. I will allow Mr Pakula's last question to stand because he indicated that it would be the last time he would ask it. I invite the minister to respond if he wishes.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I thank the member for his question. I am pleased that after 11 years of neglect and indifference by the former government, this government is bringing to the people of Victoria an Independent Broad-based Anti-corruption Commission. This is the bill that is before the chamber, and I am very pleased that we are

having this debate tonight. What I can say, as outlined — and I will repeat it — is that the second stage of the legislation granting IBAC its investigative powers will follow before the end of the year.

**Hon. M. P. PAKULA** (Western Metropolitan) — The minister just referred to the second stage of the legislation which will follow before the end of the year. Is that the second and final stage? It is a serious question.

**Mrs Peulich** interjected.

**Hon. M. P. PAKULA** — No, no, no. The point of the question, Mrs Peulich, is will that second piece of legislation be all that is required for IBAC to be up and running and fully functional, or will there need to be a third, fourth or fifth piece before it is up and running?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Coming from a former minister of the government that brought in bill after bill trying to get its anticorruption processes right, I find that question a bit rich. Mr Pakula needs to understand that the functions of IBAC are outlined in clause 9. As I said, the objectives of the act are outlined in clause 4, and we stand very proud of the legislation before the chamber, which will have IBAC up and running.

**Hon. M. P. PAKULA** (Western Metropolitan) — When the minister says the legislation will have IBAC up and running, IBAC will be up and running fully with all its investigatory powers, all its definitions and everything it needs to do to be a fully functioning IBAC as a consequence of this bill and the second bill, and that is it; is that what he is saying?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I appreciate, without any disrespect, the verballing of the member, because I indicated before that there is further legislation which vests IBAC with investigative powers. That is outlined in the second-reading speech. The bill before the chamber will establish the Independent Broad-based Anti-corruption Commission, and that is the main purpose of this bill, which is set out in clause 1.

**Hon. M. P. PAKULA** (Western Metropolitan) — Here we go again. Now what is clear is that we do not know whether this other legislation will be introduced this year, and we do not know that when it is introduced it will be enough or whether there will need to be a third piece of legislation or a fourth piece of legislation. That is not because of anything the opposition has done. It is because the minister refuses point blank to answer direct questions. When the government has made such a big deal about the fact that this legislation vesting IBAC with investigatory powers will be — I do not know what the word is — introduced or delivered this year, I do not think it is too much for the Parliament to want to know whether that second piece of legislation will be enough to get this body up and running or not.

**Mr P. DAVIS** (Eastern Victoria) — I wish to make a brief contribution to the committee stage of the debate. It seems to me that we are at risk of reprising during the committee stage a debate that we already had during the second-reading stage. I think that — —

**Hon. M. P. Pakula** — Not if the minister answers the question.

**Mr P. DAVIS** — Mr Pakula, I will take up that interjection. The minister has repeatedly given Mr Pakula a fulsome answer — that is, in effect this bill that we are considering during this committee stage deals with establishing the structure of IBAC. Investigatory powers will be vested in the structure by further legislation that will be introduced in the fullness of time. The fullness of time, in terms of the response by the minister, I thought was quite clear. At least it was clear to me; I think it is clear to most members in this chamber. The minister has made it quite clear that investigatory powers will be introduced in a further tranche of legislation that will be brought forward before the end of the year. I think that is abundantly clear. Mr Pakula may not be happy with the minister's answer, but I am entirely satisfied with the minister's response.

**Hon. M. P. Pakula** — Bully for you!

**Mr P. DAVIS** — I think it would be a good thing if, rather than badgering the minister and seeking to put words into the minister's mouth, Mr Pakula accepted that in good faith the government's position has been from the outset that it would initially establish the mechanism which the IBAC entity, the inspectorate and the parliamentary committee could be created and ensure that we give IBAC investigatory powers, as it was resolved, in a legislative proposal which is yet to come before the Parliament. That proposal is not before us tonight. In my view Mr Pakula is out of order to pursue matters that are not before the house at the present time. I would be quite relaxed if we were having a discussion about the detail of the merits of a particular clause in the bill, but it seems to me that the bill before the house deals quite adequately with the machinery involved with the creation of IBAC.

The government's position is absolutely clear — that is, the second stage of the legislation involving the granting of investigation powers to IBAC will follow this and be introduced before the end of the year. That is a position that was set out on 27 October 2011 when this bill was second read in the Assembly. It was made quite clear that the package of legislation would follow sequentially. There are two pieces of legislation before the house tonight. We are dealing with one bill in the committee stage at the present time. I am looking forward to dealing with the subsequent bill. The net result of all of this will be that members of the house will have further opportunity to deal with these matters when the further tranche of legislation is introduced before the end of the year.

**Hon. M. P. PAKULA** (Western Metropolitan) — The legislation will be introduced before the end of the year. I thank the member for giving us something that the minister did not. I would like to make a further contribution on this point given that Philip Davis made that contribution. First of all, I think it is extraordinary that what has been evinced by Mr Davis's contribution is the view that emanates from members of the government that so long as they are satisfied with the minister's answer, the rest of us should shut up. Mr Davis understands what the minister intends to say. If the opposition or the Greens are not satisfied or if the answer is incomprehensible to most people, then too bad. We ought to just pack up and go home, because Mr Davis understands what the minister is saying. It is hardly surprising given that he has the same cheat sheet in front of him as the minister has.

In relation to Mr Davis's suggestion that what has been brought forward tonight is in line with what the government has always said, that is a load of nonsense. The government said IBAC would be up and running and fully functioning by 1 July 2011. Additionally, Mr Davis was not debating the question currently before the minister but the previous question that was before the minister.

Despite the fact that we have not had a straight answer from the minister, I have in fact moved on. What we are now seeking to understand from the minister — and Mr Davis's contribution, whilst being enlightening, does not really help on this point — is: given that the government is now talking about a second piece of legislation that will materialise before the end of the year, will that piece of legislation be sufficient to get this organisation up and running? I am not asking anymore about what the end of the year means. I am asking whether the second piece of legislation vesting the investigatory powers in IBAC will be sufficient for it to be up and running.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Again for the record I need to address the false assumption made by Mr Pakula. The passing of this bill will establish IBAC.

**Hon. M. P. Pakula** — Except it will not be able to do anything.

**Hon. R. A. DALLA-RIVA** — It will; it will be up and running. Its functions are outlined in clause 9. Clause 7 outlines that IBAC is a body corporate. Clause 6 concerns its establishment, and it is very detailed there. The second-reading speech was clear about the further proposed legislation; it is well progressed and will follow before the end of the year.

**Hon. M. P. PAKULA** (Western Metropolitan) — I am inclined to say 'Whatever', because it is clear that no matter what questions we ask about — —

**Mrs Peulich** interjected.

**Hon. M. P. PAKULA** — Mrs Peulich, that is what tends to happen when you do not get an answer. When we look at the purposes of the bill it occurs to me that prior to the establishment of this piece of legislation there was an advisory committee which reported to the government on the creation of IBAC, and I am wondering why that advisory committee report has not been made public.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — To encourage free and frank participation the consultation panel undertook its work on a confidential basis. The panel prepared a report for the minister for consideration by cabinet, and accordingly cabinet in confidence confidentiality applies. Some stakeholders have chosen to publicly release their submissions — for example, posting on line. That is of course a matter for them.

**Hon. M. P. PAKULA** (Western Metropolitan) — So how will we ever know whether the legislation and the model that the minister ultimately brings forward in any way conforms with the recommendations in the advisory committee report? How will anyone ever know or ever be able to compare what you have eventually brought forward with what was advised or recommended to you?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Again, we were clear in the election about bringing this before the people of Victoria. We are, as I have indicated, undertaking a proper process. We are about getting it right, and the panel was part of that process. The panel was headed by former Supreme Court judge Stephen

Charles, QC, to canvass the views of a range of legal, community and operational stakeholders. It is no secret that a process was undertaken in opposition, with the policy document *IBAC — Independent Broad-based Anti-corruption Commission for Victoria* released in November 2010. The government is of the view that there have been adequate submissions and there has been adequate consultation to present the bill as it is. As I said, we are presenting this bill as the first bill to establish IBAC.

**Hon. M. P. PAKULA** (Western Metropolitan) — We are never going to see the advisory committee report, so we are going to have to take the government's word for it. I am prepared to take the minister's word for it, if he provides it. The question is: is the model for IBAC in conformity with what was recommended to the government by the advisory committee?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — My colleague made the point that we did not see an IBAC bill for 11 years, but I would not want to put that on the record. I will just clarify something. The panel prepared the report to the minister and Mr Pakula assumed that that was freely available. As I indicated, and it is important to reiterate, the consultation panel prepared a report to the minister for consideration by cabinet. Accordingly, normal cabinet-in-confidence confidentiality applies. As a former minister, Mr Pakula would understand that. The legislation as presented is reflective of where and how the government sees IBAC being established.

**Ms PENNICUIK** (Southern Metropolitan) — I have not so much a question, because I think we have a non-answer to the question, but as I mentioned in my contribution to the second-reading debate and privately to the minister earlier, I find it incomprehensible that the government is setting up a broadbased anticorruption commission to enhance integrity, accountability, openness and transparency but it is all being done in secret. I urge the government to release the report by Stephen Charles, QC, and his advisory committee. I am sure they have done good work. I fail to understand why it is all being kept away from the public, because what that advisory committee has advised the government about is of great public interest. I just make that comment.

**Mr LEANE** (Eastern Metropolitan) — Can the minister confirm Mr Philip Davis's previous statement that the government will be introducing a second tranche of IBAC legislation this sitting year — in the next five sitting days?

**Mr P. Davis** — On a point of order, Deputy President, relating to an earlier matter. Standing order 15.03 states:

> 15.03 Committee to consider only matters referred
>
> A committee of the whole will consider such matters only as have been referred to them by the Council.

It would seem that that provision in the standing orders makes it clear that the committee of the whole can examine any matter in detail in relation to the bill before the house and before the committee of the whole this evening, but it seems totally inappropriate to allow exploration of matters relating to proposed legislation which may be introduced at a subsequent time.

**The DEPUTY PRESIDENT** — Order! I made it quite clear when Mr Davis raised this matter as a point of order earlier — and I am going to remain consistent with the position I took before — that he would be correct if the matter of the future bill had not been raised by the minister, but the matter of the future bill or bills has been canvassed by the minister and therefore is open to subsequent questioning. Mr Davis is correct in saying that if those matters had not been raised in debate, then it would be difficult to see how they could be relevant to the committee stage, but they were raised, and therefore they are relevant. I invite the minister to answer Mr Leane's question if he wishes to.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Again, the second stage of the legislation, which will grant IBAC its investigative powers, will follow before the end of the year.

**The DEPUTY PRESIDENT** — Order! That question has been canvassed many times. I will rule that that is the last time it will be asked.

**Clause agreed to; clause 2 agreed to.**

**Clause 3**

**Ms PENNICUIK** (Southern Metropolitan) — Clause 3 sets out the definitions of terms used in the bill. It is notable that definitions of corruption and corrupt conduct do not appear in the definitions section, yet the objects of the bill and the educative and preventive functions outlined in clauses 9 and 10 refer to corruption and corrupt conduct. I also point out that section 8 of part 3 of the New South Wales government's Independent Commission Against Corruption Act 1988 defines corrupt conduct. It takes almost two A4 pages and six subsections to define corrupt conduct. People can look at that for themselves. My question is: how or why has the definition of

corruption been omitted from this bill when the subsequent clauses give the commission power to prevent and educate the community and the public sector about corruption and corrupt conduct? How will that happen without that definition? What definition will the commission rely on?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Ms Pennicuik asked this question earlier. As I indicated earlier, the IBAC bill will establish the commission and the position of the Commissioner as an independent officer of the Parliament. It outlines important education and prevention functions to be undertaken by IBAC. It establishes a parliamentary committee that will oversee IBAC's role and functions, and it will set in place the mechanism by which IBAC will report to Parliament. Alongside the $170 million the government will provide IBAC over four years, this bill demonstrates the government's commitment to integrity reform.

The IBAC bill allows the IBAC Commissioner to begin the important work of educating Victorians about corruption and its negative effects and proactively preventing corruption. It will help to ensure that Victoria's integrity and anticorruption structures undergo an orderly transition to a robust, comprehensive and cohesive system. This is important work recognised by experts as being among the key components of an effective anticorruption system. The bill allows IBAC to proactively work with public sector agencies to identify corruption risks and improve their systems and processes. It also empowers IBAC to build public sector capacity by providing training and developing anticorruption resources as well as informing the broader community about how to prevent corruption.

**Ms PENNICUIK** (Southern Metropolitan) — On my rough count the minister mentioned the word 'corruption' about 13 times in his answer. I want to know, without a definition of 'corruption' in the bill, on what definition of 'corruption' the commission will rely.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I indicated, other actions that IBAC may take can include: conducting general and targeted training and information sessions; hosting seminars, forums and conferences; conducting and publishing research about corruption and best practice models for preventing it; developing education and prevention programs, modules and information resources; conducting outreach programs targeting rural and regional communities; and publishing material for specific community groups and the community as a whole. The functions of IBAC, as outlined in clause 9, relate to issues including not only corruption, corrupt activity and corrupt conduct but also education and increasing capacity to prevent corruption, corrupt conduct and the like. I think the intentions of the IBAC bill are very clear — that is, they relate to the important work of educating about corruption and its negative effects and proactively preventing corruption.

**Hon. M. P. PAKULA** (Western Metropolitan) — I have listened to Ms Pennicuik's question, and there is an absolute logical inconsistency in the minister's answer. The bill does not define 'corruption', yet IBAC is going to educate people about corruption. What will be the frame of reference for IBAC? How can it educate people about something it has no definition of? When it is out there educating the community about corruption, what will it be describing corruption as?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I thank the member for his question. The advice I have is that we do not need a definition to enable IBAC to undertake the education and prevention roles and the capacity build.

**Hon. M. P. PAKULA** (Western Metropolitan) — I thank the minister. I have no doubt that was the advice he got when he went to the advisers box.

**Mr Koch** interjected.

**Hon. M. P. PAKULA** — Indeed, but I never had to go there to get a definition of 'corruption'. IBAC is going to be educating the public about corruption, but the bill does not define corruption, so the government clearly does not have a definition of corruption. Could the minister perhaps provide the house with his definition of 'corruption'?

**The ACTING PRESIDENT** (**Mr Ramsay**) — Order! I am not sure that question is in order. Mr Pakula is asking the minister for his personal definition of something as opposed to his role here explaining the bill, so I am not sure I can allow that question. The minister can respond if he wishes, but I am not sure I can require the minister to answer that question.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I will repeat: in terms of the issue being discussed, I understand that the functions of IBAC also relate to the education role, the prevention role and the capacity to build. We do not need a definition to enable IBAC to undertake those particular roles.

**Ms PENNICUIK** (Southern Metropolitan) — I have in my hand *Victorian Liberal Nationals Coalition Plan for Integrity of Government*, and in that document it states:

> Public sector corruption is defined as perverting or attempting to pervert the proper, honest and impartial exercise of the official functions of a public official. It can be done by the official acting corruptly or by someone seeking or inducing the official to act corruptly. Corrupt conduct may involve a criminal offence or disciplinary offence that could lead to dismissal.
>
> Corruption in the public sector means that decisions are not made in the public interest and decisions are made to serve private interests.

Is that the definition IBAC will be working to with regard to this bill?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik for providing that advice, but as I said, we do not need a definition to enable IBAC to undertake its education and prevention role and its capacity to build.

**Hon. M. P. PAKULA** (Western Metropolitan) — I risk attracting the ire of Mr Philip Davis, but on that, Deputy President, the reference to the further legislation which vests IBAC with investigations powers was not just referred to by the minister; it is actually in the second-reading speech.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — That is right; that is what I read before.

**Hon. M. P. PAKULA** (Western Metropolitan) — Exactly. That is why it is a perfectly legitimate line of inquiry in the committee.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Yes. And what does it say? 'The preparation of legislation' — —

**Hon. M. P. PAKULA** (Western Metropolitan) — Yes. I know; I understand that.

**The DEPUTY PRESIDENT** — Order! I take it that Mr Pakula's passing reference was to a matter I have already ruled on.

**Hon. M. P. PAKULA** (Western Metropolitan) — Indeed. It is a passing reference and now, having touched on it, I will move on.

**The DEPUTY PRESIDENT** — Order! Pass on to the next point.

**Hon. M. P. PAKULA** (Western Metropolitan) — Will the piece of legislation referred to in the second-reading speech that will vest IBAC with investigative powers define 'corruption'?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I am glad Mr Pakula found where I was referencing the issue that will follow before the end of the year. He can put that in another tweet as well.

**The DEPUTY PRESIDENT** — Order! We have had 45 minutes on this topic. Can we move on to the next one?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I said, I am very pleased that as a government we have before the chamber a bill that will establish an independent, broadbased anticorruption commission. I am very pleased, as I have outlined before, that there will be further legislation. The further legislation will vest IBAC with investigative powers, functions and safeguards. There are a whole range of things that will occur. I say to Mr Pakula and Ms Pennicuik that the government has been clear about the importance of getting IBAC's investigative powers and oversight arrangements right, and it does not shy from that. We have been very clear about the importance of introducing in Victoria the best model for Victorians.

**Hon. M. P. PAKULA** (Western Metropolitan) — I will try to frame this question in a way that does not offend my Public Accounts and Estimates Committee chair. The definitions clause of this bill is rather sparse; clause 3 is a rather sparse definitions clause. It does not contain a whole bunch of definitions, and it is missing a definition of corruption. Can we expect to see the definitions clause enhanced by adding a definition of corruption?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I said, the government does not see the need for a definition to enable IBAC to undertake its education and prevention roles and its capacity to build, as its functions are outlined in clause 9.

**Ms PENNICUIK** (Southern Metropolitan) — I just want to follow up on the minister's answer to Mr Pakula's question. The bill is called the Independent Broad-based Anti-corruption Commission Bill 2011, and the object of the bill — the first point — is to assist in the prevention of corrupt conduct. The word 'corruption' does not appear in the definitions section. I would have thought that any bill which deals with a

particular subject would define that key subject and that the core purpose of the bill would be defined in that bill. The minister has not been able to answer what definition of 'corruption' or 'corrupt conduct' the commissioner will be able to use in his functions set out in clause 9 of the bill.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I repeat that you do not need a definition to enable IBAC to undertake the education and prevention roles and the capacity to build. The purpose of the bill is to establish IBAC, and that is what this bill will do.

**Ms PENNICUIK** (Southern Metropolitan) — Will the definition of corruption appear in the next bill?

**Hon. R. A. DALLA-RIVA** — The second stage of the legislation granting IBAC its investigative powers will follow before the end of the year.

**Clause agreed to.**

**Clause 4**

**Ms PENNICUIK** (Southern Metropolitan) — I think I pretty well canvassed clause 4 in our discussion of clause 3, which was about how the objects of the bill, which are to prevent corrupt conduct and educate the public and the community about the effects of corrupt conduct et cetera, will be carried out without a definition of corrupt conduct. I think I have already prosecuted that argument.

**Hon. M. P. PAKULA** (Western Metropolitan) — One of the objects of the bill is to facilitate the education of the public sector and the community, and it goes on. Public sector is not defined. Some might say it is easily understood, but I am wondering whether in this bill or in terms of the powers of IBAC more generally the public sector is taken to include the judiciary.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The public sector standards commissioner (PSSC) has a role under the Public Administration Act 2004 to promote high standards of integrity and conduct in the public sector as it is limited in the Public Administration Act 2004. This body, IBAC, can educate public officials, such as judges, not included in that PAA definition. There are no issues caused by any overlap. In any event this is a body specifically educating about corruption, whereas the PSSC looks at conduct more generally.

**Hon. M. P. PAKULA** (Western Metropolitan) — Just to clarify, for the purposes of IBAC, will the public sector include the judiciary?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — IBAC has a role in terms of providing education, and it also has a prevention role and a role in capacity building. As I indicated, the IBAC body can educate public officials such as judges. There are no issues caused by any overlap, and in any event this is a body specifically educating about corruption.

**Ms PENNICUIK** (Southern Metropolitan) — I think it is true to say that the scope of IBAC is not included in the bill, but it is worth asking what 'public sector' means. Mr Pakula has asked: does it include the judiciary? I am asking: does it include local government?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The advice I have is that it is the same answer in terms of the capacity to educate about corruption, so local government is part of it.

**Hon. M. P. PAKULA** (Western Metropolitan) — Not even Philip Davis, who is still in the chamber, could object to this question.

**An honourable member** — He might.

**Hon. M. P. PAKULA** — No, there is no way. Wait until you hear it. One of the objects of the act, outlined in clause 4(c), is to 'assist in improving the capacity of the public sector to prevent corrupt conduct'. For the benefit of the house, could the minister outline how the government envisages that IBAC will do that? How will it assist in improving the capacity of the public sector to prevent corrupt conduct?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The details are outlined as follows:

> The bill gives IBAC the flexibility to conduct a wide range of activities in performing its education and prevention functions. These include:
>
> > developing education and prevention programs, modules and information resources;
> >
> > conducting general and targeted training and information sessions;
> >
> > conducting and publishing research about corruption and best practice models for preventing it;
> >
> > conducting outreach programs targeting rural and regional communities; and

> publishing material for specific community groups and the community as a whole.
>
> In addition, the bill specifically allows IBAC to proactively work with public sector agencies to identify corruption risks and to assist agencies to improve their systems and processes in order to prevent corruption occurring.

**Ms PENNICUIK** (Southern Metropolitan) — The public sector standards commissioner already issues codes of conduct and employment standards and promotes high standards of integrity and conduct in the public sector, and the commissioner has done that for a while. I am wondering whether that role will be subsumed by IBAC or whether the commissioner will continue to perform that role.

**Hon. R. A. Dalla-Riva** — I got the rest of it, but what was the last part of the question?

**Ms PENNICUIK** — I am wondering whether the public sector standards commissioner will continue in that role, whether IBAC will take over that role or whether the two will continue together.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The advice I have is that the public sector standards commissioner has a role under the Public Administration Act 2004 to promote high standards of integrity and conduct in the public sector as limited by the Public Administration Act 2004. However, IBAC can educate those public officials who are not included in the definition in the Public Administration Act 2004. There are no issues caused by any overlap. In any event, this is a body specifically dealing with education about corruption, whereas the public sector standards commissioner looks at conduct more generally.

**Ms PENNICUIK** (Southern Metropolitan) — I would like to pursue that. I thought I heard the minister say that anyone employed under the Public Administration Act 2004 would not be covered by IBAC but would still be covered by the public sector standards commissioner.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I just sought clarification. IBAC can undertake processes including those within the Public Administration Act 2004, so it is not separate.

**Ms PENNICUIK** (Southern Metropolitan) — So they are not excluded?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — No, they are not excluded.

**Hon. M. P. PAKULA** (Western Metropolitan) — My question relates to clause 4(d), one of the objects of the act, to:

> provide for the investigation and exposure of corrupt conduct.

We have seen recent examples where the investigation and exposure of corrupt conduct in many circumstances cannot be successfully carried out without telephone intercept powers. When does the government expect the commonwealth to approve its requests for telephone intercept powers?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I am advised that the government is working with the commonwealth, which will pass the relevant amendments in due course.

**Clause agreed to; clauses 5 to 8 agreed to.**

**Clause 9**

**Ms PENNICUIK** (Southern Metropolitan) — Clause 9(2) refers to education and prevention functions and clause 9(3) refers to systems and practices, information and education in the public sector. I think perhaps the question I had was partly answered during discussion on clause 4 about the crossover with the public sector standards commissioner, but this clause seems to be very limited if you compare it with the objects of the act in clause 4, which include investigatory powers, et cetera. The objects of the act include investigation and exposure of corrupt conduct, whereas the functions of IBAC, which are listed in clause 9, relate to just information and education. I am wondering whether there will be an expansion of this clause in the follow-up bill in regard to investigation, because there is nothing here about investigating corruption in the public sector. Is this the area which is going to be expanded in terms of the functions, roles and powers of the commission?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The advice I have is that the bill needs to be read as a whole. If Ms Pennicuik looks at clause 9, she will see that the functions of IBAC are outlined. Clause 10 also provides IBAC with:

> … power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievements of the objects of this Act and the performance of its duties and functions.

The functions are outlined in clause 9, and the objects are set out in clause 4, as Ms Pennicuik indicated.

**Ms PENNICUIK** (Southern Metropolitan) — Although I understand what the minister has said, I am concerned that the functions of IBAC do not include investigating corruption when it is reported. That does not seem to be a function under clause 9. Even though it is an object of the bill, it is not a function of the commission. The functions do not seem to follow on from the objects of the bill, even given what you have said about clause 10. Clause 10 could just mean that the commission can do all those things that are necessary or convenient to be done for the functions of IBAC under clause 9, which does not include investigation of corruption.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Again, if Ms Pennicuik reads clauses 10, 9 and 4, she will see that clause 9(1) states:

> The IBAC has the functions conferred on the IBAC under this Act or any other Act.

Subclause (2) states:

> The IBAC has education and prevention functions for the purpose of achieving the objects of this Act.

The objects of the act as outlined in clause 4 include to:

> (d) provide for the investigation and exposure of corrupt conduct.

Clause 9, subclause (3), is not specific; it says:

> Without limiting the generality of subsection (2) …

Clause 10, in conjunction with clauses 9 and 4, makes it clear that:

> The IBAC has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievements of the objects of this Act —

which are in clause 4 —

> and the performance of its duties and functions.

Its functions are outlined in clause 9.

**Ms PENNICUIK** (Southern Metropolitan) — I thank the minister for reading the clauses to me, and I assure him that clauses 4, 9 and 10 are imprinted on my brain. However, I still cannot see the answer to my question in what the minister has read out to me. I suppose, because I do not wish to repeat the question, that I will have to assume that I am not going to get an answer to the question. Perhaps the answer to the question may come in a future bill.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik. I have answered the question; I ask her to study *Hansard* and the bill, and she will see that it all links.

**Clause agreed to.**

**Sitting suspended 1.44 a.m. until 2.03 a.m.**

**Clauses 10 to 14 agreed to.**

**Mr BARBER** (Northern Metropolitan) — I move:

> That progress be reported.

The reason I move that we report progress is that the government should in all reasonableness and decency let members go home. In 2007, 2008, 2009 and 2010 there was only one occasion when this house sat after midnight. Since we have had a new government we have done so on a number of occasions. On 1 March this year we sat until 3.30 a.m., which cost us nearly $10 000 in overtime and that big nosh-up we all had before, according to information given to me by the Parliament. On 22 March we sat until 2.45 a.m. and again the estimates are that it cost us around $9000. On 15 April we sat until 12.53 a.m. and that cost us around $6700. On Wednesday, 1 June, we sat until 12.19 a.m. and that cost around $1600. In the sitting week starting 14 June we sat late on two nights at a total cost estimated by the Parliament to be $25 000. In the following sitting week it cost us $17 000.

Since these estimates were prepared we have had another late-night sitting, which would probably have cost us about $10 000. If we add that to what we have done here tonight, we will probably crack the ton — about $100 000 spent on these late-night soirees brought on solely by the government and its unwillingness to organise the program in cooperation with the other parties. If it was anything other than this nuff-nuff piece of legislation, this blown-out egg with the appearance on the outside of some sort of solidity but with the actual guts removed, there might be some reason to continue on in this way.

Members of the government should be aware of the cost of this exercise when they face their electorates and have to explain why it is that certain programs have been cut because the government does not have any money. It is poor practice from the point of view of all the many employees of this Parliament, not to mention MPs themselves. We have been warned before about the real risks of sitting late in this way, including fatigue of people operating in this building. Some will have to go home well after we MPs leave and then return to work even before we arrive. For that reason

we should report progress and the government should act reasonably and adjourn the house.

**Hon. M. P. PAKULA** (Western Metropolitan) — The opposition will support Mr Barber's motion, for all the reasons provided by Mr Barber and also because we are most of the way through this bill and we can easily get through what is left of it and the rest of the matters on the government business program on Thursday, without any question. None of the bills on the government business program for the rest of this week are particularly long or complex. We will have ample time on Thursday to conclude this bill and get through the other matters on the government business program.

The final reason we will support Mr Barber's motion is that the tactic being employed by the Leader of the Government is clear, and it is unworthy. It is a tactic to make sure that embarrassing, difficult pieces of legislation are dealt with in the dead of night when ministers at the table are not able to answer simple questions and when they cannot be reported on. It is also a tactic by which the government believes it can cower the opposition and the Greens into desisting from asking legitimate questions about legislation by forcing us to do so in the middle of the night. That is not a tactic which is in the interests of transparency or which in any way conforms to the government's rhetoric that what it intended to do if it won office was to be an open, transparent and accountable government.

If the government truly believed in transparency, it would not force the opposition and the Greens to ask these important questions at 10 past 2 in the morning. It would allow us to come back at a reasonable hour in the light of day and in the light of public scrutiny and ask these questions then.

**Hon. D. M. DAVIS** (Minister for Health) — The government will oppose this motion. It will do so because the two pieces of legislation in question, the Independent Broad-based Anti-corruption Commission Bill 2011 and the Victorian Inspectorate Bill 2011, are important parts of the government's legislative program. We seek to pass eight bills that are on the program this week, four today and four on Thursday, with Wednesday being a non-government-business day. We will work smoothly through that. I make the point that the government is determined not to use government business program methods with guillotines, as were brought in between 2002 and 2006 by the former Leader of the House and now Leader of the Opposition in the other place, the member for Mulgrave. We were opposed to that. We have always taken the view that committees can be long and complex. Many questions are asked, and ministers at the table make a sincere endeavour to answer those questions. We regard that as an important democratic step so that those questions are answered. In the lower house those committees are often not available and traditionally they have not been available under many governments.

**Hon. M. P. Pakula** — Never.

**Hon. D. M. DAVIS** — No; you are agreeing with me, Mr Pakula, on that essential point. In that context we understand that it does take some time. We are not going to gag or end debate. We are going to allow the opportunity for questions to be asked. I make the point that earlier in the day the Mines (Aluminium Agreement) Amendment Bill 2011 went for nearly 4 hours in total, with 2½ hours in committee — a very long and exhausting committee in which there were many opportunities for Mr Barber and other members to correctly and fairly ask as many questions as they considered reasonable to satisfy themselves.

In that context we understand that sometimes things take a while. Sometimes it is a process that takes a little longer than the minister at the table might desire, but in the interests of transparency and democracy we are prepared to go through that process and do so willingly and with good grace. I think Mr Dalla-Riva has been very generous in his approach and is prepared to work his way through these things. As I say, these are important parts of the government's agenda and we will seek to pass them tonight.

**Mr LEANE** (Eastern Metropolitan) — I have two points in relation to Mr Davis's contribution in stating that these two bills are an important part of the government's agenda. I do not dispute that, but I want to state that the implementation date on these bills is July next year. If there were a situation where the house returned and completed this particular committee stage and these bills on Thursday, I am confident, as my colleague Mr Pakula stated, that the next four bills on the notice paper would be completed in sufficient time quite easily on Thursday. We respect that the government has a desire to get through this particular list of bills this week, and the opposition members — and I am sure also the Greens — are prepared to facilitate that. If that meant that we sat a little bit past 4.30 on Thursday to maybe 6 o'clock — dinnertime — I think that might be a more sensible approach than proceeding to 3.00 and 4.00 a.m. today. I just wanted to pick up those couple of points.

**Ms PENNICUIK** (Southern Metropolitan) — Given what Mr Davis has said about the committee function and process and about it taking a while and so on, that is all true, but he does not need to be doing it at this time of night. It is really appalling health and safety practice for the staff of the Parliament and for the advisers sitting there in the advisers box; it is now 2.15 a.m. It is not a practice that the government should continue, at all. It exposes people to the chance of an accident on the way home or on the way back in this morning, and these are risks that are not worth taking for bills that are not urgent. I understand the government says they are important. They are important, but they are not urgent. In any case, the opposition has said, and we agree, that we can get them through this week, so there is absolutely no need for us to be here at this hour. These bills and the other bills on the notice paper can be finished on Thursday.

**Committee divided on motion:**

*Ayes, 18*

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

*Noes, 20*

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

*Pair*

| | |
|---|---|
| Darveniza, Ms | Kronberg, Mrs |

**Motion negatived.**

**Clause 15**

**The DEPUTY PRESIDENT** — Order! I invite Mr Pakula to move his proposed amendments 1 and 2. I also advise the committee that I intend to reverse the consideration of Mr Pakula's proposed amendments. The substantive proposition in Mr Pakula's amendments is in his amendment 2, and amendment 1 is a consequential amendment to amendment 2. I therefore propose to put this amendment 2 first. I invite Mr Pakula to move both amendments.

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

1. Clause 15, page 7, line 26, omit "Subject to subsection (4), the" and insert "The".

2. Clause 15, page 8, lines 19 to 27, omit subclause (4).

I am in your hands, Deputy President. I am happy to speak to those amendments, but I also have a couple of questions on this clause so I think I will go to the questions first if that is okay.

Clause 15(3)(a) says that the Independent Broad-based Anti-corruption Commission Committee may decide to veto or not to veto the proposed recommendation, and clause 15(4) says that subclauses (1) to (3) do not apply to the appointment of the first commissioner under the act and that the minister may make the recommendation. My simple question to the minister is: why has the government not adhered to its election commitment to provide the IBAC Committee with a right of veto over the appointment of the IBAC Commissioner? At the time the coalition made this commitment, it did not qualify the commitment in the way that the bill does; it made it clear that the power of veto applied to any IBAC Commissioner, including the first commissioner, not just subsequent commissioners.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I thank the member for his question. The government is committed to establishing the Independent Broad-based Anti-corruption Commission and appointing an IBAC Commissioner as soon as practicable following the passage of the bill. The consultation process in the Independent Broad-based Anti-corruption Commission Bill 2011 for the inaugural appointment of a Commissioner is modelled on similar processes for inaugural appointments in legislation establishing anticorruption bodies in Queensland and Western Australia.

The process in the IBAC bill is also similar to the consultation required for the appointment of the director-general of the Australian Security Intelligence Organisation. It is likely that the IBAC Committee will not be operational by the time the government seeks to appoint an IBAC Commissioner. Therefore the consultation process in clause 15(4) provides an alternative process for the appointment of the inaugural Commissioner. This consultation process is unique in Victoria in relation to independent officers of the Parliament and reflects the government's commitment to the independence of IBAC.

I note that there are no consultation processes or parliamentary committee involvement whatsoever for the appointment of either the director, police integrity or the Ombudsman. The bill establishes an ongoing process, following the inaugural appointment, where the parliamentary IBAC Committee will have a power to veto a proposed recommendation as to an IBAC Commissioner. This demonstrates the government's commitment to the independence of IBAC and is similar to the process for the appointment of the Auditor-General.

**Hon. M. P. PAKULA** (Western Metropolitan) — It is all well and good for the minister to talk about all the bodies that do not have this committee process. The fact is that in regard to IBAC the government promised one. The government is delivering on that promise in a way that means that the promise will not be delivered for at least five years after the establishment of IBAC.

The second point I want to take the minister up on is that he said it is unlikely that the IBAC Committee will be up and running in time for the government to use it for the appointment of the inaugural IBAC Commissioner. The point I make is that the timing of the establishment of the IBAC Committee is entirely in the government's hands. The government could establish that IBAC Committee by a resolution of the Parliament this week.

Can the minister explain how it is appropriate or acceptable for the government to deliberately delay, if you like, the creation of the committee and then use that delay as the justification for not adhering to its election promise?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I have indicated, the consultation process for the inaugural appointment of the Commissioner is modelled on similar processes for inaugural appointments in the legislation establishing anticorruption bodies in Queensland and Western Australia. The government considers that the consultation process in clause 15(4) provides the appropriate alternative process for the appointment of the inaugural Commissioner.

**Hon. M. P. PAKULA** (Western Metropolitan) — But that is not what the government promised, is it?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The process is as outlined in the bill, and I have explained the reasons why.

**Ms PENNICUIK** (Southern Metropolitan) — The Greens will support Mr Pakula's amendments to clause 15. As I outlined in my contribution to the debate on the second-reading speech, the Greens would prefer that the Commissioner, the Inspector and the heads of statutory and major government departments be appointed by an independent commission for public appointments. I encourage the government to look at that model and include it in its enhancement of the integrity system, because it would be an enhancement of the integrity system.

As that is not before us at this moment, I agree with Mr Pakula that the committee could be established forthwith and commence its functions. It could then carry out its functions under clause 15(3), so subclause (4) would not be necessary, and that would make for a more transparent process than the process currently proposed. As I have said, the appointment of the IBAC Commissioner needs to be at arms length and as far away from the executive government as possible if it is going to be a truly independent Commissioner.

**Hon. M. P. PAKULA** (Western Metropolitan) — Before you, Deputy President, formally put my amendment I have one more question. I am trying to understand the transparency of the process for the inaugural appointment. The process is defined in clause 15(4), which states:

> … the Minister may make the recommendation … after the Premier has consulted in relation to the proposed recommendation with the —

Leader of the Opposition, effectively. I am trying to understand how that process will work. Can the minister explain the process of consultation between the Premier and the Leader of the Opposition in some greater detail?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I indicated, this process for the inaugural appointment is modelled on similar processes for inaugural appointments in the establishment of anticorruption bodies in Queensland and Western Australia. As I said, it is likely that the IBAC Committee will not be operational by the time the government seeks to appoint an IBAC Commissioner. Therefore the consultation process, as outlined in clause 15(4), is the appropriate alternative process. The legislation speaks for itself.

**Hon. M. P. PAKULA** (Western Metropolitan) — With respect, Minister, it does not. I am asking whether the minister can provide me with some more detail about the consultation process. What does consultation by the Premier with the Leader of the Opposition mean? Does it mean that the Premier will seek the agreement of the Leader of the Opposition; or does it

mean that he will simply notify the Leader of the Opposition of the decision that has been made? If it is the latter rather than the former, at what stage in the process will the Premier consult with the Leader of the Opposition?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I believe I have answered in relation to the substantive component of clause 15(4). It states:

> … the Minister may make the recommendation for the appointment of the first Commissioner after the Premier has consulted in relation to the proposed recommendation with the member of the Legislative Assembly —

being the Leader of the Opposition. The explanatory memorandum states in relation to clause 15:

> Subclause (4) provides for a special process for the making of a recommendation as to the appointment of the Commissioner under clause 14 for the first time, whereby the only requirement before the Minister makes a recommendation for the appointment of the first Commissioner is that the Premier has consulted with the Leader of the Opposition. The requirement for consultation does not require the Premier to obtain the approval of the Leader of the Opposition.

**Hon. M. P. PAKULA** (Western Metropolitan) — Thank you. Now we are getting somewhere. The explanatory memorandum goes to one part of my question in relation to further detail. Whilst I am grateful for the minister's response — I will not describe it as an answer — this is a perfectly legitimate question for the opposition to ask. If the bill provides for the Premier to consult with the Leader of the Opposition, I do not think it is too much to ask how that will work. Let us be clear. We are talking about the only transparency provision relating to the first IBAC Commissioner appointment.

Given that it is the only transparency provision, it is not unreasonable for the opposition and the Parliament to want to know how that process will work. The minister has pointed out that the explanatory memorandum makes it clear that there is no need to obtain approval; that is fine. What the minister has not dealt with is the second part of my question, which is: at what stage of the process will the Premier consult with the Leader of the Opposition? Will it be whilst considerations are ongoing, or will it be after the decision on who the Commissioner will be has been made?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — In terms of the process, on page 2 of the media release entitled 'Coalition delivers on next stage of integrity reforms' it says:

> The opposition leader will be consulted before the appointment of IBAC's inaugural Commissioner.

**Hon. M. P. PAKULA** (Western Metropolitan) — I am none the wiser. Deputy President, I am happy for you to put the amendment.

**Ms PENNICUIK** (Southern Metropolitan) — In regard to clause 15, which is about the appointment of the Commissioner, what is the process in the lead-up to the time when the Leader of the Opposition — 'the Leader of Her Majesty's Opposition' as written in the bill — is consulted on the appointment? For example, will the government be following the guidelines for public appointments that the State Services Authority has and/or will it be an open and transparent process with regard to recruitment, expressions of interest and calls for nominations for the role of the Commissioner?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I indicated, the government is committed to establishing IBAC and appointing an IBAC Commissioner as soon as possible and practical following the passage of this bill. As I also indicated, the consultation process in the IBAC bill for the inaugural appointment of the Commissioner is modelled on similar processes for inaugural appointments in the legislation establishing anticorruption bodies in Queensland and Western Australia. I also note that the appointment of the Commissioner is provided for in clause 14 in terms of who is eligible for that appointment.

**Ms PENNICUIK** (Southern Metropolitan) — That was not the question I asked. I asked a question about the process leading up to a name coming forward. With respect, I know what is in clause 14. I know what is in all the clauses of the bill. I know who is eligible to be a Commissioner. I am asking about something which is not in the bill but which is important and apposite to the bill. What process will be followed by the government for the appointment of a person to this very important role of Commissioner of IBAC?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I think it is important to read clause 14(2). It says an eligible person:

> (a) is or has been, or is qualified for appointment as, a judge of —
>
> (i) the High Court; or
>
> (ii) the Federal Court; or
>
> (iii) the Supreme Court of Victoria or of the Commonwealth or of another State or a Territory.

(b) is not a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory.

There is also subclause (3), which I will not read. Again, in the legislation the appointment will be a similar process to what occurs in Queensland and Western Australia. I am advised that there is an executive search process well under way.

**Ms PENNICUIK** (Southern Metropolitan) — The minister says there is a search process under way. Could he give details as to that search process? Is that an open call for nominations for that position? Is it open, transparent and public?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I indicated, there is an executive search process well under way, which is consistent with the appointment of senior executives to positions like this, and as I said, the processes for the inaugural appointment are the processes that were applied in the establishment of the anticorruption bodies in Queensland and Western Australia.

**Ms PENNICUIK** (Southern Metropolitan) — In the guidelines for public appointments, there are different levels for the appointment of persons to public office. Some of those are required to go to cabinet. Will this particular appointment need to go to cabinet?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — This will be a Governor in Council appointment in accordance with the normal processes of appointments via the Governor in Council.

**The DEPUTY PRESIDENT** — Order! I will put Mr Pakula's amendment 2 and advise the committee that I regard it as a test of his amendment 1.

**Committee divided on amendment 2:**

*Ayes, 18*

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

*Noes, 20*

| | |
|---|---|
| Atkinson, Mr | Hall, Mr (*Teller*) |
| Coote, Mrs | Koch, Mr |
| 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 (*Teller*) | Peulich, Mrs |
| Finn, Mr | Ramsay, Mr |
| Guy, Mr | Rich-Phillips, Mr |

*Pair*

| | |
|---|---|
| Darveniza, Ms | Kronberg, Mrs |

**Amendment negatived.**

**Clause agreed to; clauses 16 to 30 agreed to.**

**Clause 31**

**Hon. M. P. PAKULA** (Western Metropolitan) — Clause 31 deals with oaths and affirmations. With regard to employees it says an employee 'must' take an oath or affirmation, and in regard to contractors and consultants it says they 'may' take an oath or affirmation. Can the minister explain why consultants and contractors that the IBAC Commissioner can engage as a result of the powers given to the Commissioner by this bill are not required to take the oath or affirmation that IBAC staff are required to take?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — Clause 31(1) says that before commencing employment a person referred to in clause 29 must take an oath. Clause 29 refers to any employees that are necessary for the purposes of this proposed act. It also says IBAC may enter into agreements or arrangements for the use of the services of other staff — —

**Hon. M. P. Pakula** — I told you that.

**Hon. R. A. DALLA-RIVA** — Yes, I am just explaining the 'must'. In terms of clause 31(2), which says IBAC 'may require a person engaged under section 29(2) or 30', IBAC would make the determination as to that consultant or person engaged under clause 29(2).

**Hon. M. P. PAKULA** (Western Metropolitan) — The minister in his answer just told me what I had just told the minister. In my question I had said what the minister just said. My question was: why is that the case? Why is it that employees must take an oath, but with respect to contractors or consultants it is only a 'may'? It is no good the minister telling me that, because that is what I just said. Now I would like to know why that is the case.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I have answered the question about why one is a 'must' and one is a 'may'. The answer is that IBAC may require an oath or affirmation, whereas under clause 31(1), before

commencing employment with IBAC a person referred to in clause 29 must take an oath or affirmation. It is clearly different, and it is for IBAC to determine.

**Hon. M. P. PAKULA** (Western Metropolitan) — I thank the minister. I know it is for IBAC to determine. I understand that. I am asking the minister why that is the case. Why would it not be the case that all people who work at IBAC, whether they be employees, contractors or consultants, must take an oath? Why is it left to the discretion of IBAC? That is my question.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — I reiterate my previous answer. Just to clarify further, the advice is that a broad range of people are caught under clause 31(2), and that is an appropriate matter for IBAC to determine.

**Hon. M. P. PAKULA** (Western Metropolitan) — I will not press that question. It is clear where it is heading and that the minister will just continue to refuse to answer. I will ask instead: will those people — that is, consultants or contractors — be regulated by any of the provisions of the Public Administration Act 2004 and, if not, why not?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The Public Administration Act 2004 refers to staff and is specific. The issue Mr Pakula is referring to under clause 31(2), as I said, relates to a broad range of people caught within that area, and again it is appropriate for IBAC to determine who may be required to take an oath or make an affirmation under that provision.

**Hon. M. P. PAKULA** (Western Metropolitan) — Is that a 'No' from the minister — that they are not covered by the Public Administration Act 2004?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — My learned colleague here says it depends on who they are. It is clear within clause 31 that IBAC will determine that, as appropriate, within the broad range of people caught within clause 31(2).

**The DEPUTY PRESIDENT** — Order! The President, in a previous life as Deputy President, frequently reminded ministers after lengthy committee stages that the purpose of the committee stage is to enable members to elicit the policy reasons, the background or the explanations for the provisions in bills. As the President in his previous position as Deputy President said, it extends the committee stage and is not particularly helpful if answers are consistently simply stating clauses in bills or paragraphs in media releases that do not actually answer the question that has been put. I cannot require the minister to answer in a particular way, but I remind the minister that that is the purpose of the committee stage. It is 3 o'clock in the morning, and we have spent a considerable amount of time during the hours in this committee stage in toing and froing with questions and answers that are simply not matching up. I invite Mr Pakula to pursue further questions.

**Hon. M. P. PAKULA** (Western Metropolitan) — We could have got through this committee stage about an hour and a half ago, taking up the Deputy President's point, if the minister had answered my questions the first time in regard to each of the matters — —

**Ms Pennicuik** — And mine.

**Hon. M. P. PAKULA** — And Ms Pennicuik's questions. The only reason this committee stage has taken as long as it has is that on each and every issue we have had to ask the minister four or five times for an answer. As Roberto Durán said in his fight with Sugar Ray Leonard, no más.

**Clause agreed to; clauses 32 to 43 agreed to.**

**Clause 44**

**Ms PENNICUIK** (Southern Metropolitan) — Clause 44 amends the Whistleblowers Protection Act 2001 to establish that IBAC and an IBAC officer or any other person engaged is not a public body or officer for the purposes of the act. This will ensure that IBAC is not subject to that act. Does that mean that an IBAC officer cannot be a whistleblower within IBAC?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The advice I have is that the Whistleblowers Protection Act 2001 does not apply to an IBAC officer within the meaning of the act, and that it is because of the oversight of the inspectorate and also because of parliamentary committee oversight.

**Ms PENNICUIK** (Southern Metropolitan) — That concerns me. Usually when wrongdoing occurs in an organisation it is uncovered because someone blows the whistle. It is not always uncovered by an external body looking into it because it is not necessarily seeing it or finding it or having it reported. If a person who is an IBAC staff member cannot blow the whistle on something they may see happening within IBAC, that raises serious concerns about the integrity of the integrity body. I want the minister to be pretty sure that what he is telling me is correct.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — The coalition government intends to consider further legislation providing for protection to IBAC whistleblowers. It is intended that the Victorian Inspectorate will receive whistleblower complaints about IBAC when its full range of functions and powers are implemented.

**Ms PENNICUIK** (Southern Metropolitan) — I need to be clear that the Inspector can receive complaints about IBAC from persons within IBAC.

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I indicated, the amendment is as provided in the bill. I have also indicated that the government will consider further legislation providing for the protection of IBAC whistleblowers. We have not gone to the Victorian Inspectorate Bill 2011, where we can explore that further, but it is intended that the Victorian Inspectorate will receive whistleblower complaints about IBAC when its full range of functions and powers are implemented, as I said.

**Ms PENNICUIK** (Southern Metropolitan) — This is an important issue. Is the minister saying that under the bill a staff member of IBAC who wants to blow the whistle on conduct within IBAC is not protected by the Whistleblowers Protection Act?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — As I indicated, the government will consider further legislation to provide protection for IBAC whistleblowers; I have said that.

**Ms Pennicuik** interjected.

**Hon. R. A. DALLA-RIVA** — It is intended that the Victorian Inspectorate will receive whistleblower complaints about IBAC when its full range of functions and powers are implemented.

**Ms PENNICUIK** (Southern Metropolitan) — Just to be clear, because it is not quite clear and it is an important point, am I to infer from that that they do not have protection now, because the minister is suggesting the government is going to legislate to ensure that they do have protection? I have to infer from that that they do not have protection under this bill. Is that correct?

**Hon. R. A. DALLA-RIVA** (Minister for Employment and Industrial Relations) — It was advised that in the context of the bill before the chamber I have provided surplus information that would indicate where our position will lie in terms of the protection of IBAC whistleblowers, and I think it is very clear what we intend to do.

**Committee divided on clause:**

*Ayes, 20*

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

*Noes, 18*

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

*Pair*

| | |
|---|---|
| Kronberg, Mrs | Darveniza, Ms |

**Clause agreed to.**

**Clause 45 agreed to.**

**Reported to house without amendment.**

**Report adopted.**

*Third reading*

**Motion agreed to.**

**Read third time.**

## ADJOURNMENT

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

That the house do now adjourn.

### Water: charges

**Mr LENDERS** (Southern Metropolitan) — The matter I raise in the adjournment debate tonight is for the attention of the Treasurer. It relates to dividends from water authorities, particularly the status of the $654 million annual security payment factored into water premiums by the Essential Services Commission which has obviously not been charged, at this stage,

because the desalination plant is not yet on stream. Under the contract entered into by the previous government, these charges are not paid until the water is actually delivered.

The action I am seeking from the Treasurer is for him to give a clear and coherent statement when the dividends are struck on the water authorities as to whether or not all or any of the $654 million first-year annual security payments or the pro rata amount will be gouged out of the water authorities as a dividend for the government — —

**Mr Drum** — Gouged?

**Mr LENDERS** — Yes, Mr Drum, gouged, because if the water authorities are billing Melbourne water users for seven-twelfths of $654 million and that payment has not been made, then those authorities, presumably, will have a super profit. If the state of Victoria is going to take half of that as a dividend, then that is gouging Melbourne water consumers.

I say this particularly on the basis of a government that is endlessly lamenting the desalination plant contract which has actually protected taxpayers. If it then goes on to gouge part of that $654 million as a dividend, it is more than appropriate, I suggest, for the Treasurer to make absolutely clear in his determination when he sets the dividends in relation to the water authorities, including Melbourne Water and the three urban retailers, whether or not he is taking this into account. The action I seek from the Treasurer is a clear and transparent determination that does not gouge Melbourne Water users and take short-term advantage from a charge that is not being charged because the desalination plant is not ready.

## V/Line: customer service

**Mr BARBER** (Northern Metropolitan) — My adjournment matter is for the attention of the Minister for Public Transport. It relates to a couple of customer service issues on the V/Line system, a system which I generally find to be a very good service. I have received two reports from commuters, which I hope the minister will be able to take some action on. First of all, in relation to Rockbank railway station, a commuter reported that he was waiting on the station at platform 1, hoping to travel to the MCG on a Friday evening. A woman was also on the same platform. Platform 2 was deserted in this instance because the trains always depart from platform 1 in both directions. The train, however, pulled in to platform 2.

The customer reports that he and the woman headed for the end of the platform with the intention of crossing behind their train. They managed to get through the emergency gate because it was broken. They crossed both lines and got through the other emergency gate, which was not broken. Just as they got onto the platform an express train came racing through. The person reports that he still gets cold chills recalling it, because clearly that was a near miss, but the customers were put in a position where they would have missed their train and their entire outing if they had not made that rapid move to the other platform. There are no platform announcements at Rockbank. The customer reported that he had previously called customer service to verify the correct platform but that the train had changed its behaviour.

The other issue in relation to customer service at V/Line concerns requests for bookings and whether they can be made in advance. A customer reported that he tried to book a return rail journey from Melbourne to Beechworth at the Flinders Street V/Line ticket office. He gave the booking clerk a written list of the details of the return journey for later in the month. The clerk had to look at two timetables and make a telephone call while the queue of people waiting to be served lengthened. After 12 minutes he shrugged his shoulders and the customer walked away without a booking. The customer noted that it is possible to buy a return ticket to London online but that the same cannot be done for a V/Line train ticket. I ask the minister whether that aspect of customer service can also be addressed.

## Schools: Torquay

**Ms TIERNEY** (Western Victoria) — My adjournment matter in the early hours of this morning is directed to the Minister for Education. It is in relation to a new Torquay primary school. At present Torquay College has approximately 820 students enrolled in prep through to grade 6, making it, as I understand, the largest primary school in Victoria. Each year an average of 120 prep students enrol at Torquay College, meaning that by 2013 there will be over 1000 preps to grade 6 students at the college. The Surf Coast Shire Council projects that there will be a 6.6 per cent growth rate per annum over the next 15 years, a number that will include young families.

In the lead-up to the last state election both the Labor and Liberal parties promised to build another state primary school in Torquay, and this year the coalition government set aside $5 million to purchase land for the new school. My concern is that the $5 million set aside will not be sufficient to purchase the land, so I am seeking from the minister — —

**The PRESIDENT** — Order! I seem to recall that the member raised the same matter on a previous occasion.

**Ms TIERNEY** — No, on the other occasion my request was for the secondary college. This request is for the promised new primary school. I am concerned that the $5 million set aside by the coalition government will not be enough, given land prices in the Torquay area. There is some speculation, particularly by parents who are contacting my office, that this funding will only provide for something like an oval and not a school.

I ask that the minister inform me and members of the Torquay community when the new primary school will be built in Torquay to alleviate the pressures on Torquay College and particularly where the school will be located.

## Wallan-Kilmore bypass: construction

**Ms BROAD** (Northern Victoria) — My adjournment matter is for the attention of the Minister for Roads. As a result of the Baillieu-Ryan election promise to construct a bypass road from the Hume Freeway to the Northern Highway north of Kilmore, VicRoads is now charged with the responsibility of commissioning planning studies to determine the route for the bypass road.

Despite the government's election promise to construct a bypass road to the north of Kilmore, hundreds of households to the east of Kilmore have recently been informed that they may be directly affected by route options to the east of Kilmore. These householders, who never believed they might be affected by the bypass, are now struggling to come to terms with information about planning studies, flora and fauna studies, compulsory acquisition procedures and the Land Acquisition and Compensation Act 1986. Some landowners who are planning new homes are potentially affected, including landowners I have visited and listened to together with the shadow Minister for Roads. In the last week alone, two community meetings have been held involving hundreds of affected landowners, many of whom are frankly horrified at what they may be facing. Understandably emotions are running high, and there are a range of views about preferred routes.

The Baillieu-Ryan government is entirely responsible for creating this situation, and it has a responsibility to explain to the people of Kilmore and Wallan why a promised bypass to the north has been converted into a bypass to the east. In addition, members of the government have a duty to listen to the views of local people before any decisions are made by the government about routes for the bypass road. The electors of northern Victoria deserve to be fully informed about the Baillieu-Ryan government's intentions in relation to the promised Kilmore-Wallan bypass road, and I call on the Minister for Roads to take personal responsibility and attend public meetings to hear community concerns firsthand.

## Responses

**Hon. D. M. DAVIS** (Minister for Health) — I have written responses for matters raised in the adjournment debate by Mrs Peulich on 1 June, Mr Drum on 18 August, Ms Pulford on 30 August, Mr Drum on 13 October, Mr Ramsay on 13 October, Mr Lenders on 26 October, Mr O'Donohue on 26 October, Ms Crozier on 27 October, Mr Somyurek on 27 October and Mr Leane on 27 October. There are 10 responses altogether.

Mr Lenders raised a matter for the Treasurer concerning dividends from water authorities. I was surprised at his language, given his history as a Treasurer who raised to a new level the taking of significant dividends. He also oversaw the desalination process, which is a significant cost to the state. Nonetheless, I will faithfully pass his matter on to the Treasurer.

Mr Barber raised matters concerning public transport: two matters under the heading of customer service. One concerns a V/Line train at Rockbank, where there were insufficient announcements and also it seems to me without having investigated the incident, some confusion. I will make sure that that matter is passed on to the Minister for Public Transport. The other matter, which also comes under the banner of customer service, relates to advance bookings. The member used the example of the Melbourne–Beechworth service and the fact that bookings for that service cannot be made online. I accept his point that this facility is not available online. Mr Barber suggested that improvements be made in that regard. I will also pass that on to the Minister for Public Transport.

Ms Tierney raised a matter for the Minister for Education concerning the Torquay primary school and pointed to the growth in population in the Surf Coast area. I think this is well known and well understood. Significant effort is going into catching up on the lack of planning over the last 11 years. I know this is occurring in all portfolio areas. People are aware of the significant growth in population that Ms Tierney has correctly pointed to. She also pointed to the $5 million

that has been set aside by the state government to honour an election commitment concerning land for the new primary school.

I am personally not aware of the details of that, but I will pass the matter on to the Minister for Education to enable him to inform the community of what is happening with that. However, I can give Ms Tierney an assurance that the Minister for Education will be honouring the government's election commitments. He takes seriously those commitments to the Assembly electorate of South Barwon and related areas on the Surf Coast. I know he has been in contact with Mr Koch and the new member for South Barwon, and I know he will give this matter his close attention. I am sure he has already considered the matter.

Ms Broad raised a matter for the Minister for Roads concerning the bypass at Kilmore. I understand this is something the minister will give his attention to. Indeed I understand that he is currently giving it his attention. I make the point here that Ms Broad herself correctly pointed to the consultation process that is occurring, and I know the minister is determined to undertake proper and complete community consultation. I will pass that matter on to him and ensure that he is able to give it his attention.

**The PRESIDENT** — Order! The house stands adjourned.

**House adjourned 3.27 a.m. (Wednesday).**