PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Tuesday, 5 October 2010

(Extract from book 15)

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By authority of the Victorian Government Printer

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The Lieutenant-Governor

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Legislative Council committees

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

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

Select Committee on Train Services — Mr Atkinson, Mr Barber, Mr Drum, Ms Huppert, Mr Leane, Mr O'Donohue and Mr Viney.

Standing Committee on Finance and Public Administration — Mr Barber, Mr Guy, Mr Hall, Mr Kavanagh, Mr Rich-Phillips, Mr Tee and Mr Viney.

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

Joint committees

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

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

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

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

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

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

Family and Community Development Committee — (*Council*): Mr Finn and Mr Scheffer. (*Assembly*): Ms Kairouz, Mr Noonan, Mr Perera, Mrs Powell and Mrs Shardey.

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

Law Reform Committee — (*Council*): Mrs Kronberg and Mr Scheffer. (*Assembly*): Mr Brooks, Mr Clark, Mr Donnellan, Mr Foley and Mrs Victoria.

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

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

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

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

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

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

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Dalla-Riva, Mr Richard Alex Gordon	Eastern Metropolitan	LP
Darveniza, Ms Kaye Mary	Northern Victoria	ALP
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Davis, Mr Philip Rivers	Eastern Victoria	LP
Drum, Mr Damian Kevin	Northern Victoria	Nats
Eideh, Mr Khalil M.	Western Metropolitan	ALP
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Murphy, Mr Nathan[2]	Northern Metropolitan	ALP
O'Donohue, Mr Edward John	Eastern Victoria	LP
Pakula, Hon. Martin Philip	Western Metropolitan	ALP
Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Peulich, Mrs Inga	South Eastern Metropolitan	LP
Pulford, Ms Jaala Lee	Western Victoria	ALP
Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Smith, Hon. Robert Frederick	South Eastern Metropolitan	ALP
Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Theophanous, Hon. Theo Charles[3]	Northern Metropolitan	ALP
Thornley, Mr Evan William[4]	Southern Metropolitan	ALP
Tierney, Ms Gayle Anne	Western Victoria	ALP
Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Vogels, Mr John Adrian	Western Victoria	LP

[1] Appointed 3 February 2009
[2] Appointed 9 March 2010
[3] Resigned 1 March 2010
[4] Resigned 9 January 2009

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Tuesday, 5 October 2010

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.34 a.m. and read the prayer.

ROYAL ASSENT

Message read advising royal assent to:

21 September

Traditional Owner Settlement Act

28 September

Consumer Affairs Legislation Amendment (Reform) Act
Justice Legislation Further Amendment Act
Marine Safety Act
Occupational Licensing National Law Act
Residential Tenancies Amendment Act.

PAPERS

Laid on table by Clerk:

Architects Registration Board of Victoria — Minister's report of receipt of 2009–10 report.

Auditor-General's Office — Report, 2009–10.

Auditor-General's reports on —

Soil Health Management, October 2010.

Sustainable Management of Victoria's Groundwater Resources, October 2010.

The Department of Human Services' Role in Emergency Recovery, October 2010.

Parliamentary Committees Act 2003 — Government Response to the Education and Training Committee's Report on Skills Shortages in the Rail Industry.

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

Bayside Planning Scheme — Amendments C75 Part 1 and C76.

Boroondara Planning Scheme — Amendment C115.

Brimbank Planning Scheme — Amendment C136.

Campaspe Planning Scheme — Amendment C79.

Cardinia Planning Scheme — Amendment C100.

Glen Eira Planning Scheme — Amendment C74.

Greater Bendigo Planning Scheme — Amendment C89 Part 1.

Greater Dandenong Planning Scheme — Amendment C101.

Greater Geelong Planning Scheme — Amendment C236.

Greater Shepparton Planning Scheme — Amendments C111 and C146.

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Moreland Planning Scheme — Amendments C85 and C105.

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Mount Alexander Planning Scheme — Amendment C41.

Stonnington Planning Scheme — Amendments C84 and C122.

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Victoria Planning Provisions — Amendments VC63 and VC71.

Whitehorse Planning Scheme — Amendments C83, C114 and C128.

Whittlesea Planning Scheme — Amendment C144.

Wodonga Planning Scheme — Amendment C76.

Wyndham Planning Scheme — Amendment C131.

Yarra Planning Scheme — Amendments C85 and C132.

Professional Standards Act 2003 — Report on the Review of the Act, September 2010.

Project Development and Construction Management Act 1994 —

Nomination order, application order and a statement of reasons for making a nomination order, 21 September 2010 (three papers).

Nomination order, application order and a statement of reasons for making a nomination order, 21 September 2010 (three papers).

Public Record Office Victoria — Report, 2009–10.

Special Investigations Monitor's Office — Report for the period 1 January 2010 to 30 June 2010, pursuant to section 30Q of the Surveillance Devices Act 1999.

Statutory Rules under the following Acts of Parliament:

Infringements Act 2006 — No. 92.

Occupational Health and Safety Act 2004 — No. 93.

Retail Leases Act 2003 — No. 91.

Subordinate Legislation Act 1994 — No. 94.

Transport (Compliance and Miscellaneous) Act 1983 — No. 95.

Subordinate Legislation Act 1994 — Ministers' exemption certificates under section 9(6) in respect of Statutory Rule Nos. 92, 93 and 95.

Victoria Police — Chief Commissioner — Report under section 96 of the Drugs, Poisons and Controlled Substances Act 1981, 2009.

Proclamations of the Governor in Council fixing operative dates in respect of the following acts:

Education and Training Reform Amendment Act 2010 — Sections 5 to 9 and 60 — 22 September 2010 *(Gazette No. S385, 22 September 2010).*

Gambling Regulation Amendment (Licensing) Act 2010 — Part 1, Part 2 (except sections 6, 7, 10 to 12, 20, 22, 29 to 31, 33, 42, 46 to 48 and 56 to 61) and Parts 3 to 6 — 15 September 2010; sections 56 to 61 — 1 December 2010; sections 6, 7, 10 to 12, 42 and 46 to 48 — 1 January 2011 *(Gazette No. S372, 14 September 2010).*

Local Government and Planning Legislation Amendment Act 2010 — 24 September 2010 *(Gazette No. G38, 23 September 2010).*

Primary Industries Legislation Amendment Act 2010 — except sections 18, 31, 33, 43(4) and 45 — 1 October 2010 *(Gazette No. G39, 30 September 2010).*

Traditional Owner Settlement Act 2010 — 23 September 2010 *(Gazette No. S382, 22 September 2010).*

Workplace Rights Advocate (Repeal) Act 2009 — Sections 5 to 7 — 1 October 2010 *(Gazette No. G39, 30 September 2010).*

BUSINESS OF THE HOUSE

General business

Mr D. DAVIS (Southern Metropolitan) — By leave, I move:

That precedence be given to the following general business on Wednesday, 6 October 2010:

(1) the notice of motion given this day by Ms Pennicuik relating to amendments to the standing orders and to establish Council standing committees;

(2) the notice of motion given this day by Mr D. Davis relating to amendments to the standing orders;

(3) order of the day 7, resumption of debate on the motion moved by Mr Kavanagh regarding the education of Victorian school-age students;

(4) notice of motion 129, standing in the name of Ms Hartland, relating to services for aged pensioners;

(5) notice of motion 122, standing in the name of Ms Pennicuik, relating to the establishment of an independent body to scrutinise custodial services;

(6) the notice of motion given this day by Mr Guy to revoke an item in amendment VC71 to the Victoria planning provisions;

(7) notice of motion 110, standing in the name of Mr Rich-Phillips, relating to utility prices;

(8) notice of motion 121, standing in the name of Mr D. Davis, relating to the extension of sittings on Wednesdays; and

(9) the notice of motion given this day by Mr D. Davis relating to amendments to the standing orders to establish Council standing committees.

Motion agreed to.

EDUCATION AND CARE SERVICES NATIONAL LAW BILL

Second reading

Debate resumed from 16 September; motion of Mr LENDERS (Treasurer).

Ms LOVELL (Northern Victoria) — I rise to speak on the Education and Care Services National Law Bill 2010. The purpose of this bill is to create a national law, which will be hosted by the Victorian Parliament, to implement a uniform approach to regulation, assessment and quality improvement for early childhood education and care and outside-school-hours care.

I would like to outline the Liberals' position on early childhood education and care services. Liberal Party members believe that reform of early childhood education is an important process, and the Liberal-Nationals coalition fully supports that process. The early childhood sector at large also fully supports that process. The years from 0 to 8 are vital to a child's development and education, and it is imperative that we get the legislative and regulatory structure right.

Victoria was one of the early leaders in providing high-quality early childhood services. We can go back over many decades and read about the quality and leadership Victoria has displayed in services such as maternal and child health and kindergarten.

The Liberal-Nationals coalition values the reputation Victoria has earnt and believes we should always aspire to delivering improved quality standards, whether that be in improving the ratio of staff to children, the qualifications and numbers of staff, educational

outcomes, communication with families or standards of facilities. The Liberal-Nationals coalition fully supports the intent of this legislation to adopt national law and improve quality and standards in early childhood services. However, we have some concerns and feel this legislation is being rushed through the Parliament. It should be subject to further consultation and a full cost analysis. Therefore the coalition will be moving a reasoned amendment, which would see the bill halted at this point until further consultation and a thorough assessment of the regulatory burden on the cost of child care are carried out before this legislation is passed. I ask that the reasoned amendment be circulated at this point.

By way of background to give people some insight into how this legislation has come about, the bill is part of a Council of Australian Governments process. There are two stages to that COAG process. In December 2007 the Council of Australian Governments agreed to pursue substantial reform in the area of education, skills and early childhood development. An essential component of this agenda was a commitment to the development and implementation of a new national quality agenda (NQA) for early childhood education and care in Australia. Then in December 2009 COAG agreed to the national partnership agreement on the national quality agenda for early childhood education and care to establish a jointly governed, unified national quality framework for early childhood education and care and school-age care, which will replace existing separate licensing and quality assurance processes from 1 January 2012.

The principal objective of the bill is to provide a national approach to regulation, assessment and quality improvement for early childhood education and care and outside-school-hours care; replace existing separate licensing and quality assurance processes for preschool, known as kindergarten in Victoria, long day care, family day care and outside-school-hours care; and establish a public rating system for education and care services. Services that will not yet be included under the national laws, such as occasional care, three-year-old activity groups, limited hours services and early childhood intervention services will be excluded from the legislation by regulation.

The national quality framework will be a jointly governed national system with a three-tier governance structure that includes a ministerial council, the Australian Children's Education and Care Quality Authority (ACECQA) and state and territory regulatory authorities. The first tier of that, the ministerial council, has overall responsibility for the implementation and administration of the national quality framework, including the setting of standards and regulations, approving learning frameworks, the rating and approval system, the fee structure and appointment of the board of the Australian Children's Education and Care Quality Authority.

The authority which is to be set up by this new bill will be known as the Australian Children's Education and Care Quality Authority. Its functions will include the implementation and administration of the national quality framework, determining auditing arrangements, promoting continuous improvement, publishing ratings of services, publishing guides and resources and determining qualifications to be held by educators and authorised officers. The board of ACECQA will consist of up to 13 members. Each state will have the opportunity to nominate one person to that board, and they will be appointed by the consensus of the ministerial council. One member nominated by each state and territory and four nominees from the commonwealth will be appointed to the board. The chairperson is to be nominated by consensus of the ministerial council.

The third tier of the governance structure, the regulatory authority, will be deferred to the states. The state department here in Victoria — the Department of Education and Early Childhood Development — will act as the regulatory authority and will be responsible for administering the national policy framework, including provider approvals, service approvals and supervisors certificates and for monitoring and enforcing the national law and reviewing and investigating complaints.

The bill sets up a new assessment and rating framework, and the regulatory authority will be responsible for assessing each service against the national quality standard, which includes seven quality areas and establishes a services rating. Applications for the highest rating can only be given by the national authority, so if a service wants to be given the highest rating, it will have to apply to ACECQA to be included in that rating.

The national authority will also be responsible for publishing the ratings of each service as they are determined by the states or, as I said, those in the highest category. Those ratings will be published on the website. Some concerns have been raised about the assessment and ratings, largely about the assessment rating tool which has not yet been finalised. There have been some trials in New South Wales and Victoria, and the assessment tool has been tweaked and re-tweaked but it has not yet been finalised. There are concerns

about what the assessment tool will be and how services are to be assessed.

There are also concerns that by publishing the rating of an early childhood and care service an individual teacher will be rated. These concerns have come to us particularly from the AEU (Australian Education Union). It wrote to the opposition saying:

> There are aspects of the bill that the AEU supports … However, the AEU has a number of concerns regarding the quality ratings system, its publication on the *MyChild* website, and the potential misuse of the ratings … we are concerned that publication of ratings on the *MyChild* website has the potential to lead to unintended negative consequences for preschool centres, teachers and ultimately the quality of education provided to children.

In particular the union notes the potential of the rating system to become a proxy measure for teacher performance, particularly in a one-teacher school or in smaller preschools. It also says there is the:

> potential of the rating system to become a proxy measure for the performance of principals and other designated leaders;
>
> the potential for the ratings system to be misused by external agencies and for the media to produce unfair and invalid comparisons between centres.

It also says there is the potential for the ratings to damage the viability of some centres, increase inequity between centres and damage the equity of educational opportunities for children. It goes on to say there is:

> potential for the rating system to lead to the abrogation of the responsibility of governments to ensure quality in the provision in early childhood education.

The union has concerns that the ratings system will effectively force teachers to meet two sets of standards concerning their professional capabilities. It also says there is the potential for the rating system to lead to increased workloads that detract from other responsibilities of preschool centres and teachers, particularly in the application process to 'excellent' level. In relation to the application process required to progress to 'excellent' level, there is concern that some services will be advantaged over others where there is a greater level of skill, experience and resourcing of formal application processes.

Even the union movement has concerns about this legislation; it is not just the child-care providers themselves who are concerned about it. The bill will allow regulations to be developed. As is more and more often the case under this government, we stand here and debate what is enabling legislation. The legislation before us today is largely innocuous. It sets up the national authority and the funding for the national authority, it sets out the three levels of governance and it provides that regulations can be developed. But what we do not see here is the devil in the detail; we do not see the detail of the regulations. The requirements that will put imposts on child-care providers may cause the cost of child care to rise significantly for Victorian families, and indeed for families right around the country, because this will become national law.

It is expected that these regulations will be developed by December 2010 and that consultation will occur from late December until early February 2011. The regulations will include staff qualifications, staff-to-child ratios, rating levels and other matters such as room sizes et cetera. There is quite a bit of detail about what may be in the regulations and that has been speculated upon. There was a proposed set of regulations and a regulatory impact statement, but what is in the final regulations may be quite different. We already know that the model for the staff-to-child ratios that is going to be put into this set of regulations was not included when the regulatory impact statement was done during the consultation phase, so there has been no regulatory impact statement on its effects. A lot of concern has been raised about that, and I will go through that a little bit later.

The bill provides that regulations can be disallowed in a house of the Victorian Parliament but that disallowance will become effective only if it is supported by a majority of participating jurisdictions. The opposition has concerns about this Parliament bowing to other states in having the final say on law in Victoria. We believe that final say should be retained by the Victorian Parliament. I will also go through that later, because the opposition will be moving an amendment along those lines.

The bill sets up the arrangements for Victoria's part in ACECQA. Funding will be contributed on a 50-50 basis between the states and territories and the commonwealth. The total running costs for ACECQA, we were told in our briefing, are estimated to be about $11.5 million per annum, and Victoria's share will be based on 25 per cent of those costs because we have 25 per cent of the services in Victoria. Our share of the costs will be about $1.44 million a year, and 10 per cent of all licensing fees will also go towards funding ACECQA.

This bill will be subject to the commonwealth Freedom of Information Act and is due to become operational on 1 January 2012. At the briefing we were told that the legislation had been agreed to by all states and territories and that it had been through every cabinet in the land and had been accepted by those cabinets, but in

the lower house debate Mr Hudson, the member for Bentleigh, informed the house that Western Australia was not signing up to the legislation and that it would be introducing its own corresponding legislation — so it will not be accepted by all states and territories.

I have also been informed by people in this sector that Queensland is not entirely happy with this legislation. In fact I am told that the Bligh government has expressed great concern about what is going on in Victoria with this bill being rushed through Parliament at great speed at the 11th hour. It is concerning that what we were told by this government in the briefing appears not to be the case at a national level.

I will run through some of the issues and concerns that the coalition and the sector have with this legislation. The opposition has had raised with it concerns about the regulations which are still to be finalised. As I said before, much of the detail of the regulation, such as the staff-to-child ratios, the staff qualifications, room sizes et cetera, has been widely reported in COAG publications.

An economic analysis of the proposed regulations was conducted by Access Economics in July 2009. However, the report noted that as the regulatory arrangements were yet to be finalised, it was not possible to supply reliable costings at that stage. We were told at the briefing that the final regulations, to be developed by December 2010, will not be subjected to a further regulatory impact statement. Until these regulations are in place we will not know the increased cost of child care to families in Victoria and around Australia because COAG does not intend to carry out a further regulatory impact statement on those final regulations. Concerns about this have been raised with us by a number of stakeholders.

The opposition has already circulated its proposed reasoned amendment to halt the bill at this time until further consultation has been undertaken and this final regulatory impact statement has been completed to assess the final outcome of the impact of this legislation and the regulations on Victorian and Australian families.

The sector has also raised a number of these issues with us. The Child Care Centres Association of Victoria, representing the private child-care operators in Victoria, which make up 53.5 per cent of all providers in Victoria, has written to the opposition saying that it was disappointed that this bill — tabled at the very last moment it could possibly be tabled to enable it to be debated before the end of this session of Parliament — was being rushed through at the 11th hour. It said it was still coming to grips with the 265-page document.

It is a large document. It is a lot for people to come to grips with; I do not doubt that, because I know the time and effort that I too have had to put into understanding this bill. The Child Care Centres Association of Victoria said that this is an unfair process because of the lack of time given for consideration of the bill. It said:

> It is bizarre to expect the sector to absorb the bill, collect evidence and then provide meaningful responses in the short time available. Presumably because the government wants to rush it through before the election …
>
> This is ridiculous. This inadequate time for consultation is especially unfair because COAG has not complied with its requirements for proper consultation and analysis.

There are several reports that support the stance taken by the child-care sector on this bill. In its report entitled *Annual Review of Regulatory Burdens on Business — Social and Economic Infrastructure Services* dated August 2009 the Productivity Commission talks about the final impact of this bill and the process undertaken by COAG. It says:

> Finally, the impacts of the third core element of the NQA, the enhanced regulatory framework, could also not be quantified with any certainty.

This is referring to the regulatory impact statement (RIS) that was conducted as part of the consultation process. Further, it says:

> This was not because of any technical difficulty with obtaining data or measuring these impacts in dollars, but because the details of the new regulatory system are yet to be finalised …

Yes, in August 2009 they were yet to be finalised. In fact as we stand here today, in October 2010, they are still to be finalised. The report goes on to say:

> From a regulatory burdens perspective, the consultation RIS would have been a more useful consultation document if it had included quantified estimates of the impacts of the enhanced regulatory framework on service providers. It is difficult for providers to meaningfully comment on the enhanced regulatory framework when they are not provided with any estimates of the magnitude of the impacts on individual providers.

The report goes on to talk about the COAG best practice guidelines. It says:

> Consistent with COAG's *Best Practice Regulation Guide* … it is imperative that the forthcoming final RIS on the national quality agenda contains a transparent assessment of the costs and benefits of the enhanced regulatory framework, particularly the magnitude of the purported compliance cost

savings to service providers (and also to regulators). As the consultation RIS makes explicit:

> … some of the key benefits [of the enhanced regulatory framework] can be estimated with a satisfactory degree of confidence …

It is interesting that the report talks about a final RIS, because we have been told by this government that there will not be a final RIS. The report goes on to say:

> According to the department, the final RIS will quantify some of the impacts arising from the enhanced regulatory framework:
>
> > Based on feedback from stakeholders, COAG will undertake further cost-benefit modelling to inform development of the new regulatory arrangements, including quantifying savings and costs to, and the impacts on, services, parents and governments, in moving from the existing regulatory arrangements to a new set of arrangements …

Again the report is talking about a final RIS, but we have been told by this government that there is to be no final RIS.

The report also notes that there needs to be further consultation, stating:

> However, without another round of consultation, it is not clear how this final RIS will demonstrate that COAG's RIS guidelines have been followed, given the consultation requirements in the guidelines say:
>
> > Consultation should occur as widely as possible but, at the least, should include those most likely to be affected by regulatory action (for example, consumer and business organisations) which might provide valuable feedback on the cost and benefits of regulation and on the impact assessment analysis generally.

The report goes on to say:

> Child-care services have not been provided with any estimates of the costs and benefits of the enhanced regulatory framework via the consultation RIS. Without further consultation, before the final RIS is provided to decision-makers, it is difficult to see how this final RIS will meet the requirements outlined in COAG's RIS guidelines … The department should engage in further consultation with child-care services before the final RIS is provided to decision-makers.

Again this Productivity Commission report is calling for further consultation, which is not occurring. It is calling for a final regulatory impact statement, which is also not to occur. No information will be given to stakeholders, the service providers or families on what the final cost of this legislation and regulation will be.

Access Economics conducted a report for the federal Department of Education, Employment and Workplace Relations called *An Economic Analysis of the Proposed ECEC National Quality Agenda*. In that report Access Economics noted:

> As the specifications of the regulatory arrangements are yet to be finalised, it is not possible to supply a reliable costing at this stage. Both the impacts on the cost of administering industry regulation (the current licensing and accreditation processes) and the change in regulatory burden on industry, cannot be reliably estimated until the parameters governing the new models are refined.

The report also says:

> The economic characteristics of the ECEC market suggest that the cost increases described —

in this report —

> will likely be passed on to consumers through higher prices. Ultimately the impacts will be borne by the purchasers of ECEC; namely parents and the government.

Both the Productivity Commission report, which is an Australian government report, and the Access Economics report commissioned by the Department of Education, Employment and Workplace Relations, a federal government department, on the economic analysis of the proposed changes note that there can be no qualification of the final cost. Both also note that there should be further consultation and a final regulatory impact statement so that people are fully informed about the cost of this regulatory burden on Victorian and Australian families.

Further concerns about this process have been raised by the community sector of child-care provision in Victoria. Although the community sector, which is a smaller sector providing about 34.6 per cent of the services in Victoria, is very supportive of the national quality framework and the reform agenda, it is concerned that the planned consultation period for the regulations — from late December 2010 to the end of February 2011 — will seriously disadvantage many outside-school-hours care services which rely on primary school sponsors to pass on correspondence. Schools are often unable to do this until well into February when the school program is bedded down.

The community child-care sector says that it is working with the Department of Education and Early Childhood Development to try to find ways to engage outside-school-hours care professionals during this difficult time of the year, but it is quite correct in saying that over the Christmas and New Year period when schools and lots of services are on holidays it will be very difficult for those services to be involved in any further consultation on the regulations. Mind you, it will be limited consultation and there will not be a

further regulatory impact statement done on those regulations.

The coalition has even been contacted by some interstate services about this legislation, because it is going to be national law. The Association of Independent Schools of South Australia has written to us expressing concern that the bill is administratively complex and may reduce the administrative burden for government departments but not for service providers. It also has a real concern that the bill places the head of the government provider in the position of regulatory authority — the head of the public provider will be the regulator for both government and non-government providers. In other words, the government will be regulating its services as well as the non-government services.

The association's view is that the public provider should be separated entirely from the regulatory function. It is of the opinion that the legislation as proposed will surely lead to a potential conflict of interest as the person who is the head of the public provider and the regulator for both government and non-government providers is the same person. This will be the case for some services in Victoria because 11.8 per cent of our child-care services are provided by government.

The Association of Independent Schools of South Australia is also concerned that the regulatory authority will determine the rating of the service provider. It is concerned about the public provider rating both its public services and non-government-provided services and about competitive neutrality in that process. I guess conflict of interest could come into that as well. The association is also concerned about whether the financial penalties in the bill will be applied to the government providers as well as to the non-government providers.

A further concern about this legislation is the impact on the affordability of child care. The government claims that the national quality agenda reforms will increase the cost of child care by $12.85 per week. However, private child-care providers warn that costs may increase by up to $35 per day. We have seen a number of press articles about this. The *Herald Sun* of 25 August featured an article about the row over the reform costs and warned that child-care fees may rise by up to $35 per day. Written by Elissa Doherty, this report says that working parents are paying up to 10 per cent more of their net income on child care and face a further hit under the proposed regulations. The article goes on to say:

> The revelation comes amid a row on child-care reforms, with some private centres warning of possible rises of between $3–$35 a day …

It further says:

> The Child Care Centres Association of Victoria said many parents would not be able to afford care with the changes, and different ratios could cost 3000 places.

The association's chief executive is quoted as having said:

> This is a classic case of well-intentioned initiatives having unintended consequences, which, in this case, will see families priced out of well-regulated, quality care and into unregulated backyard care …

The article reports that the Community Child Care Association says it 'estimates the changes would mean about a $5-a-day rise' and that most centres were already operating above minimum standards. That is testimony that child-care services in Victoria operate to the best possible standards they can and often above the minimum standards required at the moment. The article says Barbara Romeril, the executive director of the Community Child Care Association:

> … accused the private sector of running a national scare campaign, saying increases of up to $35 a day were not justifiable.
>
> 'They are running a scare campaign. It's nonsense,' she said.

But as the *Herald Sun* article points out, even a $5-a-day rise could be unaffordable for low-income families. It goes on to say that the director of the St Kilda East Child Care Centre, Paula Kruger, predicts that fees at her centre would rise by about $10 a day, which is about $50 per week, and that is quite a lot for young families who have children in child care.

What could solve this problem is the government and the other parties supporting the reasoned amendment just to delay this legislation. We are not saying it should be scrapped. We are just saying, 'Let us have another look at this'. The national law will not come into effect until 1 January 2012, so we will have time in which to debate this bill when Parliament returns early next year, and when we know what will be the full impact of the regulations a regulatory impact statement could be done to assess those costs. That would remove any doubt about this debate.

I have been advised that I should formally move my reasoned amendment. I move:

> That all the words after 'That' be omitted with the view of inserting in their place 'this house refuses to read this bill a second time until —

> (1) there has been adequate time for proper consultation on the contents of the bill with the community and with affected stakeholders; and
>
> (2) the assessment tool and the regulations are finalised and fully costed.'.

The editorial in the *Herald Sun* of 25 August talks about the same thing. Under the headline 'Parents let down — again' it states:

> Following hard on the heels of the federal government's failure to honour its child-care election promises, parents have been dealt another blow.
>
> Daily child-care fees are set to jump under a series of changes to staff ratios and qualifications in the industry by the federal and state governments.
>
> It is a cost many parents will struggle to carry once all the measures are implemented.
>
> Australian parents are among the highest spenders on child care in the developed world, parting with 10 per cent of their net income.
>
> While they want the best standard of care for their children, it's difficult to give children the best when the bills keep climbing.

One of the things we as legislators always have to take into account is that fine balance between what is the highest standard of care that we can provide and at what point it becomes unaffordable for families.

An article in the *Sydney Morning Herald* in June 2010 said:

> The families of more than 500 000 children in long day care centres could face fee increases of up to $120 a week …
>
> …
>
> Long day care centres — the largest provider of preschool services in NSW — are expected to increase fees by up to $24 a day to meet requirements under the government's national quality framework.

The *Daily Telegraph* of 9 August 2010 carried an article about a Guild Accountancy survey of 170 child-care centres in New South Wales. That survey found that parents would face rises of up to $33 per child per day under these reforms. The article states:

> For a family using full-time care, the cost increases could amount to $2970 per year.

That is a significant increase for young families for just one child. The article continues:

> The survey, carried out by Guild Accountancy, found that 36 per cent of centres will reduce the number of child-care places they offer to minimise the impact of cost increases — making it even harder for parents to find a child-care place in the already undersupplied infant-to-two years age group.

An article in the *Australian* of 12 August 2010 spoke about what is called the What Parents Want survey recently conducted by Childcare Alliance Australia, which represents more than 70 per cent of child-care providers in New South Wales, saying:

> More than a third of parents relying on child care say they will be forced to quit their jobs …

And:

> Another third … will delay having more children if the cost is increased by measures to improve standards in the industry.

It will be a significant impost on the community if one-third of parents quit their jobs to stay at home. I always think it is a very admirable thing to do for anyone who chooses to stay home with their child, but this will put further imposts on those families. These are obviously families where parents have chosen to work who are now feeling that because of the cost of these reforms they will be forced to stay at home, and a third of families say they will delay having more children. We know it is not a good thing for our country if young people put off having children and their families do not grow at all. According to this article, the survey found:

> … the situation was worsening for those families who already found care so expensive they were experiencing financial stress.
>
> In those families, 51 per cent said one parent would quit their job if child-care costs increased and one in two families said they would withdraw their child or children from their current long day child-care centre.

The article goes on to say:

> If the cost per child increased by $13–$22 a day as a result of the federal government's national quality agenda reforms, 74 per cent of families said they would have difficulty managing the cost. This includes 47 per cent of parents who said they could definitely not afford any such increase.

There have been plenty of articles from around the country and surveys and comments from private child-care providers talking about this cost increase, and it is not only private child-care providers who have raised the issue. Just last weekend we saw screaming headlines around the country, including the *Herald Sun*, 'Child-care fees to rise'; the *Sunday Mail*, 'Child-care fears: sharp rise tipped'; the *Sunday Telegraph*, 'Child-care gains to bring fee-rise pain'; the *Sunday Times*, 'Child fees stoush'; and the *Sunday Tasmanian*, 'Row over child-care fees: new standards force parents to dig deeper'.

These articles have largely been generated by a not-for-profit group, the GoodStart consortium, which

is a consortium of charities including Mission Australia and the Brotherhood of St Laurence. The consortium bought out the old ABC early learning and care centres last May, but it is no longer a private child-care provider. It is a consortium of not-for-profit charities running community child-care centres saying that it will be forced to increase fees by up to $20 a day when the national quality standards start. There is more than just concern in the private sector; there is also concern in the community sector about the impact of the regulations and legislation on the affordability of child care.

There is also concern about the number of qualified staff who will be needed. We have already seen this debate in relation to the introduction of 15 hours a week of kindergarten, whereby we will now need additional four-year-degree-qualified early childhood educators to provide 15-hour programs of kindergarten per week in Victoria by 2013. Along with the regulations this government brought in last year, it also put out calls for degree-qualified early childhood educators to be in child-care centres. These are things we all support because it is a good thing to have an early child-care educator in child-care centres, and it is a good thing for us to have higher qualifications for staff. But the question being asked is: is it going to be possible to fully train the number of educators we will need to implement these things?

The government's bilateral agreement with the federal government for the implementation of 15 hours of kindergarten has a table that sets out that Victoria will need about 800 additional early childhood educators to be trained by 2013, and we currently have about 850 according to that bilateral agreement. It also notes that it will only have 1000 by 2013, so there are only about 150 to be trained between 2010 and 2013. That number of 150 is well short of the additional 800 needed by 2013, and this will be further compounded in 2016 because these new regulations will reduce the ratio for four-year-old groups from 1 to 15 to 1 to 11. That will also increase the need for additional fully trained staff. There is concern that it is not going to be possible to train the number of qualified staff who will be needed by 2016.

The quality assessment criteria and the quality assessment tool have not yet been finalised in terms of how services are to be assessed, and that has raised a number of concerns amongst providers as well. The draft assessment tools have been used to conduct trials, but they have failed to produce the desired results and are still being refined. We were told at the briefing that the final assessment tool will not be defined in legislation or regulations but will just be part of a policy document that the minister's office advised us can be more easily changed; I think that is a concern in itself. Significant concerns have been raised about the assessment and ratings system and the publication of ratings. The assessment tool should be defined in either the legislation or the regulations, not just in a policy document that can be more easily changed. That is not fair on services.

Another concern we have with this legislation is that it requires the annual report of ACECQA to be tabled in only one jurisdiction, and that will be at the discretion of the ministerial council. The annual report of ACECQA could therefore be tabled in the Northern Territory Parliament and we in Victoria would never know it had been tabled unless we went digging for it on the website. If our reasoned amendment is not successful, we will be moving a further amendment that will require that the annual report be tabled in the parliaments of all participating jurisdictions, which is the right thing to do.

Appointments to the 13 positions on the board of ACECQA is another area of concern. Victoria has 25 per cent of the early childhood, education and care services, yet it will be represented by only 1 out of 13 board members. One person will be appointed from each state and territory, making 8 representatives; 4 members will be appointed by the commonwealth and the 13th member will be the chair.

This legislation passes the final responsibility for regulation of our early childhood, education and care services to this national authority, yet we will only have 1 representative out of 13. If we have 25 per cent of the services, as this government is so often fond of saying, we should get 25 per cent of the representation on the board. The Treasurer, John Lenders, has certainly been a great advocate of that position for federal funding — namely, that Victoria has 25 per cent of the population and so should receive 25 per cent of the funding — yet the Minister for Children and Early Childhood Development does not seem prepared to stand up for Victoria and say we want 25 per cent of the say on the board.

Another amendment the opposition will be moving provides for the disallowance of a regulation. I think I said earlier that currently the bill enables a regulation to be disallowed by a house of the Victorian Parliament, but it is carried only if that disallowance is also agreed to by the majority of states and territories participating in the legislation.

The legislation would revoke Victoria's ability to have the final say on the law in this state without the

approval of other states. Victoria must retain its right to veto any regulation that this Parliament considers not to be in the best interests of Victorian children, and we must be able to do that without the approval of other states and territories. The coalition will be moving that further amendment. We understand the argument around nationally consistent legislation and regulations, but we cannot support Victoria handing over full responsibility for the regulation of its early childhood, education and care services to a national body. We will be moving those two further amendments if our reasoned amendment is not carried.

In summary, this bill has been introduced at the 11th hour; it has been introduced with limited time for consultation. Serious concerns exist about the impact of regulations on the affordability of child care. The commencement date of this bill is 1 January 2012, so there is plenty of time for further consultation, for the development of the assessment tool and the regulations and for a regulatory impact statement to be undertaken to assess the true cost of the changes prior to adopting this legislation.

The Liberal-Nationals coalition supports the intent of the legislation to adopt a national law and improve quality and standards in early childhood services; however, we feel this legislation has been rushed through the Parliament and should be subject to further consultation and a full cost analysis before it is passed.

Ms HARTLAND (Western Metropolitan) — I will start my contribution firstly by thanking Ms Lovell for her very detailed presentation. But I will take a minute to read what the Greens think about child care. Our policy clearly states that 'child care should be a not-for-profit service'. The reason for that is we do not believe anybody should be allowed to make a profit from children or families requiring child care. That is the premise from which the Greens address this bill.

We do not have the same concerns as the coalition regarding this bill. The consultation on everything I have seen has been quite extensive. While there may be some feeling that this bill has been rushed, the Greens will not be supporting the reasoned amendment, but we will listen to the argument in relation to other amendments. I would like to hear the government addressing those issues — that is, as to why the reports cannot be tabled in all states rather than just the one where it will be tabled initially. Why should we not disallow regulations? There are also the issues about Western Australia and Queensland having concerns about this bill; I would also like those issues addressed.

A couple of things that concern me about the approach that has been taken by the opposition relate to the cost. Obviously costs will rise because there will be more qualified staff. There will be higher ratios of staff to children, and I believe that is a good thing because anybody who has worked in child care knows the level of responsibility that workers have. The other thing that has to be remembered is that child-care workers are incredibly badly paid for what they do. That should be also taken into consideration.

I am only going to speak briefly at this stage, because in the committee stage I will be asking a number of questions. We started to talk to various groups, and the statement we received from Barbara Romeril from the Community Child Care Association summed up this issue for us quite well:

> We are happy with the bill — it is broad enough to support a significant shift towards national consistency while being specific enough to enable improvements in standards.
>
> We are looking forward to the detail in the regulations where the real quality standards will be set — and we will be vocal in our objections if it isn't good quality.

I have been receiving this sort of statement from the community child-care sector. These are the people who run the not-for-profit organisations; these are the people who have campaigned for years and years for adequate funding for child-care centres and adequate funding for people who work in child-care centres. I have a great deal of regard for their statements.

I will wait for the committee of the whole to ask questions about the issue of disallowance and why these reports should not be tabled in all states.

Ms HUPPERT (Southern Metropolitan) — I am delighted to rise to make a few comments in support of the Education and Care Services National Law Bill. Its purpose is to enact a national quality framework for early childhood education and care and school-aged care. I am pleased to hear that the Greens are supporting this bill, because it is an important step in ensuring quality of care for our children.

I am disappointed but not surprised by the comments I have heard from Ms Lovell. I am not surprised that opposition members are not supporting this bill; their federal colleagues also have not supported the national quality framework. I am very disappointed at this reasoned amendment, because it will put back the implementation of the national quality framework which has such an impact on the lives of children in care.

The early childhood education and care sector lacks national consistency. There is duplication between national, state and territory accreditation and regulatory regimes, which imposes a burden on participants in the sector, as well as causing some issues for parents who are looking at standards of care.

More and more children are spending time — and longer times — in long day care, family day care, after-hours care and kindergartens. For example, in 1996, 14 per cent of children were spending time in care, and by 2009 that figure had increased to 23 per cent. In 2004 the average child in care was spending 19 hours there, which rose to 26 hours per week in 2009. As a parent of children who spent considerable time in child care in their younger years, both prior to starting school and later in after-school care, I know that parents are very concerned about the consistency and quality of care available during the time when they are not personally able to look after their children. There is also significant evidence that early childhood experience has a lifelong impact on children, which is another reason for ensuring that there is quality and consistency of care available to children.

This bill is a result of the national partnership agreement on the national quality framework for early childhood education and care agreed to by COAG (Council of Australian Governments) in 2009. The main details of the framework that will be brought in by this bill are that it will establish a national approach to regulation, assessment and quality improvement of children's services and replace existing licensing and quality assurance processes.

There will be an agreed national standard for early childhood and outside-hours care services, including minimum staff-to-child ratios and staff qualifications, a rating and assessment system based on the national quality standard, a streamlined regulatory regime and the establishment of the Australian Children's Education and Care Quality Authority, a national authority to oversee the system and report to the Ministerial Council for Education, Early Childhood Development and Youth Affairs.

In moving her reasoned amendment Ms Lovell made a few comments regarding the lack, or perceived lack, of proper consultation and raised a number of other issues in relation to the proposed legislation. The comments about lack of consultation are simply not correct. There has been extensive consultation regarding this bill.

In January 2009 a report of the expert advisory panel on quality early childhood education and care was released. The development of the national partnership agreement from which this bill flows was informed by a consultation regulation impact statement released in July 2009 by the federal government. The consultation included public forums and information sessions attended by over 1700 people, peak body sessions involving more than 100 people, and 341 written submissions, which were received along with 3000 letters and submissions and almost 3000 online survey responses. It is clear that there was a great deal of opportunity for people to comment on the statement and also that people availed themselves of that opportunity.

The Victorian government also undertook a small business impact statement in which key stakeholders were consulted. Throughout the development of the bill there have been three national stakeholder reference group meetings. The reference groups include representatives of private child-care providers, unions and peak bodies representing child care and schools. There have also been three further meetings in Victoria of the Victorian early childhood reference group. One of these meetings focused entirely on the policy of the bill.

The Victorian government conducted 34 information sessions around the state to encourage responses to the COAG consultation process. These sessions were attended by 2225 people, and again this was not just consulting in Melbourne but taking the consultation around the state to ensure that people in regional areas also had the opportunity to have their views heard. Clearly quite a large number of them did avail themselves of that opportunity. In fact the chief executive of Early Childhood Australia has rejected notions of inadequate consultation, noting in the *Age* on 27 July 2010 that there had been 'enormous consultation'. Clearly the comments made by Ms Lovell are misguided. The regulations relating to this law, as we have heard, are expected to be released this year for at least a 10-week consultation period — that is not a maximum period but 'at least'.

Although generally during December schools do not have students, school staff are in fact working very hard until Christmas Eve, and therefore they will have adequate opportunity to ensure that after-hours care providers at those schools are informed of the regulations. As members know, child-care centres also continue operating until Christmas Eve, and many will not break at all over the summer. Again, they will have plenty of opportunity to look at the regulations and make any comments on their impact.

Ms Lovell also questioned why we need to have the bill passed now given that it will not come into effect until

January 2012. This is a very important issue. The government is seeking to provide the necessary catalyst for the passage of referencing or corresponding legislation through the parliaments of each jurisdiction. Some jurisdictions are planning to introduce legislation this year, which cannot happen if this bill has not been passed by the Victorian Parliament.

Once the model law is passed in Victoria, other jurisdictions then have to draft jurisdiction-specific front sections of their bills, as Victoria has, before introducing them into their parliaments, all of which takes time. In South Australia draft amendments to existing legislation must be drawn up in line with the national law and consulted on before passage of the national law can be submitted to the South Australian Parliament next year. The Northern Territory has already made a lodgement to have the legislation introduced before the end of this year, while New South Wales is working towards introducing legislation in the current session of Parliament and Queensland is looking to introduce its legislation in the first half of next year.

Another reason for passing this bill now is that it will enable the development of and consultation on the regulations I mentioned before. It will also allow the development of an assessment and rating tool, which is dependent on the early passage of the legislation. The development and finalisation of a quality improvement plan is necessary. The assessment process needs to include assessment against act and regulation requirements and the national quality standard. The quality improvement plan and the assessment tool need to be widely trialled and validated before their finalisation, with enough time afterwards for training assessors and to allow for communication and support to be provided to the sector about these new processes before they come into play in 2012.

There also needs to be time to establish the Australian Children's Education and Care Quality Authority, which is established by this bill, and the current National Childcare Accreditation Council must be wound down. The transition between the two entities will take time, and a period of crossover between the two is essential to having everything in place to ensure the national quality framework is effectively managed from 2012. Also of concern is ensuring as much certainty as possible for the staff, some of whom are expected to transition to the new authority.

Another reason this bill should be passed now rather than being deferred is that it will provide certainty for people in the sector in their planning. Passage of the legislation this year will give us the maximum time to communicate and liaise with the sector and familiarise stakeholders with the framework throughout 2011. That will enable them to be sure that they are complying with the framework when it comes into force in 2012.

A key concern for education and care providers is certainty and advance knowledge of any changes that may impact on the way they operate. For some services that are to come under the framework this will be the first time they have been regulated. This includes outside-school-hours care in New South Wales and South Australia, and family day care services in Western Australia and South Australia. Those services will have to come to terms with significant changes in the regulatory framework. In Victoria family day care and outside-school-hours care came under a new regulatory framework in 2009, and it will take until the end of this year to issue licences to the last of those services.

By proposing to pass this bill this week the government is seeking to give all operators and educators as much time as possible to become familiar with the changes, to have their questions answered and to prepare for 2012. This sector includes more than 13 800 services and a workforce in excess of 100 000 educators — and transition to the new system is no simple task.

One of the other issues raised by Ms Lovell was the workforce implications. The national quality framework includes, as members have heard, improved educator-to-child ratios and qualification requirements. The purpose of this is to improve the quality of care and educational outcomes for children in care, resulting in lifetime benefits which accrue to both the child and the economy and society more broadly through increased productivity and improved social outcomes.

An important change is the removal of the minimum age for staff. This means children under 18 years can be included in ratios provided they are supervised by a qualified staff member. This will allow young people in the education and care area to study and work part-time. The workforce issues created by the rise in the new ratios is just one of the areas we will addressing and providing assistance in.

Each year in Victoria about 300 people commence study for early childhood teacher qualifications, and they are helped by a range of incentives. The Victorian government's Early Childhood Workforce strategy, released in November 2009, sets out a range of actions to boost workforce quality and supply. This includes $3.6 million in scholarships to encourage existing early childhood staff to upgrade their qualifications and a $1.9 million employment incentive scheme to

encourage educators to work in hard-to-staff positions, including teaching positions in long day care centres and rural and regional areas. The strategy also commits $2.3 million to support professional development and $1.5 million to attract a broader range of people to work in early childhood. An additional $900 000 will be provided to support Aboriginal Victorians to work in early childhood. In addition to the state initiatives the commonwealth government has committed a $126.6 million package of measures aimed at increasing the quality and supply of the early childhood workforce.

Addressing some of the other issues that have been raised by Ms Lovell, under the new unified system proposed by the bill each jurisdiction will be responsible for the administration of regulatory functions under the guidance of the national body and will identify a lead agency within that jurisdiction to perform the function. Each state will have the opportunity to deal with regulations which are specific to itself. In jurisdictions where preschool is currently delivered by a government or non-government school there will be the option of administering the national quality framework through existing government quality assurance processes with respect to preschools. This will only occur where those processes have not been delegated to other entities to self-regulate. That addresses some of the issues that have previously been raised.

One of the other issues we have heard something about is cost. There will be some cost impact on parents. The regulatory impact statement, which was released in 2009 to inform the Council of Australian Governments of deliberation on the national partnership agreement from which this legislation results, indicates there will be some additional costs. Most recent data indicates that the median weekly cost of long day care to Victorian parents is $293, based on 50 hours of care. The decision regulation impact statement model completed in December 2009 modelled the cost of the proposed improvements to ratios and qualifications, taking into account wage growth, labour supply training costs and enrolment growth.

The regulation impact statement estimated that by 2019–20 a family with an income of $80 000 or less and one child in long day care for 30 hours per week will face an out-of-pocket cost increase, after the child-care benefit, of $12.85 per week. Of this, $6.64 is attributable to the national quality framework whilst $6.21 is attributable to expected cost increases, such as the consumer price index, which would occur regardless of the implementation of the framework. Similarly a family with an income of $160 000 and two children in long day care for 50 hours per week would face an additional cost of $85.68, of which $44.28 is attributable to the national quality framework, with $41.40 attributable to other increases not connected to the framework.

We have seen some scare campaigns about a possible increase in child-care costs of up to $35 a day, but the methodology behind these assertions of private child-care providers has not been published and cannot be scrutinised. The changes outlined above and the small increases in cost will provide parents with the assurance that the child care available for their children is of good and consistent quality across both Victoria and Australia. There are advantages to this system. People who are not using the private system but are using community child care or government-funded child care can be assured of quality care, and that is what parents are looking for. There will be many advantages to this.

In conclusion this bill is part of the Labor government's commitment to ensuring that Victorian children have the best opportunities to reach their potential. It provides information to parents, ensures consistent standards across both Australia and Victoria, provides certainty for providers and reduces the regulatory burden of the current system of duplication. It ensures that those who are placing their children in day care will receive quality care for those children. I commend the bill to the house.

Ms TIERNEY (Western Victoria) — I also rise to make some comments in support of the Education and Care Services National Law Bill. Ms Huppert has taken the chamber through a number of points that were raised by the opposition, so I will take this opportunity to go back over the actual intent of the legislation prior to the chamber going into the committee stage.

The first point I want to make is the importance of child care and the need for this bill. Essentially this bill aims to ensure consistent quality child care and early education across the country and, in the context of Victoria, the state. We are all aware of the need to have quality child care, particularly given that there has been a substantial increase in the number of children in formal child care. Statistics show that in 1996, 14 per cent of children were in formal child care. As recently as 2009 that number had risen to 23 per cent. We have also seen a dramatic rise in the number of women who have dependent children participating in the workforce. In 1985 that figure was around 40 per cent; now it is over 60 per cent.

It is important to ensure not only that we have services in place that reflect the modern workforce and changed family circumstances but that the quality of the services is there. We know through academic research, and also in terms of what we have seen in a range of communities, that early childhood development is absolutely critical when it comes to ensuring that children are able to explore their maximum potential. We know early childhood development improves not just access to a variety of opportunities for young children but also the circumstances for the wider family from which that child comes. Early childhood development also builds more resilient communities because we have communities and community members interacting with each other at a very early stage. This is unlike many years ago when we had a situation where even though children might not have had parents in the workforce there was isolation.

There has been an expansion of bipartisan knowledge and a growing acceptance that we need good quality child care — child care that engages not just the child but the community in a wider sense. Since 1999 this government has invested $134 million in early childhood education and care facilities across the state. This reflects the importance that this government places on early childhood development and on our partnerships with local government, the community sector and parents in supporting children to get the best possible start in life.

This bill will enact the national quality framework for early education and care and school-aged care. It is about integrating education and care into early childhood services. The legislation will establish a national approach to regulation, assessment and quality improvement and will replace the existing licensing and quality assurance processes. Initially the changes will be restricted to long day care, family day care and preschool, kindergarten and outside-school-hours care services. These services will no longer be regulated under the Children's Services Act 1996.

There are a number of major aspects to this framework. Firstly, there is an agreed quality standard for early childhood outside-school-hours care services, including prescribed educator-to-child ratios and staff qualifications. The bill introduces a ratings and assessment system which is based on the national quality standard, and it also streamlines the regulatory regime. The legislation also sets up the Australian Children Education and Care Quality Authority, a national authority that will oversee the system and report to the Ministerial Council for Education, Early Childhood Development and Youth Affairs.

Under the ratings and assessment system all services will be assessed against seven quality areas, and those quality areas were spelt out by Minister Morand when she introduced the bill in the Assembly. Those standards go firstly to the educational program and practice, including the development of programs based on the approved learning framework, taking into account each child's strengths, capabilities, culture, interests and experiences, as well as the child's health and safety. The bill also deals with staffing arrangements, including mandated educator-to-child ratios and qualifications. There are provisions relating to leadership and service management, collaboration partnerships with families and communities, relationships with the children involved and the physical environment. There are seven quality areas. Each area is given a rating and then there is an overall rating. These ratings will be published and will provide parents and the community with more information on the quality of service. The national approval and certification system will also mean a significant reduction in the regulatory burden for service providers. The bill provides for national consistency and will stamp out duplication that exists in other states and territories.

The bill has been developed in consultation, and I am heartened by the comments made by Ms Hartland in relation to that consultation. Ms Hartland is aware that extensive consultation has been undertaken. I have been furnished with a timetable of consultations that have occurred, and I also have copies of correspondence provided by such organisations as Kindergarten Parents Victoria, the Community Child Care Association and Early Childhood Australia, who are all supportive and in correspondence to the minister they have indicated their support for this bill.

In conclusion, in many ways Victoria has led the way in recognising the importance of early childhood development. In fact many of the elements that are contained in the bill before us are the result of work that has been done in Victoria. Not only will the bill provide a national approach and a clear national framework that will enable standards to be applied and tested and will build upon work already undertaken, it will also build on ensuring that our children and their families can rest assured that their care, safety and development will continue to be a priority of this government.

In the debate this morning there has been some mention of the coalition's position on this issue, which at the last federal election was:

> We will not proceed with Labor's new national rating system for child care and early childhood education services.

After listening closely to the comments made by Ms Lovell for something like 43 or 44 minutes I would say the coalition has been quite disingenuous in the way it has treated this issue before us today. I call on her to indicate whether the Victorian Liberal Party has a different policy position to the federal coalition or whether she is essentially being a bit disingenuous on this whole issue this morning. I look forward to her response on that.

Leaving that to one side for the moment, it is important for this chamber to provide ease of passage for this bill. It is a very important bill. There has been a lot of work done on it and there has been a lot of consultation. It is now just a matter of getting on with it. I commend the bill to the house.

Mr JENNINGS (Minister for Environment and Climate Change) — In reply I will briefly speak to a number of the matters that have been raised in the second-reading debate. I will not repeat verbatim the arguments that have been outlined by my colleagues Ms Huppert and Ms Tierney, but I will seek to echo their understanding of the importance of implementing, through template legislation in Victoria, a national quality framework to support the work that has been achieved by Australian jurisdictions through the Council of Australian Governments (COAG) process. The establishment of a national quality framework for early years development and the provision of quality support for those early years is underpinned through this legislation. That was contested during the second-reading debate by Ms Lovell, who said there are a range of matters that warrant further consultation and consideration and an evaluation of the financial implications.

I understand Ms Huppert has run through those arguments. But put simply, a regulatory impact study statement was released as far back as July 2009 to support this proposal, which resulted in 341 written submissions, 3000 letters and 3000 online survey responses. The financial implications of this regulatory impact statement determined that the impost to a family on an income of $80 000 or less, with one child in long day care for 30 hours a week, would be an out-of-pocket cost, after the child-care benefit increase, of $12.85 per week.

In her contribution Ms Lovell quoted some unattributed and larger scale imposts that have been described by some as providing some fear and apprehension about the implementation of a national quality framework. But a very different result has been derived from the work undertaken through the auspices of COAG, and the major stakeholders in child care across Victoria — and this is echoed in other jurisdictions as well — support the implementation of the national quality framework.

I would like to briefly quote from correspondence received by the Minister for Children and Early Childhood Development. In the first instance Emma King, the chief executive officer of Kindergarten Parents Victoria, wrote the following in a letter to the minister, dated 4 October 2010:

> We have appreciated the sound consultative process that has been undertaken by the department during the development of the legislation.

In the concluding paragraph she went on to say:

> KPV hopes that the advantages of the bill are recognised by all political parties, enabling legislation to be passed by Parliament at the earliest opportunity.

That sentiment is echoed by Barbara Romeril, the executive director of Community Child Care, who similarly wrote to the minister on 1 October. She commenced by saying:

> As the peak body for community-owned children's services in Victoria, Community Child Care is deeply supportive of the bill currently before Parliament — the Education and Care Services National Law Bill 2010.

She concluded by saying:

> Furthermore, by passing this bill the Victorian Parliament is maintaining its national leadership in the process of reform to improve minimum standards in children's services.
>
> We congratulate you on the vision for our future that this bill represents.

In similar terms Marlene Fox, the president of the Victorian branch of Early Childhood Australia, and Joy Williams, the convener of the Victorian branch of the qualifications advisory committee of Early Childhood Australia, wrote to the minister on 4 October and indicated their support, saying:

> Early Childhood Australia Victorian branch … welcomes and supports the agreement reached by the Council of Australian Governments (COAG) setting the framework for national consistency in regulation and quality assurance for all children's services.

In terms of the major stakeholders in this matter in the Victorian community, consistent with the COAG agreement and consistent with the fact that Victoria has played a leadership role in establishing the national template legislation, the Victorian government has brought the legislation to the Parliament and wants to proceed this year, within this parliamentary sitting and this session, to pass this legislation, because it establishes a national momentum and an opportunity

for other jurisdictions to pick up and apply this template legislation.

am advised that at the moment other jurisdictions are already lining up to introduce this legislation. I am informed that the Northern Territory is due to lodge the legislation by the end of this year. Similarly, New South Wales may introduce its version of the legislation in the current session. Queensland is anticipated to introduce its legislation in the first half of next year. The South Australian Parliament in turn will be considering amendments to its pre-existing laws to deal with these matters during next year.

Anybody who is associated with establishing national frameworks, national template legislation and the required regulations attached to them knows that it takes quite some time to achieve this uniformity. Through the COAG process the Victorian government has given undertakings to other jurisdictions that it will establish at the earliest opportunity a legislative template that can be picked up by other jurisdictions. That is the reason the government is intending to pass this legislation in this session.

In relation to the amendments foreshadowed by Ms Lovell, she is seeking an undertaking from the minister that an annual report about the effectiveness of this legislation will be provided to the Parliament. The minister has given me advice that it would be appropriate for the Victorian government to commit to such a process and to provide that assurance to the Parliament. If the amendment had been limited to the state of Victoria, the government may have been in a position to support that amendment, but that has not been the case. We do not want to impose a blanket requirement on jurisdictions that are not part of the national agreement, and this is what would be set in train by Ms Lovell's amendment.

Similarly, as a matter of principle the Victorian government does not support Ms Lovell's foreshadowed amendment in relation to the options — that is, the opportunity for jurisdictions to in effect cherry pick the parts of the legislation that suit them in terms of opting in or out of various provisions of the national template and national quality framework. We understand that for equal partners in the federation to agree to national quality frameworks there needs to be national application of them. In the view of the Victorian government, any variation that may occur from state to state should only be allowed with the agreement of the majority of states and territories and the commonwealth, and that would be formally constituted rather than being done at the discretion of individual jurisdictions.

For those reasons the government will not be supporting the reasoned amendment and does not agree to the foreshadowed deferral of consideration of these matters. The government believes, on balance, the consultation and the regulatory impact statement satisfy the requirements to warrant the introduction of the legislation. We have given undertakings to other jurisdictions that we will commence a unified and uniform national template of behalf of those jurisdictions and on behalf of the early childhood development sector in Australia.

House divided on amendment:

Ayes, 16

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

Noes, 21

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

Pair

Drum, Mr	Darveniza, Ms

Amendment negatived.

Motion agreed to.

Read second time.

Committed.

Committee

The DEPUTY PRESIDENT — Order! We will be dealing with some amendments to the schedules as foreshadowed by Ms Lovell in the second-reading debate, but I understand she also wishes to make some comments in respect of clause 1, the purposes clause.

Clause 1

Ms LOVELL (Northern Victoria) — Clause 1 states that the purpose of this act is to create a national law to regulate education and care services for children.

We just heard from the minister that the government does not intend to support our proposed amendment to disallow regulations and maintain the supremacy of the Victorian Parliament. However, during the debate in the lower house we heard from Mr Hudson, the member for Bentleigh, that Western Australia will have its own legislation complementary to this, and we have just heard in Ms Huppert's contribution that Queensland will also have legislation separate to this.

This means the national law will apply to other jurisdictions but not to Queensland and Western Australia, which will maintain the supremacy of their parliaments and maintain the final say on legislation and regulation in those states. Victoria seems prepared to give away the supremacy of the Parliament and bow to the wishes of other jurisdictions. It is a sad day for democracy in this state when the Parliament abrogates its responsibilities, particularly when those responsibilities involve legislation for and regulation of early childhood education and care services.

There is nothing more important than our children and the care of our children and ensuring that we have the highest quality standards, yet Victoria under this Labor government and Minister Morand are not prepared to stand up and maintain the supremacy of this Parliament over regulation and legislation when it comes to early childhood care. That is a sad thing to see in this state.

Mr JENNINGS (Minister for Environment and Climate Change) — It is important to state as a matter of principle that the interests of the Victorian government are to provide a quality care system for Australian children, and the Victorian government wants to use Victorian law consistently with national law to achieve the highest consistent standards within the sector and to provide that care to Australian children. That is our aspiration — not the lowest common denominator approach. A peripheral concern about the notion of supremacy of Parliament does not come into the thinking of the Victorian government at this time, because we are concentrating on the main game, which is quality assurance in the care and educational development of Australian children.

Ms HARTLAND (Western Metropolitan) — I have a question for Mr Lenders. Following up on Ms Lovell's question, it would now appear that Western Australia and Queensland will have their own legislation, and if this is to be a national scheme, how will that affect it? I do not think that was answered.

Mr LENDERS (Treasurer) — In response to Ms Hartland's question, the two states have their own legislation at the moment, but the new legislation will be pre-eminent, and they will need to amend their legislation to mirror the new legislation. That is what they agreed to do at the Council of Australian Governments.

Clause agreed to; clauses 2 to 17 agreed to.

Schedule — Education and Care Services National Law

Schedule clauses 1 to 279 agreed to.

Schedule clause 280

Ms LOVELL (Northern Victoria) — I move:

1. Schedule, page 204, clause 280, lines 15 to 17, omit "a participating jurisdiction determined by the Ministerial Council" and insert "each participating jurisdiction".

This amendment is about accountability to the Victorian Parliament. It is about the tabling of the annual report of the Australian Children's Education and Care Quality Authority (ACECQA). The bill provides that that annual report must be tabled in a Parliament of a participating jurisdiction, which means that it may be tabled in the Northern Territory, Tasmania or South Australia; it may be tabled anywhere, basically, other than Western Australia and Queensland, which have their own legislation, and Victoria. We do not consider it appropriate that the annual report of ACECQA should be tabled in only one jurisdiction so that members of the Victorian Parliament should then have to search for it on the internet.

We believe it should be tabled in the parliaments of all participating jurisdictions. The minister said that had this been confined to Victoria, the government would have accepted the amendment. I do not see why it is inappropriate for an annual report to be tabled in all participating jurisdictions. We are talking about the accountability to the Parliament of the national authority that governments are charging with the management of this legislation, and that is important. I believe the annual reports should be tabled in every jurisdiction, and I urge all members to support our amendment.

Mr LENDERS (Treasurer) — I thank Ms Lovell for her amendment. While from the government's perspective we certainly accept the sentiment of what she is saying about tabling annual reports in all Parliaments, the reality is that this is a Council of Australian Governments agreement, and if the Victorian Parliament were to insist on making this amendment, it would of course delay the process. This arrangement was reached between jurisdictions, so it

would delay the process, and just as the government would not support the reasoned amendment, it feels equally that this amendment would be a delaying tactic.

However, I am saying that we agree with Ms Lovell's sentiment. My colleague the Minister for Children and Early Childhood Development has committed to seek leave to table the report in the Victorian Parliament, and in a further step we will volunteer to be the jurisdiction where it is tabled; we will put our hand up for that. From Ms Lovell's perspective that does not mean it will be a formal requirement that it be tabled, but the minister has indicated that she is willing to do it and also that we will volunteer to be the host jurisdiction. I think the objective Ms Lovell seeks can be achieved by another method, but in my view to accept the amendment would be to delay the legislation. We would need to go back to the drawing board with the other states, and therefore the government will be opposing the amendment.

Ms HARTLAND (Western Metropolitan) — I have some sympathy for this amendment, and there are things that I do not quite understand. If the annual report is tabled in another jurisdiction, how will we know it has been tabled? Also, what is the delay that would be caused if it is tabled in each jurisdiction?

Mr LENDERS (Treasurer) — Ms Hartland's concerns are understandable. In specific response to her question about how we would know it was being tabled, it will certainly be on the website, and yes, that does not automatically get onto the notice paper in this house, so that does put people at some disadvantage. Again, the minister has undertaken that she will, by leave, seek to have it tabled, as we often do, and it will become a procedure. She has also undertaken to volunteer that Victoria be the host jurisdiction. That is the answer to that part of Ms Hartland's question.

The second part of the question is more difficult, because it goes into the realm of speculation. The reason we did not support the reasoned amendment is the legislation is to start on 1 January 2012. That sounds a long time away now but the reality is that we would need to go back to a Council of Australian Governments ministerial council to get the change signed off. Victoria's government will go into caretaker mode in about four weeks. Once that period is over, we will then be in December, when it is near impossible to get ministerial councils together. Then the New South Wales government will go into the caretaker period.

There is no reason you could not schedule a meeting of ministers, or if there was agreement, have it done out of session. Logically it could be done, so I am not trying to gild the lily, but the reality is about getting together eight state and territory ministers and one commonwealth minister, assuming each jurisdiction only has one person attending the meeting. I do not know the nature of this particular ministerial council, but certainly some that I have sat on — including in New Zealand and Papua New Guinea — include several ministers. It is very unlikely that we would get a rescheduled meeting of the ministerial council, which would be needed to approve this amendment. The bill would then come back to us as the host Parliament, which would mean February or March would be the earliest we could achieve it.

Whatever the case, we would not get the change achieved until early next year because we are approaching our election period, and even if it was early next year, we would run into the dilemma of getting all those other jurisdictions on board. Logistically it would be very difficult to do it.

Ms LOVELL (Northern Victoria) — I thank the Treasurer for his commitment, and I thank the Minister for Children and Early Childhood Development for the commitment that she would seek to have the annual report tabled in the Victorian Parliament, but that commitment is not good enough. As we know, ministers come and ministers go — ministers change — and if it is not in the legislation, it is not binding on whoever may be the minister after the state election.

This is such a minor amendment that I cannot see how it can possibly delay this legislation. If it were passed today the bill can still pass in the Victorian Parliament and then it can become the template legislation. If other jurisdictions were not happy with that — I cannot see why they would not be happy with an annual report being tabled in their jurisdiction — they have the opportunity to change it when the template legislation goes through their Parliament. Surely with such a minor amendment the ministerial council could consider it even via a telephone conversation. It is important that there is accountability to all parliaments in all jurisdictions participating in this legislation. It is a minor amendment, and I cannot see that it would delay the passage of the legislation.

Mr LENDERS (Treasurer) — As Ms Lovell says, theoretically the ministerial council could sign off on this, but I have less confidence than she does in these things moving quickly. While government members will not support this amendment because we think there is a high risk, if Ms Lovell were to move an amendment to another piece of legislation I would commit to this particular report being tabled in the Victorian

Parliament as a matter of course. I would certainly commit to supporting that piece of legislation.

Ms LOVELL (Northern Victoria) — Does the Treasurer mean to the initial part of this bill?

Mr LENDERS (Treasurer) — What I mean is in a subsequent bill — either a private members bill or as an amendment to a subsequent bill — where we could logically say, 'The minister is obliged to table this particular report in the Victorian Parliament'. We would have no difficulty supporting that amendment to other legislation.

Ms HARTLAND (Western Metropolitan) — I have just a brief comment — or it may end up being a question. What really concerns me — and I have done several of these Council of Australian Governments bills now — is that we come down to this fine detail in the committee about tabling and about how people know et cetera. Could it not be put on the agenda that in the next set of COAG bills this does not happen, so that there is an ability to table them around the country? Also, on the issue about it being on the website in the Northern Territory, how are we possibly going to know that unless people are notified? People will want to know about this. It is more a comment about process, but I will continue to listen to the argument.

Mr LENDERS (Treasurer) — The point Ms Hartland makes is one of those challenges with the COAG process where you have a council of ministers that tries to agree on things, meets infrequently and then comes back. I think her point is that there is no logical reason why, particularly being proactive rather than retrospective, it could not be addressed. For the life of me, I cannot understand why this is not there. If there were some specific time line for reporting to Parliament I could understand it getting complex — if you had to report it in a Parliament within a week or a month or whatever of sitting. There should be a construct of words that would make it relatively simple. I cannot see the complexity.

On Ms Hartland's point, going forward, I certainly will undertake to raise the issue with the Premier, who is the appropriate person in dealing with these things as part of a COAG agenda. I know it is a broader issue that Ms Hartland is talking about than just the tabling of reports, but certainly on the tabling of reports I cannot for the life of me see why, going forward, that cannot be addressed. Other issues we probably would have to have a longer discussion on.

Ms LOVELL (Northern Victoria) — Parliamentary counsel yesterday gave me some different advice to the advice I was given during the last parliamentary sitting week. During that week the opposition in the lower house moved this amendment to the section of the bill that affects all jurisdictions. Yesterday parliamentary counsel advised that if we moved these proposed amendments to the initial stage of this bill, which relates to Victoria only, then these amendments would only relate to Victoria.

We proceeded with the original amendments for consistency between the houses, but if we report progress on this bill, I ask that parliamentary counsel at that time draft the amendment so that it will confine the requirement for tabling of the annual report to the Victorian Parliament only. The amendment could be drafted and inserted into this legislation today, and in accordance with the minister's prior commitment that he would accept it if it applied only to Victoria, we could deal with this issue today.

Mr LENDERS (Treasurer) — Ms Lovell is correct in that the bill can be amended as it applies to Victoria only, but the schedule, which we are debating, can only be dealt with with the agreement of the ministerial council.

In trying to resolve this as quickly as possible, if it would help, I suggest we report progress and discuss whether it would be an option to move a government amendment to the bill itself where the same impediment does not apply, rather than the schedule and hopefully we can get back to that later this day. If that is a solution for the committee, it may resolve the issue. I think we are all in agreement, and our only issue is what it will do to the COAG process. I intend to seek to report progress and return to the bill later this day at least with an answer as to whether that would actually work.

Schedule clause and amendment postponed; schedule clauses 281 to 300 agreed to.

Schedule clause 301

Ms LOVELL (Northern Victoria) — I will comment on the regulations and particularly the time frame for consultation. Ms Huppert said that outside-school-hours care and child care operate right up to 24 December and that they would have ample time to consider the regulations. At the briefing on this bill by the minister's office we were given a document relating to the national regulations. The document states that the plan is to have draft regulations available for consultation with the sector from late December 2010 to end February 2011; 'late December' indicates exactly what it says — late December. You would

imagine that would probably mean from 20 December on, in the last third of the month. Even if it were to be released on 20 December, it would only give those services four days until they break for the Christmas period.

Unlike Ms Huppert, I do not think that is ample time for consultation with the sector. The government really needs to look at having further time for consultation. As we have already discussed with the outside-school-hours care services part of the sector, it relies on school administration to pass on all the correspondence et cetera. Schools finish earlier than 24 December, and it therefore may not even receive such correspondence before Christmas, and schools will not recommence until the end of January. Schools are then busy with their own administration requirements. If the period for consultation were to close by the end of February, part of the sector could be left out of the consultation phase.

Ms HARTLAND (Western Metropolitan) — I think Ms Lovell has a relevant point about the consultation period. All too often I have been involved in community consultations where we have received material on 23 December and have been expected to deal with it very quickly. I do not think it would be a bad thing to extend this consultation period on the regulations by a month.

Schedule clause agreed to; schedule clause 302 agreed to.

Schedule clause 303

The DEPUTY PRESIDENT — Order! As I indicated before, Ms Lovell has an amendment 3, which I regard as a test for her remaining amendments 4 to 7. All of these amendments relate to the process for the disallowance of regulations.

Ms LOVELL (Northern Victoria) — I move:

3. Schedule, page 221, clause 303, lines 1 to 10, omit all the words and expressions on these lines.

This amendment provides for a disallowance of a regulation by either house of the Victorian Parliament to be carried without the support of other jurisdictions. What this legislation does is revoke Victoria's ability to have the final say over law in this state without the approval of other states. I believe Victoria must retain the right to veto any regulation this Parliament considers to be not in the best interest of Victorian children. We must be able to do so without the approval of other states and territories.

The coalition understands the argument around nationally consistent legislation and regulation, but we have already heard that Western Australia and Queensland have opted out of this, and we cannot support legislation that hands over full responsibility for the regulation of Victoria's early childhood education and care services to a national body. In order to ensure the protection of Victorian children and to ensure that the highest quality of care is provided in this state, we believe the ultimate responsibility for the regulation of these services must reside with the Victorian Parliament.

A precedent for Victoria retaining power over national regulation was set in March this year during the debate on the Livestock Management Bill, which introduced national standards for the management of livestock. The coalition moved an amendment similar to the one we have moved today, which allowed the Victorian Parliament to have the final approval or veto over regulations which govern the management of livestock in this state and indeed around the country. The Greens and the Democratic Labor Party supported that amendment, and it was accepted by the government when the bill was returned to the lower house. Surely it is even more important that Victoria retain its right to have the final approval or veto over regulations that deal with the very important issue of regulating children's services in this state.

We have heard from Minister Jennings that the government does not intend to support this amendment because it changes the schedule that is part of the national law. I would like the minister at the table, Mr Lenders, to comment on whether the government may support such an amendment if it were inserted into the bill itself rather than the schedule, which parliamentary services advised me yesterday could be done.

Mr LENDERS (Treasurer) — I have not received advice on the amendment being put into the bill itself. The government will not support the amendment. The difference between this and previous legislation is that what we are seeking to do here is have national laws. We have already had the discussion about Queensland and Western Australia. Queensland has indicated that it will adopt the legislation. If you have national laws, the regulations that arise from them need to be national. Under the proposal in the schedule, a majority of jurisdictions can disallow a regulation. This is different to the previous item Ms Lovell raised, that of the annual reports. The tabling of annual reports is perfectly logical; it does not in any way detract from a national scheme. The requirement for such reports to be tabled is a logical amendment that Ms Lovell suggests, and I

think we have a way through in adopting that into the bill rather than the schedule.

This starts going to the fundamental issue that if individual states start vetoing, then every individual state will seek to have the same veto. If Victoria wants to have a veto to disallow a regulation, it is perfectly legitimate for all other participating states and territories to ask for the same thing, in which case you would have no national regulation in this area. To mount a case that the Northern Territory, the ACT, South Australia, Queensland, New South Wales and Tasmania should go by a national scheme while Victoria is different is not what you do. If you did, you would suddenly have any individual jurisdiction being able to disallow a regulation, and you would take the 'national' out of national. That is why the government will not support the amendment.

Ms HARTLAND (Western Metropolitan) — The Greens are not inclined to support the amendment, even though we have supported disallowance before. My basic premise on this is that, while I can understand the argument that the government is making, in this case I believe there are a number of very effective non-government organisations that will make sure the regulations are of a high standard. However, I put the government on notice that it is very difficult for political parties in this setting, when we are discussing legislation, to approve legislation without knowing what is going to be in the regulations. As I said before about the tabling of reports — and that should be part of this — I think that in Council of Australian Governments bills there needs to be a process that allows us to at least see draft regulations so that we know where it is going to be heading.

Committee divided on amendment:

Ayes, 16

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

Noes, 21

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

Pair

Hall, Mr	Darveniza, Ms

Amendment negatived.

Schedule clause agreed to; schedule clauses 304 to 324 agreed to; schedules 1 and 2 agreed to.

Progress reported.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Members: government scrutiny

Mr DALLA-RIVA (Eastern Metropolitan) — My question is to Mr Lenders in his capacity as both the Treasurer and the Leader of the Government in this chamber. I refer Mr Lenders to revelations in today's press, confirmed by Labor insiders, that the Brumby Labor government is running an extensive dirt-digging operation which is directed by the Premier's office and involves the abuse of taxpayer resources to delve into the personal lives of opposition members, including the coalition and the Greens, to smear them in the lead-up to the state election. I ask: how many staff does the government employ in order to run this dirt-digging operation and how many hundreds of thousands of taxpayer dollars are being spent on researching the private lives of other members of Parliament with the aim of keeping Labor in government?

Mr LENDERS (Treasurer) — I thank Mr Dalla-Riva for his question, which I guess goes to the issue of resources supplied to members of Parliament and the issue of scrutiny. There are a couple of things I would say. Firstly, Mr Dalla-Riva asked about work done by government. Today, for example, I launched a series of costings of opposition policy in which we costed 70 announcements made by the opposition. With those 70 announcements we showed that the opposition would be putting the budget into the red. That work was done by my office, as is appropriate, as a way of scrutinising work for public debate.

In similar vein the Liberal-Nationals coalition has 98 electorate officers paid for by the taxpayer from a fund of $2.8 million provided to engage research and other staff to keep the government under scrutiny. In that context it is not unusual for work to be done. In my office we have scrutinised the policies of the opposition, and I have released the results to the media

this morning. We have asked the opposition to get the Department of Treasury and Finance to scrutinise its policies so that they are open to the public.

I reject Mr Dalla-Riva's assertions. As part of a robust political discussion there is appropriate scrutiny, and I reject the connotations he suggests about that scrutiny.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — I thank the Treasurer for his admission that there are processes that are engaged in digging up the backgrounds of individuals. I also ask the Treasurer to tell the house how many of his ministerial and other staff are directly engaged in the dirt-digging activities and which of those attend the government's dirt-digging committee meetings, which are also attended by Simon Hammersley from Premier Brumby's office?

Mr LENDERS (Treasurer) — Mr Dalla-Riva is trying to put words in my mouth. If he is talking about Simons, perhaps he should talk about Simon Troeth, who emails the media on a daily basis about language used, announcements made and issues that are being covered by members of the government. If he wants to talk about Simons, perhaps he should start looking at what Simon Troeth is doing with the $2.8 million taxpayer-funded opposition research unit.

I stand by my original point that scrutiny is appropriate — for example, today I announced a $700 million-plus cost blow-out and a destruction of the government's bottom line by the reckless promises by the Leader of the Opposition, Mr Baillieu. That is appropriate work for the staff in my office to do. It is appropriate work to do, as it is appropriate for opposition or minor parties to scrutinise the role of government. That is appropriate, and I think Mr Dalla-Riva has gotten a little bit excited by an *Age* article.

Economy: employment

Mr MURPHY (Northern Metropolitan) — My question is to the Treasurer, Mr Lenders. Can the Treasurer update the house on the current position of the Victorian economy and how our economic position is fostering job growth?

Ms Pennicuik — That's not a question.

Mr LENDERS (Treasurer) — I thank Mr Murphy for his question. I heard Ms Pennicuik saying, 'That's not a question'. Let me assure the house, and through you, President, assure Ms Pennicuik, that cause and effect apply here: the actions taken by governments do have an effect on what is happening in an economy. They do have an effect, and they do generate jobs.

It can be something obvious and immediate, as I have spoken about in this house before, such as when the national broadband network proposed by Senator Conroy and federal Labor creates 700 direct jobs in Melbourne and 8000 jobs throughout the state, plus the spin-on and spin-off that will come from the better ICT (information and communications technology) industry in this state. Government policies make a difference, government policies generate jobs and government policies delivered well give our citizens opportunities they would otherwise not get.

I thank Mr Murphy for his question, and the general response I have is that the actions of this government, working together with a very strong Victorian education sector, a very strong business sector and a very strong workforce, have generated 117 000 jobs in the last year. There is more to be done, but Victoria is in a much stronger position than any other jurisdiction to keep this position going forward.

Members: government scrutiny

Mr DALLA-RIVA (Eastern Metropolitan) — My question without notice is directed to the Treasurer in both that capacity and his capacity as Leader of the Government in this chamber. I refer to Premier Brumby's dirt unit and committee, attended by Mr Brumby's strategy adviser Simon Hammersley, the existence of which has been confirmed by senior Labor members in today's *Age*, and I ask: will the Treasurer release to the house today a full list of names of the members of this committee, including those members from the offices of Minister Holding, Minister Neville, Minister Andrews and the Premier, and the names of all of his own staff who are involved in or have attended meetings of this dirt unit funded by the Victorian Treasury?

Mr LENDERS (Treasurer) — I think I thoroughly answered Mr Dalla-Riva's question in my answer to his initial question and the supplementary.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — Following on from that non-answer, the fact of the matter is that in the Treasurer's earlier answer he raised the issue about using his office for costing opposition policies, and I ask: has the Treasurer been using Treasury to cost that or has that been done out of his own ministerial office?

Mr LENDERS (Treasurer) — As I said, my office has costed opposition policies, but I invite Mr Dalla-Riva, his leader and the Leader of The Nationals, who are afraid of this, to get the Department of Treasury and Finance to cost every single policy they put forward. In the federal debate, which this debate goes to, Tony Abbott was too afraid to have the federal Treasury cost his policies, and it was only when the three country Independents held him to account after the election that the coalition's budget black hole and its chasm of red ink were exposed.

My office did this work, which I released today, but I say to Mr Dalla-Riva that he should by all means ask the Department of Treasury and Finance to cost those policies. I welcome him asking the Department of Treasury and Finance to cost them, and the only caveat I put on that is that he do it before the election so that voters can make a judgement, unlike his cowardly federal leader, who would not do it and tried to hide.

Economy: business confidence

Ms HUPPERT (Southern Metropolitan) — My question is to the Treasurer, John Lenders. Can the Treasurer inform the house on any measures the Brumby Labor government is undertaking to ensure that Victoria is an attractive place in which to do business and that Victoria remains competitive?

Mr LENDERS (Treasurer) — I thank Ms Huppert for her question. The things you need to do to attract business to the state so as to generate jobs fall into four areas. The first is to actually have a budget surplus, which Mr Baillieu has squandered by his costings. One of the next three things you need to do is to invest heavily in infrastructure, which we as a government have done, and we are seeing the results. Some of those important infrastructure measures, like the channel deepening, were opposed by those opposite, but we will move forward with them to generate jobs in Victoria. We also need to invest heavily in the skills of our workforce. A skilled workforce generates jobs, and we have invested heavily in that, although those opposite nit-pick and try to slow it down.

The fourth area to which I alert the house and Ms Huppert is what you can do on competitiveness. We have acted to bring down taxation rates, and we are seeing that with payroll tax in particular having come down. Jobs are coming into the state that otherwise would be in other states or other countries. We are also seeing competitiveness in cutting red tape. Cutting red tape may not sound exciting to many members of the house, but let me assure them that to the business community it is one of those things that makes businesses choose Victoria as a place to invest and generate jobs over other jurisdictions.

I was delighted last week to present to the Victorian Employers Chamber of Commerce and Industry the fourth report I have done in my time as Treasurer on reducing the red tape burden. For four years in a row we have cut the red tape burden by more than 5 per cent, which is the key performance indicator the Premier has set me. What we are seeing now is that that red tape reduction is saving business more than $400 million a year — $400 million that can go to creating new jobs or building new infrastructure or making the businesses more profitable. It is $400 million more a year.

Mr Guy interjected.

Mr LENDERS — Mr Guy interjects, but if he adds up 10 or 20 years worth of that $400 million a year, he will actually see the significant benefit it offers Victoria.

I say to Ms Huppert that these are the difficult decisions governments make. I will use just one example of where reducing the red burden has made a difference to small business, which opposition members claim they like. Under the regulations inherited from the Kennett government if you wanted to run a little coffee wagon to sell some cappuccino, lattes and soft drinks and you wanted to wheel it around Victoria or just move from Spring Street in the city of Melbourne to the city of Yarra, you would have to go to the Richmond town hall and get a permit for Yarra. What we have done now is streamline the red tape burden and say that if the City of Melbourne accredits your coffee van, you pay for a permit once and using that permit you can go to the next municipality and do business. Small items like that make a big difference for small business and actually cut the cost to consumers.

I am delighted to report to Ms Huppert on what this government has achieved. What I would say to Mr Guy is that if he wants a decent coffee from a happy small businessman at a lower cost, he should get with the government.

Education: government advertising

Mrs PEULICH (South Eastern Metropolitan) — My question is also directed to the Treasurer and Leader of the Government in the Legislative Council, Mr Lenders. Given the state government's Shine advertising campaign and the recent state schools advertising campaign where full-page advertisements were taken out in local newspapers to prop up

inadequate local Labor MPs, can he inform the house of what the total cost of the two education campaigns was and why the advertisements should not be paid for by the ALP as election advertising?

Mr LENDERS (Treasurer) — I thank Mrs Peulich for her question. You do not get a good Dorothy very often in this house, so I am really impressed with her question.

What I can say to Mrs Peulich is this: firstly, I will take on notice the question about the cost of the Shine campaigns, but I find it interesting that this question is coming from a party that has called for more advertising in education. It is quite interesting that despite the Liberal Party's call for a $35 million cut in government advertising, Mr Baillieu has called for 19 separate advertising campaigns since he became Leader of the Opposition. What I say to Mrs Peulich is that this government will govern well and is proud of its education system. If Mr Baillieu wishes to have 19 advertising campaigns funded by the taxpayer — —

Hon. J. M. Madden — Nineteen?

Mr LENDERS — Nineteen, Mr Madden. There are more than that, but they are the only ones I would attest to. If he wishes to fund 19 advertising campaigns at the expense of the taxpayer and if he and his voice here, Mr David Davis, say they can cut expenditure by $35 million, I suggest they submit that proposition to the Department of Treasury and Finance for an independent assessment.

Supplementary question

Mrs PEULICH (South Eastern Metropolitan) — I thank the Treasurer for his avoidance of the question, and I ask: given that the education advertising was paid for from the state coffers, can the Treasurer confirm that the money spent was from promised school funding that was forgone for advertising — promised funds such as the broken promise to fully rebuild the Dingley Primary School announced by Janice Munt, the member for Mordialloc in the Legislative Assembly, in May 2009 when she said:

> This will be a complete rebuild for Dingley, not only for the school but for the entire community …
>
> If ever there was a fitting candidate for these funds, it's them.
>
> The buildings no longer function for modern education and everything is in dire need of a refurbishment.

Mr LENDERS (Treasurer) — I have substantially answered the question in my preliminary answer — —

Mr D. Davis — No, you haven't.

Mr LENDERS — Mr David Davis may think he is the independent adjudicator of this, but I suggest his Liberal colleagues would be the judges of whether he is an independent adjudicator.

Mrs Peulich interjected.

Mr LENDERS — I also suggest to Mrs Peulich that if she wishes to be a credible person — unlike her leader — on finances, she should have a look at the difference between recurrent and capital funding, as they are quite separate things. This government has invested more than $1.7 billion in rebuilding government schools in Victoria, whereas in its first four years the government of which she was a member when she was in the Assembly sold off, flogged and closed 300 schools. Judge the leopard by its spots. Mrs Peulich was the member for Bentleigh in the Kennett government and presided over 300 schools being sold, closed and flogged off by her current leader, who was then the Liberal president, through Baillieu Knight Frank. Today she ignores $1.7 billion being invested in rebuilding and modernising 554 schools in Victoria. Mrs Peulich is judged by her own words.

Planning: activity centres

Mr EIDEH (Western Metropolitan) — My question is to the Minister for Planning, Justin Madden. Can the minister update the house on how the government is supporting jobs when planning for our activity centres?

Hon. J. M. MADDEN (Minister for Planning) — I thank the member for his question. I know he has a particular interest in activity centres given that there are a number of them located in his region. Unlike others in this place, we have a plan for Melbourne and Victoria when it comes to urban planning and making and maintaining Melbourne and Victoria's livability, particularly around housing, jobs and services. Activity centre planning is a critical component of this.

I had the great privilege recently of announcing that planning permits have been approved for the development of 227 Toorak Road, South Yarra, which is part of the Forest Hill precinct. This development includes the construction of a 25-storey building with 345 apartments and ground floor retailing.

Mrs Coote interjected.

Hon. J. M. MADDEN — This $100 million project has the capacity to deliver 1000 new jobs. Whilst Mrs Coote may not like the project, surely she has got to like at least the 1000 new jobs during the construction phase as well of the tens of jobs that will

come about through the ongoing development once the construction has finished.

In the city of Maroondah — —

Mrs Coote interjected.

Hon. J. M. MADDEN — I will miss Mrs Coote when I leave this chamber. I announced that a planning permit has been granted for a major retail and office development on the site of the former Ringwood market in the city of Maroondah. This development is at the heart of the Ringwood central activities district. It will provide an $80 million boost to the local economy, and it will create up to 110 construction jobs and up to 960 ongoing jobs, I understand, once it is complete.

These are big projects. I point out to Mrs Coote that both of these projects have been supported by local councils. They have great strategic support from the point of view of their contributions to the development of the activity centres. They each offer an exciting opportunity and a step forward in terms of transforming those respective activity centres, which is about ongoing rejuvenation, upgrading and providing services, jobs and housing to local communities.

These are just an example of the jobs and the urban renewal we are providing in specific strategic locations which will make Melbourne, and Victoria, a great place to live, work and raise a family.

Planning: precinct structure plans

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. With the Growth Areas Authority (GAA) completing just 14 of the 40 precinct structure plans (PSPs) in four years, despite committing to finishing all 40 by 2012, I ask: will the minister stand by his government's commitment to speed up the planning process and his own commitment to this Parliament that no PSPs will be late?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in these matters, particularly around the Growth Areas Authority, because I know he has been a bit sceptical about it across the course of three or four years and about the investment the government has made in the Growth Areas Authority. I have noticed over a number of years some scepticism in his questioning about the Growth Areas Authority, but it is interesting to know that he has now come on board in terms of the Growth Areas Authority. I sense he now sees merit and value in having the Growth Areas Authority facilitating the bringing together of precinct structure plans — master planning might be better terminology for the layman — in terms of contributing to housing development, housing opportunity and housing diversity across Melbourne's new and growth areas.

I know we can always do more in this space. We can always do more, but I point out in particular that recent figures have highlighted what a great job we are doing in this state in terms of the provision of housing. I look towards my colleague the Treasurer, and he might correct me if I am not completely accurate, but I understand that 40 per cent of the housing approvals across the nation — of that order — have been in Victoria.

What that says is that we are leading the way nationally when it comes to housing development, because Victoria — and I compliment the Treasurer again — is the economic engine room of this country at this particular time. There is no better measure of that than the contribution of the housing sector in terms of growth. Not only is that growth in our growth areas, or in those new communities in those areas, but the statistics more recently have also shown an enormous increase in apartment growth and the development of apartments right across Melbourne.

What we are seeing is housing provision leading the way nationally, which is also signifying that Victoria is the economic engine room of this country. To get to the specifics that no doubt Mr Guy is interested in, I am happy to highlight for Mr Guy that as of July this year 14 precinct structure plans have been completed, 9 are at the planning — —

Mr Guy — Fourteen! That's right. That's the point. I asked you that.

Hon. J. M. MADDEN — Mr Guy wanted to hear it, but now that I am telling him he does not really want to hear it. Obviously too many Red Bulls today or a bit too much coffee has got him excited. If Mr Guy toned it down for one moment, he could get a few answers.

Fourteen precinct structure plans have been completed, 9 are at the planning scheme amendment stage and there are a remaining 17 in the process of being prepared. All remaining 26 precinct structure plans are scheduled for completion by the end of 2012. I feel very confident that these will be completed, and I look forward to some announcements in the very near future — and I know Mr Guy cannot wait, either, for some big announcements — in terms of the number of completed precinct structure plans that will make significant inroads into the provision of housing in this state.

When it comes to all measures on all housing fronts — housing diversity, our bigger plan for Melbourne and our plan for the regions — we are achieving nation-leading results that inspire all the other jurisdictions around this country to perform. If only they could perform as well as we are performing in this space, there would not be the national issues that exist around housing provision. We are leading the way. We have an outstanding set of numbers.

I look forward to Mr Guy's supplementary question, but no matter how he expresses it, no matter how he phrases it, we are achieving great results right across the development frontier in terms of new housing, housing provision and of course affordability — in contrast to other jurisdictions. This reinforces what a great job we are all doing on this side of the chamber to make Victoria the best place to live, work and raise a family.

Supplementary question

Mr GUY (Northern Metropolitan) — Maybe the minister can take advice from his media adviser when he makes that big announcement. If the GAA can complete at best 5 PSPs a year, with 26 still to be done in 14 months, plus new PSPs from the growth boundary expansions, what additional resources will the government allocate to speed up this woefully slow process, or was the minister's pledge to speed up planning approvals with PSPs just another hoax?

Hon. J. M. MADDEN (Minister for Planning) — Sometimes I feel like I have been slapped by a wet lettuce in this chamber when it comes to the questions that Mr Guy asks. I just make the point that if he had listened to the statistics I gave, then he would appreciate that 14 precinct structure plans have been completed; 9 are at the planning scheme amendment stage, so they are not at all far away from being completed; and 17 are in the process of being prepared. They are moving through the system, and I am very confident that we will see those precinct structure plans delivered in a short period of time. Of course the sooner we can deliver those, the better, but on all measures we are delivering housing right across the community — needed housing.

The only thing that really stands in the way of housing in this state is not anything this government is doing; it is what the opposition has done in this chamber through the course of the last three and a half years, when it has tried to stall every opportunity to increase housing provision. Whether it has been in activity centres, whether it has been in growth areas or whether it has been in changes to the urban growth boundary he only hold-ups that have taken place have been through and contributed to by the opposition's recalcitrance on these measures at every opportunity in this chamber.

Parks: East Gippsland

Mr SCHEFFER (Eastern Victoria) — My question is to the Minister for Environment and Climate Change, Gavin Jennings. Can the minister update the house on how the creation of new parks in East Gippsland will not only protect important natural assets but also bring about very real benefits to local communities, businesses and all Victorians?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Scheffer for his question and the opportunity to talk about one of those rare occasions when members of this chamber unanimously supported a piece of legislation creating national parks and extensions to the reserve system in East Gippsland. Hats off to this chamber for stepping up and supporting that.

I am very pleased to say that last Friday I proceeded, in accordance with the legislation that was passed by this chamber, to proclaim those additions to the reserve system. Whether it be through the additions to the Errinundra and Snowy River national parks or the Croajingolong National Park or the creation of Tara Range Park, we took the opportunity to celebrate the additions to the reserve system. It saw 45 000 hectares of old growth forests, icon sites and parcels of land of high conservation value being added to the reserve system across East Gippsland. That was something beyond the commitment of the then Bracks government and what the Labor Party took to the 2006 election, which was to add 41 000 hectares to the reserve system in East Gippsland. We achieved an addition to that commitment and simultaneously satisfied our undertakings that we would maintain the contracted timber supply to the timber industry and prevent the erosion of contracted timber supply volumes, which may have led to job losses in the communities in Gippsland.

We got through, as I described it, the eye of the needle of those expectations and commitments. We delivered on our promise. We created great additions of areas such as Goolengook, which is quite famous across the Victorian political and environmental landscapes in terms of its significance. The Yalmi and Dingo Creek areas of East Gippsland have been added to the reserve system.

Very importantly we understand that nature-based tourism is already an important part of the Victorian

economy and a way we can drive economic activity throughout Victoria, and we will continue to do so. We have made investments, making sure that walks of international standing are created through our park system and that we add to the infrastructure and facilities that support the tourism activity.

We understand that every year there are more than 6 million domestic visitor nights involving Australian tourists who come to Victoria and have a nature-based tourism experience. Somewhere of the order of 1.1 million international tourists come to Victoria and have an overnight stay and a nature-based tourism experience. The tourism industry creates some $10.9 billion of economic activity in Victoria.

I emphasise the significance of nature-based tourism as part of the tourism experience and the economy of Victoria and that it will continue to be supported by investments by the Victorian government to protect our natural assets, to build infrastructure within national parks and to derive economic tourism opportunities that come from these great environmental assets that the people of Victoria have now reserved and preserved through the additions to the park system in East Gippsland.

It was a great day for Victoria and a great day for the Brumby government to be able to support the proclamation of these parks, and it was one of those rare occasions when I could celebrate the unanimous support of this chamber — something that is almost a forgotten thing — in establishing national park legislation. On this occasion members on the other side of the chamber stood up and did the right thing in protecting the park system, under the leadership of the Brumby government.

JobWatch: funding

Ms PENNICUIK (Southern Metropolitan) — My question is to Mr Pakula, the Minister for Industrial Relations. As the minister knows, JobWatch is now in its 30th year. It provides a free and confidential telephone service and a legal casework practice to assist and represent disadvantaged workers. It is highly regarded in Victoria, in Australia and internationally. From 1997 to 2006 JobWatch was funded by both the state and the federal governments. However, in 2006 the then Office of the Employment Advocate terminated its partnership program with JobWatch, which was worth $210 000. Also in 2008 the Victorian government reduced its funding of JobWatch by $34 000. Since the establishment of Fair Work Australia, JobWatch has received about 50 per cent of its calls from Fair Work Australia, and its unmet demand has increased from 25 per cent to 65 per cent. Given that demand is increasing but, due to funding cuts, JobWatch will need to reduce its services, what plans does the minister have to restore resources to JobWatch to enable it to continue its valued service?

Hon. M. P. PAKULA (Minister for Industrial Relations) — I thank Ms Pennicuik for her question. A few weeks ago I was pleased to attend the 30th anniversary celebrations of JobWatch, which is, and has been for some time, ably led by Zana Bytheway.

Mrs Coote — Did you catch a tram?

Hon. M. P. PAKULA — I walked there, actually. I was there along with others who have supported and worked with JobWatch over the years, including Jon Faine, who also spoke at that 30-year celebration.

As Ms Pennicuik would know, this government substantially increased funding to JobWatch and has retained that funding at those substantially increased levels. The funding to JobWatch was in effect frozen during the period of the Kennett government, and as a consequence when the Bracks government was elected it was required to more than double the annual remit to JobWatch.

The other element of the funding of JobWatch was a contribution from the commonwealth. That contribution from the commonwealth was revoked; it was removed entirely by the Howard government. Our government has increased and maintained its funding for JobWatch. We support JobWatch very strongly. We praise and strongly support the work it does. It fulfils a very important function in the community, and those record funding levels that have been provided by our government play an overwhelming role in allowing JobWatch to fulfil its responsibilities.

Supplementary question

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. He correctly reiterated what I said, that funding was removed by the Howard government. That funding has not been reinstated since the election of the ALP government three years ago. So that is still missing. My information is that since 2008 state funding of JobWatch has been reduced by $34 000 per annum. It was $902 000; it is now $871 000 also my advice is that, given the costs and increasing demand, funding should really go up to around $1.3 million to allow JobWatch to continue its services. Does the minister have any plans to increase funding along those lines?

Hon. M. P. PAKULA (Minister for Industrial Relations) — I thank Ms Pennicuik for her question. The government and my office and I remain in constant contact with JobWatch about matters of both funding and the appropriate placement and functions of JobWatch. Workforce Victoria has been engaged in dialogue with JobWatch about the potential of it filling a role which more properly equates to that of a community legal service. As members know, it does have a significant legal role in terms of the advice it provides to people who call up for advice and assistance.

Those conversations between Workforce Victoria, JobWatch, the Department of Justice and the Attorney-General's office, including discussions about funding and the appropriate resourcing, roles and functions of JobWatch, are ongoing conversations that will continue over the coming months and will obviously include dialogue about its funding.

Trams: new fleet

Mr SOMYUREK (South Eastern Metropolitan) — My question is for the Minister for Public Transport, Mr Pakula. Can the minister inform the house of the successful bidder for the contract to manufacture Melbourne's 50 new trams and what that will mean for Victorian jobs and our manufacturing industry?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Mr Somyurek for his question. I am glad that at least he seems to show an interest in this fantastic announcement of the preferred tenderer for the 50 new trams. I know that not only Mr Somyurek but also Mr Rich-Phillips — at least in the past — has expressed some interest in the outcome of this tender deliberation.

Last week I was very pleased to join with the Minister for Industry and Trade, Jacinta Allan, to announce that Bombardier — a company based in Dandenong — has been selected to design, construct and maintain 50 new low-floor trams for Melbourne as one part of an $807.6 million investment by the Brumby Labor government.

That overall funding package involves not just the delivery of the new trams but also a new tram maintenance facility, a new works and storage depot at Preston and a major upgrade to the electricity supply to part of the network. This order to boost our tram fleet is a great endorsement of our local manufacturing capability and our local manufacturing industry. Major components of these trams are going to be built at Dandenong, and assembly and testing will also take place there.

These trams are going to be state of the art. They will be 33 metres long and they will have the capacity to transport something like 210 passengers each. This new order will provide the system with the capacity to transport an extra 10 500 passengers in peak periods. The first of those 50 trams will enter service in 2012. The trams will be fitted with closed-circuit television and they will be fully air-conditioned. They will be fully accessible for people in wheelchairs or with prams on routes that are equipped with level access stops of whichever kind — there are, as members would know, a number of different kinds of level access stops. We are going to have a prototype mock-up tram unveiled next year to ensure that the design meets the needs of key stakeholders — whether they be drivers, the elderly or people with disabilities or disability issues.

I should also add, with some degree of what I think is not misplaced pride, that this order will include over 50 per cent local manufacturing content. People might recall that when we declared this a project of strategic significance we set a minimum benchmark for manufacturing content of 25 per cent for these trams. We have actually achieved a local minimum manufacturing content of 50.3 per cent. The shells of the trams will be constructed at the Dandenong plant of Bombardier. The assembly will occur there as well. This is a clear demonstration of the effectiveness of our manufacturing strategy, Building Our Industries for the Future, in supporting our local manufacturing industry.

We are not talking just about the jobs at Bombardier and the workers at Bombardier themselves but also the jobs in the enormous supply chain that that company has, particularly in the south-eastern suburbs of Melbourne. More than 500 jobs will be generated at Bombardier and through the supply chain when production is at its peak. Bombardier is very optimistic about the benefits that will flow to that supply chain and the local manufacturing industry as a consequence of the awarding of this tender to that company.

As well as building these new trams for Melbourne, Bombardier is continuing its rollout of 32 new V/Locity carriages. We have more than 100 of those carriages on the V/Line network as we speak. They are extremely popular with passengers — they are a fantastic train — and now through the collaboration with Bombardier not only will we have a fantastic V/Line train being produced at Dandenong but a fantastic new tram as well. I expect the same response from tram passengers when they board this great new vehicle as we have had

from V/Line passengers when they have travelled on the V/Locity trains.

This is a great announcement for Melbourne, and it is a great announcement for commuters, but importantly it is a great announcement for jobs and our manufacturing sector, particularly in the south-eastern suburbs of Melbourne.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Treasurer) — I have answers to the following questions on notice: 9584, 9662, 9765–6, 9768–72, 9778, 9782, 9981–94, 9996–10 004, 10 006–18, 10 036, 10 075–82, 10 361–2, 10 364, 10 372–4, 10 378–9, 10 381, 10 389–91, 10 619–20, 10 653–4, 10 674–5, 10 900, 10 902–3, 10 915–6, 10 923–4, 10 957–8, 11 068–9, 11 081–2, 11 088, 11 092, 11 099, 11 106, 11 152–3, 11 165–6, 11 186–7, 11 276, 11 278–9, 11 311–2, 11 360–1, 11 373–4, 11 467–8, 11 524–9, 11 543–4, 11 775–6, 11 790, 11 919, 11 925, 11 927, 11 945–6, 11 967, 11 992–12 012, 12 068–76, 12 084, 12 086, 12 088–90, 12 106–44, 12 146–58, 12 161, 12 166, 12 169, 12 171, 12 177–85, 12 189–235, 12 238, 12 240–1, 12 250–1, 12 256–62, 12 267–70, 12 272, 12 277, 12 283–4, 12 288–9, 12 310–19, 12 325, 12 328, 12 333–42, 12 445–6.

MEMBERS STATEMENTS

Water: charges

Mr VOGELS (Western Victoria) — I rise to make my last 90-second statement and to highlight the incompetence of this 11-year-old Labor government at securing the future water needs of Victorians at a reasonable cost. Over the past 11 years we have heard ad nauseam from the Premier, various water ministers and Labor backbenchers that dams do not make it rain. Imagine the consequences if this head-in-the-sand attitude had been the mantra of our forefathers, who had the wisdom to understand that in this land of drought and flooding rains you harvest excess water in times of abundance for future use.

In my electorate the Otways Ranges received 1 metre of rain in August. Most of this water flushed into the Southern Ocean to become salt water which will need to be desalinated in the future if we want to use it for potable water, as we will be doing at Wonthaggi. In other words, rain falls in the Otways, flows into the ocean and currents take that water down to Gippsland, where it will be sucked out of the ocean, desalinated and pumped all the way back to Geelong, where it will have fallen as rainfall a few weeks earlier. In this day and age this is called smart thinking.

The other day a Mrs Calvert of Cumming Street, Peterborough, brought a water bill to my attention. The total amount due on the bill is $221.67. The water she was charged for amounted to $4.66 — that is, out of a bill of $221.67, she used $4.66 worth of water.

UCI Road Cycling World Championships

Ms TIERNEY (Western Victoria) — The 2010 UCI World Road Cycling Championships were held in Geelong from 29 September to 3 October. The whole city was buzzing with anticipation during the days before the racing as the infrastructure was being erected and the riders were out in the colours of their respective countries exploring the course and undertaking time trials.

I want to thank everyone for their patience, especially those who took different travel routes, those who put up with time delays and those who had to find alternative parking. The people of Geelong embraced this fantastic event, with crowds out in force to support the riders and to enjoy such a magnificent spectacle. The City of Greater Geelong did an exceptional job in ensuring that the event ran smoothly, which was quite a task considering the sheer volume of visitors and spectators. An article in the *Geelong Advertiser* states that more than 156 000 people packed the streets last Sunday for the main event. The article quotes the president of the UCI, Mr Pat McQuaid, as saying:

> People can be proud that they hosted the event very successfully and it should give Geelong the confidence to go after any other major event.

Mr McQuaid was also quoted as having said:

> Geelong has done an outstanding job from the atmosphere to the crowd to the weather …
>
> It justified our decision to come here.

As well as the enormous numbers of people converging on Geelong, it is estimated that over 400 million people worldwide saw Geelong and the region at its finest — a feat of which Geelong and Victoria should be extremely proud. We showcased the magnificence of the area and all it has to offer. Geelong is now on the international map thanks to the enormous work and positive attitude of all those involved. It is an indictment of members of the opposition that they chose to stand on the sidelines and to snipe and criticise.

Queenscliff: safe harbour

Mr KOCH (Western Victoria) — I would like to highlight the exorbitant fees charged to users of the Queenscliff safe harbour and the discriminatory discount afforded to the commercial fishing fleet at a cost to others, including charter boat operators.

Due to the exorbitant fees charged to use the new harbour, commercial fishermen and charter boat operators have been given a 15 per cent discount by Queenscliff Harbour Pty Ltd. I have in my possession correspondence from Queenscliff Harbour Pty Ltd saying that Parks Victoria will provide a further discount to commercial fishermen that will take the discount offered to 49 per cent. This offer has not been extended beyond commercial fishermen. The fee structure that will operate from February 2011 will see one charter operator's berthing fees rise from $3000 to $16 000. This is an untenable burden on a part-time business that operates for approximately three months of the year.

There is already significant community unrest about the management of operations at the safe harbour. The fact that this favourable assistance is being offered to only one section of the boating community is seen by many people as unreasonable and discriminatory, and it will further divide this close coastal community. The minister and the management of Queenscliff Harbour Pty Ltd are the key players in this public-private partnership. I suggest that they meet with tourist-boat operators and offer support similar to that extended to commercial fishermen or explain their reasons for not doing so.

Owners of boats in the couta fleet are also in a similar plight, with unviable mooring fees that exceed any of the government's earlier assurances.

Housing: energy efficiency

Ms HARTLAND (Western Metropolitan) — Our emerging carbon-costed economy will disproportionately burden those who are already disadvantaged in our society, unless they are insulated by the government. The Greens believe the key to alleviating increased electricity prices lies not just in direct financial support but also, more importantly, in upgrading the energy efficiency of Victoria's housing stock.

Improving household energy efficiency has long-term benefits. Less brown coal emissions will be produced, occupants will save money through less consumption and those who are disadvantaged will have an improved standard of living and corresponding health benefits. To achieve this the Greens will reintroduce legislation in the 57th Parliament that will require all rental properties to meet mandatory minimum standards. This will enable low-cost energy-efficient measures to be required through regulation.

The Greens strongly endorse the campaign of the One Million Homes alliance. At $514 million per year for five years, 1 million Victorian homes will be retrofitted by 2016 and ultimately the entire housing stock of Victoria by 2020. The initial priority will be to service public housing and the properties of pensioners, low-income people, concession card holders and people referred under hardship programs. We will also introduce incentives for landlords and sliding scale means-tested rebates for non-concessional property owners to make their properties more energy and water efficient.

The PRESIDENT — Order! Time.

His Eminence Metropolitan Archbishop Paul Saliba

Mr ELASMAR (Northern Metropolitan) — On Saturday, 18 September, I was invited by the Antiochian Orthodox Christian Archdiocese of Australia, New Zealand and the Philippines to participate in the celebration of His Eminence Primate Paul Saliba's 50th anniversary of his holy priesthood. The reception was attended by parliamentary colleagues, dignitaries and, importantly, members of the archdiocese.

His Eminence Paul Saliba is a humble man who has dedicated his life to helping others, and he is a shining example of what a truly good man is capable of achieving for his community.

Victorian Multicultural Commission: excellence awards

Mr ELASMAR — On another matter I wish to warmly congratulate all the recipients of the latest multicultural awards. These awards are well earnt and are a recognition by the Brumby Labor government of the hard work of many migrants living in Victoria who have strived to enhance the daily lives of people in their communities who are often less fortunate. I admire and respect them for their participation in their communities and their commitment to making Victoria, overall, a better place to live and raise a family.

Floods: infrastructure repair

Mr DRUM (Northern Victoria) — I have spent the last couple of weeks travelling around my electorate, and I need to bring to the attention of the house the current state of our infrastructure in relation to roads, bridges and waterways as a result of the recent heavy rains and flooding that took place throughout northern, north-central and north-western Victoria.

There is real concern about some of the B-class roads, which are wholly and solely the responsibility of the state government. These roads are currently in a very dangerous state, and they are deteriorating further as every day goes by. There have been many complaints made by locals and through the councils, yet those roads remain to be fixed because the councils do not have the money and VicRoads seems to be unable to respond in a timely fashion.

A lot of the waterways have deteriorated to the stage where they are very dangerous. Again in relation to waterways there seems to be a lack of clarity as to whether it is the catchment management authority, the council or the government, through the Department of Sustainability and Environment or Parks Victoria, that is the authority that has responsibility for fixing up some of the damage caused by the floods. The floods were very welcome but the damage needs to be fixed, and the government needs to fix it.

Minister for Planning: performance

Mrs COOTE (Southern Metropolitan) — The Minister for Planning has presided over a disaster. Melbourne is no longer marvellous. On his watch Melbourne and the Southern Metropolitan Region in particular have come to a grinding halt. There is unacceptable density under the guise of housing for the needy. We have seen a display of arrogance with the Windsor exercise, for example, and I would say that was ignorance at best, but stupidity is another word that comes to mind. Melbourne's planning is an absolute disaster, and the minister has presided over it.

I have attended many meetings in the Southern Metropolitan Region recently. Some of them have had over 200 or 300 people at them. They are angry and concerned and are saying the minister's arrogance, lack of consultation and transparency and his ignorance of a whole range of cultural and heritage issues is making their lives a misery and they will show him on polling day.

At these meetings in Stonnington, Burwood, Moorabbin, Kingston and Boroondara there have been hundreds of people complaining about high-rise towers, high density, overshadowing, traffic congestion and a whole range of unacceptable issues presided over by him and his department. For example, in Caulfield there are going to be 1300 new households in a very small block. In Ashwood there is another unacceptable housing development. In Toorak Road, Prahran, in Orrong Road, South Yarra, and all over the place — —

The PRESIDENT — Time!

Breast cancer: digital mammography

Mr EIDEH (Western Metropolitan) — The Minister for Health, Daniel Andrews, visited my electorate recently for the reopening of the BreastScreen clinics at Sunshine Hospital and Footscray. Women in my electorate will now have better access to life-saving breast cancer screening, and thanks to the new digital technology, mammography images can be captured more efficiently and sent to specialists faster.

I am pleased to say that the Brumby Labor government has delivered $10 million to BreastScreen Victoria for its state-of-the-art digital mammography equipment to detect cancer as early as possible. This will provide over 12 000 screens a year for women living in my electorate and offer them a greater chance of early detection, treatment and recovery. The commonwealth government will also provide $32 million over the next four years for Victoria to upgrade its breast screening equipment.

Breast cancer is the most common cancer affecting women in Victoria, and of the approximately 3200 Victorian women diagnosed with it each year, about 700 die. It is thanks to vital services such as BreastScreen Victoria that we have seen an increase in the five-year survival rates of breast cancer patients. The Brumby Labor government is committed to providing world-class health services and state-of-the-art technology with its $150 million Victorian cancer action plan, which will invest in cancer prevention, research, support and treatment strategies for Victorians.

Ambulance services: response times

Mr O'DONOHUE (Eastern Victoria) — Ambulance services in Victoria are in crisis. In my electorate this year we have seen some tragic situations because ambulances, which are stretched to the limit, have not arrived in a timely manner. A response to a freedom of information request I lodged earlier this year shows there were times when the Berwick and

Pakenham stations had no staff on duty at night-time. Recently an 84-year-old Garfield gentleman was forced to wait over 2 hours for an ambulance, which only arrived after the intervention of the gentleman's general practitioner. One of the issues arising from this incident is that it would appear that there is a lack of communication between metropolitan and rural ambulance stations, notwithstanding the merger between the two services. I call on the minister to examine the delay experienced by my constituent from Garfield.

I am pleased that the opposition has previously committed to upgrade a number of ambulance stations, including those at Emerald, Belgrave and Yarra Junction, to 24-hour staffed stations. Regarding the government's announcement yesterday, I note that it has again been playing policy catch-up with the opposition, but it has done so in a half-baked fashion that will fail to resolve the critical issues facing our ambulance services going forward. Importantly for my constituents from the township of Belgrave, the government has failed to match the opposition's policy commitment to upgrade the Belgrave ambulance station to a 24-hour station.

Ambulance services are in crisis, and the government must be held accountable.

Northern Hospital: mental health unit

Ms MIKAKOS (Northern Metropolitan) — On 25 September I had the great pleasure of attending the opening by the Minister for Mental Health, Lisa Neville, of the upgraded 25-bed adult acute mental health inpatient unit at the Northern Hospital. The $1.4 million renovation brings the total number of acute mental health beds at the Northern Hospital to 50, following the completion of a new $17.23 million facility earlier this year. The upgraded areas include single rooms with ensuite facilities, three separate wings that will meet the needs of women and young people, and several smaller lounge areas with courtyards. It features a homelike environment for patients and their families.

I thank the Brumby Labor government for undertaking the biggest reforms of mental health ever in this state to continue to provide high-quality support for those in need.

Northern Hospital: maternity services

Ms MIKAKOS — On 29 September I attended the opening by the Minister for Health, Daniel Andrews, of the new maternity services wing at the Northern Hospital. The $2.5 million boost will help expand the range of maternity services, and includes six new single-bed maternity rooms that will provide for the delivery of an additional 500 babies each year.

I again thank the Brumby Labor government for its long-term commitment to investing in hospitals and Victoria's public health system and for continuing to serve Melbourne's rapidly growing community in the outer northern suburbs.

Collingwood Football Club: premiership

Ms MIKAKOS — Finally, I wish to extend my warmest congratulations to the mighty Collingwood Football Club on its premiership win.

Ambulance services: response times

Mr D. DAVIS (Southern Metropolitan) — Today I want to talk about ambulance services in this state, which are a disgrace after 11 years of this Brumby Labor government — a government that in 1999, when in opposition, promised to fix the ambulance service to reduce response times to 10 minutes. In 2004–05 what it actually did was push the response times out to 15 minutes — and I make the point that it has never once met those promised response times.

Now we are 11 years into this government — 11 long years — and the ambulance service is deteriorating year by year, day by day. People are dying, people are not getting the service that is required, and the Minister for Health, Daniel Andrews, and Premier John Brumby have to answer for their culpable mismanagement of the ambulance service. It is disgraceful that they have put lives at risk in the way they have.

Even today a woman rang in to radio station 3AW to talk about how 10 ambulances were ramped this morning outside the Royal Melbourne Hospital. There are long waits for ambulances, long waits for people in the back of ambulances and long waits for people who are unable to get ambulances because they are tied up, ramped outside the back of a hospital. It is a disgrace; it is hopeless mismanagement.

What is the government's solution to this? It is to create a dirt unit to attack the opposition, to attack the Greens and to attack the Democratic Labor Party. The government's solution to the ambulance crisis is to create a dirt unit.

BUSINESS OF THE HOUSE

Standing orders

Mr VINEY (Eastern Victoria) — By leave, I move:

That the standing orders be suspended to the extent necessary to enable the notices of motion given this day by Ms Pennicuik, Mr D. Davis (excepting the notice of motion seeking to incorporate some sessional orders into the standing orders) and Mr Viney to be debated cognately tomorrow under 'special business' and that the debate take precedence over general and government business.

Motion agreed to.

Sitting suspended 12.59 p.m. until 2.03 p.m.

GOVERNMENT: PRODUCTION OF DOCUMENTS

The PRESIDENT — Order! I am advised by the Clerk that the various documents required to be lodged with him pursuant to the resolution of the Council of 15 September 2010 have not been lodged with him. Pursuant to the terms of the resolution, the Leader of the Government is therefore suspended from the service of the Council until 12 noon tomorrow.

JUDICIAL COMMISSION OF VICTORIA BILL

Second reading

Debate resumed from 16 September; motion of Hon. M. P. PAKULA (Minister for Public Transport).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The purpose of the bill before the house this afternoon is to establish the Judicial Commission of Victoria. The bill establishes the commission with a board consisting of the heads of the various jurisdictions: the Chief Justice of the Supreme Court, the Chief Judge of the County Court, the Chief Magistrate, the President of the Children's Court, the state coroner and the President of the Victorian Civil and Administrative Tribunal (VCAT). Four other board members, who are to be non-judicial members, will be appointed by the Attorney-General. Two of them must have expertise in organisational development or education service delivery; the other two cannot be from the legal profession. The board will be a mix of the heads of jurisdictions and four other non-legal parties.

The bill abolishes the Judicial College of Victoria, which was previously established as a body for judicial education, and it provides that the new commission will take over the functions of the judicial college and that the appointed members of the current board of the judicial college will become the first appointed members of the commission's board.

The bill provides that the chief executive officer of the commission will be appointed by the Governor in Council on the recommendation of the Attorney-General after consultation with the commission. The intention is that the inaugural chief executive of the commission will be the current chief executive of the Judicial College of Victoria. The bill also provides, significantly, that the chief executive of the commission may report separately and directly to the Attorney-General. This is one of the areas where the coalition parties have significant concerns with the way in which the legislation will operate. I will come back to that concern shortly.

The commission will be an administrative office of the Department of Justice under the chief executive as its head and that the staff of the commission will be public servants appointed by the CEO. Members of the public can make a complaint to the commission about a judicial officer. A concern about a judicial officer may also be referred to the commission by the relevant head of jurisdiction or by the Attorney-General, so there are three avenues by which a complaint about a judicial officer can reach the commission for consideration and investigation.

The bill provides that the commission, having received a complaint, must undertake a preliminary investigation and dismiss the complaint if it is outside the scope of the matters covered by the commission. Matters that would not be considered within the scope include matters about the private life of the judicial officer. Matters that are outside the scope would not be considered and the matter would be dismissed — likewise if the matter is regarded as vexatious. If those two tests are not met, then the matter would be formally investigated by the commission.

The Attorney-General or the relevant head of a jurisdiction may also request that the commission investigate a health issue that may affect the ability of a judicial officer to perform their function, and the commission is required to investigate the matter and decide whether the judicial officer should undergo a medical examination. The scope of the power provided to the commission is very wide ranging when it extends to matters such as the health and medical condition of judicial officers. If the commission considers that a

medical issue may significantly affect the performance of a judicial officer, it can then refer that matter on to the head of jurisdiction for further investigation with a view that the judicial officer be removed. If such a referral is made, it is also reported to the Attorney-General if the Attorney-General was the source of the referral.

The commission may refer judges or magistrates to an investigating panel if the issue raised warrants their removal, or else it must decide itself whether a complaint is substantiated. If the commission decides that it is substantiated, it must give a report to the head of the jurisdiction and to the Attorney-General if, again, the Attorney-General was the source of the referral on the particular matter. A head of jurisdiction, having received a report from the commission, may counsel the judicial officer, may require them to undertake further training or may take further steps as set out in clause 68. If the commission refers a matter to an investigating panel, the panel must investigate. If it considers that the issue may warrant dismissal, it must give to the Governor in Council a report on the matter concerning the judicial officer, with copies sent to the Attorney-General, the commission, the head of jurisdiction, as well as the complainant and the judicial officer who is the subject of the particular investigative panel inquiry. The Attorney-General is then required to lay before Parliament a copy of the report that has been produced by the investigating panel.

The investigating panel must consist of three members appointed by the commission; one is chosen from a pool nominated by the Parliament, and the other two are judges or former judges. The bill provides the following mechanism for Parliament to appoint a pool: the Legislative Assembly nominates a pool of four people after seeking the views of the Legislative Council.

The commission may refer a judicial registrar or a Victorian Civil and Administrative Tribunal officer to an investigator, or else it must decide whether a complaint against such an officer is substantiated. It is a similar procedure to that of an investigation into a judge, save that the investigator's report goes to the Attorney-General and the Attorney-General may recommend dismissal to the Governor in Council.

The commission must also provide information to the Attorney-General if an issue is substantiated and may provide information in any other case unless it is contrary to the public interest. A provision also exists in the bill for the commission to make information public, pursuant to clause 120 of the bill.

The coalition has a number of concerns about the way in which this legislation would operate if it were to be passed. Our concerns are of sufficient weight that it is our position on this bill that we will seek to move a reasoned amendment to the second-reading motion. I ask that that reasoned amendment be circulated. I formally move the reasoned amendment:

> That all words after 'That' be omitted with the view of inserting in their place 'this bill be withdrawn and redrafted to —
>
> (1) provide for the outcome of further consultation regarding —
>
> (a) streamlining the structure of the board of the commission; and
>
> (b) retaining a separate Judicial College of Victoria; and
>
> (2) ensure the powers of the Attorney-General do not undermine the independence of the judicial commission.

The reasoned amendment largely sets out some of the key concerns the coalition parties have with respect to this bill. The first element of the reasoned amendment relates to the structure of the board of the commission. One of our key concerns about the judicial commission as proposed is that it involves the heads of all the jurisdictions of the courts and other judicial bodies that will be subject to its jurisdiction, and yet in reality we know a body such as this can expect to receive of the order of 300 complaints a year. Some of those complaints may be of a substantial nature, some of them may be minor, but we are talking of the order of, in effect, one complaint every day or more than one complaint for every business day. They could be complaints of varying degrees of seriousness against a judicial officer of one of the jurisdictions in Victoria. It is our view that responding to individual complaints made under the provisions of this bill will result in an unreasonable burden being imposed on a commission that is comprised of the heads of all the relevant jurisdictions.

We do not believe it will be an effective mechanism to have the Chief Justice of the Supreme Court and her colleagues in other jurisdictions tied up through this process in addressing what is a reasonable number of complaints on an annual basis. We do not see that as the best use of the time of the heads of jurisdictions in their sitting on the judicial commission for that purpose. That goes to the first element of the reasoned amendment with regard to the structure of the board of the commission and the fact that it will seemingly impose such a large time burden on the heads of the various jurisdictions that are subject to the judicial commission.

The other area we have concerns about is the abolition of the judicial college. It is our view that the judicial college has been reasonably effective as an entity for the further judicial education of judicial officers. Our concerns with the way in which the judicial college will be abolished and its functions taken over by the judicial commission relate to, firstly, the loss of funds that have been accumulated in the judicial college for judicial education purposes and whether those funds will now be diverted into the investigative functions of the judicial commission rather than being used for the educative purposes for which they currently sit within the judicial college.

Secondly, we are concerned about whether the educational functions of the judicial college will take a lower priority than they currently do in a stand-alone judicial college once they are subsumed by the judicial commission. It is our view that this particular mechanism is an unnecessary step in having the investigative body take on the role of the judicial college. We see it as more about accessing the funds of the judicial college rather than an improved mechanism to provide judicial education.

One of the other areas where we have significant concern relates to the way in which the chief executive of the commission is to be appointed — that is, by Governor in Council on the recommendation of the Attorney-General after consulting with the commission. We are concerned that having a mechanism that makes the chief executive a Governor in Council appointment will undermine the independence of that chief executive officer and in doing so will undermine the independence of the judicial commission. I think every member of this house would accept, or at least should accept, that the need for the independence of the judiciary, and by extension the independence of a body that has the capacity to investigate members of the judiciary, should be paramount.

Yet what we are being asked to support here is a model that puts the appointment of a senior officer of that investigatory body in the hands of the government via a Governor in Council appointment. We believe that is an inappropriate mechanism. The appointment of the chief executive of the commission, if it is to be formed as proposed by this legislation, should be a matter for the board of the commission and not a matter for the Attorney-General or the government via this Governor in Council appointment.

Allied to that and probably of even greater concern is the capacity in the bill for the chief executive to report directly and independently to the Attorney-General. Again, highlighting the need for the judicial commission to be independent of government, we see it as entirely inconsistent to have the chief executive not responsible to the board of the commission but in effect responsible to the Attorney-General, who can require the provision of information and direct reporting from the commission to the Attorney-General and not via the board.

It seems completely inappropriate to the coalition parties that the government would seek to establish this commission with the chief executive having a direct reporting line to the Attorney-General rather than via the board of the commission. In our view it completely undermines any argument that the commission is to be independent of government and perform its investigatory function over the judiciary in a way that is independent of government. That is an enormous concern we have with this legislation.

The other element of our concern relates to the way in which the establishment of the judicial commission has been promoted by the government and the Attorney-General as being in some way a response to the recent review of public sector investigatory and anticorruption measures undertaken by Peter Allen and Elizabeth Proust. Following the release of the Allen-Proust report the Attorney-General issued a statement which implied that this bill and the establishment of the judicial commission were part of the government's response to the Allen-Proust inquiry into anticorruption bodies in the state.

It is the coalition's view that this body, the judicial commission, is in no way a response to that inquiry by Allen and Proust. It is in fact something that predates the release of that report, and it was a mere convenience for the Attorney-General to try to suggest the proposed establishment of the judicial commission was in some way part of the government's response to the Allen-Proust report.

That said, it is also our view that even if you accept the government's position that this is part of the response to the Allen-Proust review, it is not an appropriate response. The coalition has a very clear position that the mechanism for addressing complaints and corruption allegations within the public sector — be it the public service, be it non-departmental agencies, be it within Parliament or be it the judiciary — is through an independent, broadbased anticorruption commission. The attempt to paint the judicial commission as proposed by this legislation as going some way towards putting in place such a mechanism is unacceptable. We believe that only through a broadbased commission that has the capacity to cover the entire public sector will an appropriate mechanism be put in place.

We have a number of practical concerns about the way this commission would operate. They relate, as I said, to the practical time impost that would be imposed on the heads of the various jurisdictions if this mechanism were to be put in place, they relate to the abolition of the judicial college and its functions being subsumed by the commission, and they relate to the independence of the commission due to the fact that the chief executive will be appointed by and to a certain extent responsible to the Attorney-General. As such, we have proposed the reasoned amendment I moved earlier. I urge the house to support that reasoned amendment which seeks the withdrawal of the bill for redrafting to have those concerns addressed. I commend the reasoned amendment to the house and seek its support of the amendment's intention to produce a better mechanism for the accountability of the judiciary in Victoria.

Ms PENNICUIK (Southern Metropolitan) — I am pleased to make some remarks on the Judicial Commission of Victoria Bill 2010. Mr Rich-Phillips has comprehensively outlined the provisions in the bill. I would like to say at the outset that we have spent quite a lot of time considering this bill and also similar bodies in other jurisdictions. We attended a briefing provided by the minister's office and the department on the bill, at which we were advised that the bill is based on the New South Wales model which has been in place since 1986. I have also seen a discussion paper produced by the department and there was some consultation. But I have to say that, as usual, the report of the consultations has never been publicly released, which is pretty true to form for the Department of Justice in that you never see the final outcome except for the bill, and that is the case again.

It is quite a substantial bill. It establishes a judicial commission and outlines the functions of the commission and its powers, including the powers to delegate. It outlines the membership; the heads of jurisdiction are the Chief Justice of Victoria, the Chief Judge of the County Court, the Chief Magistrate, the president of the Children's Court, the state coroner and the president of the Victorian Civil and Administrative Tribunal. There will be four appointed members who will be non-judges, and two will have expertise in organisational development or educational services given that the judicial college will be subsumed into the Judicial Commission of Victoria, as is the case in New South Wales. None of the other appointed members is to be a lawyer. They will be appointed by the Attorney-General.

As Mr Rich-Phillips mentioned, the bill also outlines the appointment of the CEO of the commission. The bill provides that the Attorney-General or Governor in Council will appoint a CEO on the advice of the Attorney-General and an acting CEO or deputy CEO, as the case may be. Under a separate clause of the bill, the CEO has the ability to report directly to the Attorney-General. Neither of these provisions is based on the New South Wales model, which, as I was advised in the briefing, is working very well; I was told it has been working well for 34 years. Under the New South Wales model the CEO is appointed by the commission and does not have a direct line to the Attorney-General.

I share the concerns outlined by Mr Rich-Phillips that the Attorney-General as a representative of executive government has too much involvement in the appointment and ongoing operation and activities of the CEO as provided for in the bill as it stands. To that extent I have prepared amendments to the bill. I will talk about the other amendments as well. I am happy to have them circulated.

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

Ms PENNICUIK — The amendments in effect would mean the CEO would be appointed by the commission, as is the case regarding the CEO under the New South Wales model, which I am advised by the department and the minister's adviser is working well. I have not been given a convincing argument by the government as to why this departure from the New South Wales model is provided for in the bill before us.

I also mentioned the appointment of other members to the commission. I have prepared an amendment to clause 9, which covers the appointment of other members so that the appointment of other members would also reflect the New South Wales model, given that I am again concerned about the appointment of members being in the purview of the Attorney-General. The provision for the involvement of the Attorney-General in the judicial commission should be removed from the bill. That is why those amendments go to that issue.

Clause 24 is about reports the commission can make on its educational functions. However, two of the subclauses refer to reports by the commission on non-educational functions, even though they are provided for under a heading pertaining to educational functions. I queried that with parliamentary counsel and they have prepared an amendment to the heading so that it incorporates reports on both general and educational functions. The bill erred in that respect.

Some of the other amendments I have prepared go to part 3 of the bill, which provides for handling complaints. The amendments are mainly about the reporting of the complaints function, in that the bill provides that members of the public can make complaints to the commission about judicial officers, including the heads of jurisdiction. Given that the heads of jurisdiction are the members of the commission, the bill sets up a possible conflict where a head of jurisdiction is the subject of a complaint to the commission on which that head of jurisdiction sits. Even bearing in mind that one would assume that if a complaint were made about a head of jurisdiction that officer would absent themselves from the commission, it is a concern.

It also adds to the concern raised by Mr Rich-Phillips, which I also share. I presume that the heads of jurisdiction already have a lot to do and it is not as if they are fishing about for extra jobs to add to their list. I wonder whether setting up a commission with the heads of jurisdiction as members of the commission is the best way to go, given their workload and the possible conflict of interest. That could be a difficulty when a complaint is made not only about them or one of their judicial officers but also about another head of jurisdiction. They all know each other and they all work in a collegiate way, so that is a difficulty.

As I mentioned earlier in my contribution, the Greens looked at other models — that is, those in New Zealand and Canada. The New Zealand one is worth looking at. The New Zealand judicial conduct commissioner is appointed by the Governor-General upon the recommendation of the New Zealand House of Representatives and in consultation with the Chief Justice. The commissioner performs the initial examination of the complaint to come to a decision as to whether the complaint is serious or less serious. The last commissioner in New Zealand was a practising lawyer.

If the commissioner forms the view that a matter warrants further investigation and is sufficiently serious that it could justify consideration of removal, the commissioner may recommend to the Attorney-General that an investigative body, made up of two judges and a layperson, should be convened. The commissioner must dismiss certain complaints in certain circumstances, and if the commissioner does not dismiss a complaint and does not consider it to be sufficiently serious, the complaint must be referred to the head of the relevant court.

There are some similarities between that model and what is proposed in the bill. The main thing is that the New Zealand system has a commissioner and panels can be set up and matters can be referred to the heads of jurisdiction, as can be done under the model proposed by the bill. The difference is that the heads of jurisdiction are not sitting on the commission. Another difference is that the commissioner is basically a complaints-handling body and does not have an educational function. A Greens colleague in Western Australia, Giz Watson, commissioned an intern report on this issue.

We also looked at the Senate inquiry, which mainly deals with the federal courts. The model that we have before us is not the only model. It is certainly not the perfect model; I think it has flaws. The chief justice has been reported as being disappointed about the judicial college function being subsumed by the complaints-handling function. She recently commented that judicial education should not be compromised through management of complaints. She went on to state:

> It is important that Victorian judicial officers see the college as a creative and innovative institution that enriches the quality of their judgement.

I asked about this in the briefing because I think it is an important issue. The answer provided to me was, 'If there is a complaint made to the judicial commission, then there would be a learning in that in terms of the education of judicial officers'. Yes, I can accept that. However, I would also say that even if the judicial commission were only undertaking the complaints-handling function, it could still make a report and a recommendation to the judicial college that this particular issue become part of judicial education. It does not follow that the two must be combined together.

The model we have in front of us is certainly not perfect. As I have mentioned, there are different models around the world. The report instigated by my colleague in Western Australia Giz Watson seems to have come out favouring a hybrid similar to a mixture of a commissioner model, as in New Zealand, and a judicial commission model, as in New South Wales.

There are some issues with this. It is important that there is a complaints-handling mechanism for the judiciary so people can have their complaints heard; I am totally in favour of that. I do not necessarily feel that this matter is so urgent that it must be passed this week. We have gone through the last four years without a judicial commission. It is not as if this is a burning issue that cannot be resolved between now and February.

I am reluctant to support a reasoned amendment in most cases, but my colleagues and I are inclined to support one in this case because of the issues that we have pointed out, even though I have circulated and foreshadowed amendments that I will move to the bill in the committee stage. My feeling is that there is nothing urgent about it — there are other models. I am uncomfortable with the government's model because it has significant flaws in it. I am not convinced by any of the reasons. I am presuming Mr Tee will have something to say about the bill; he might be able convince me otherwise. So far, though, through the questions I have raised with the department and through my own research I still have not been convinced.

I do not think it is urgent. I think it is more important that we get it right. If it takes us another couple of months down the track when we have not got anywhere in four years on this issue, so be it. It is not a bill that absolutely must be passed in this session of Parliament. However, if the reasoned amendment does not succeed, then I will proceed with the amendments I have outlined.

Ms TIERNEY (Western Victoria) — I rise to make a contribution to the debate on the Judicial Commission of Victoria Bill 2010. At the beginning I also indicate that the government will not be supporting Mr Rich-Phillips's reasoned amendment. With respect to the proposed amendments that have just been circulated by Ms Pennicuik, I understand Mr Tee will be responding to many of those.

In relation to the bill in front of us this afternoon, the establishment of a judicial commission for Victoria was first mooted in justice statement 2, where the government outlined its commitment to explore processes to handle complaints of judicial misconduct or unprofessional behaviour as well as measures to address things such as ill health and competency if a judicial officer becomes unable to continue with a full range of judicial duties. A working party was formed and a public discussion paper was developed by that working group. Essentially it had three options for discussion. It received over 20 submissions in response to the public discussion paper, and in every instance there was support for an independent judicial commission.

I need to mention that there has, of course, also been the Proust review. Members of the chamber will recall that in November last year the Premier requested the public sector standards commissioner, Peter Allen, and special commissioner Elizabeth Proust to review the efficiency and effectiveness of Victoria's integrity and anticorruption system, including investigations by the Auditor-General, the local government investigations and compliance inspectorate, the Ombudsman and Victoria Police. The findings and recommendations were presented in the report *Review of Victoria's Integrity and Anticorruption System*. In June this year the government announced that it would adopt the Proust model for public sector integrity, including the establishment of the Victorian integrity and anticorruption commission, but we need to be clear that the development of this bill pre-dates that announcement.

I refer to the central elements of the bill. Its main purpose is to set up the Judicial Commission of Victoria. It provides for the continuing education and professional development of judicial officers and for the investigation of complaints, referrals and health requests regarding judicial officers. It also repeals the Judicial College of Victoria Act of 2001 and makes consequential and other amendments to other acts. The two main features of the bill are that it establishes the judicial commission and its responsibility for investigating serious and so-called less serious complaints, and it provides the judicial commission with the education functions that were previously held by the judicial college. It has two smaller features: it maintains the current constitutional protection and it expands the powers of the heads of jurisdiction to enhance their ability to manage their courts.

The first element of the commission's functions will give Victorians greater confidence in the way our judicial system functions. The bill will take a more systematic and consistent approach and essentially a more structured approach to the investigation of complaints.

The board that will govern the commission will comprise six judicial officers, each the head of their respective court or the Victorian Civil and Administrative Tribunal, together with four non-judicial members appointed by the Governor in Council. Ms Pennicuik mentioned that two of the non-judicial members must have expertise in organisational development or the delivery of education services. Those two members may be, but do not need to be, Australian lawyers who are admitted to the legal profession. The other two non-judicial members must not be lawyers. The chief justice is the chairperson of the board, who will have the deliberative vote if necessary — if they are in a casting situation.

The CEO and staff will be able to perform much of the investigative work of the commission, which is a point that needs to be brought home to Mr Rich-Phillips.

There is no requirement for every board member to be involved in every element that comes before the board.

The bill provides that the board retains an oversight of the CEO and the staff by requiring that certain decisions can only be made by the board. It is important to highlight the fact that the bill also provides for unanimous resolutions of members of the board to be made without a meeting. There are sensible checks and balances to ensure on the one hand that there are practical mechanisms in place to ensure that the work of the board can be undertaken in an effective and efficient manner and on the other that the board is oversighting the work being conducted.

From looking at the contributions to the debate on this bill in the lower house and listening to the contributions that have been made in this house this afternoon I understand that the structure of the board is an issue for some members on the other side of the chamber. We as a government have listened to all the views that have been put during the discussion period as well as from Mr Tee, I understand, as recently as this morning, but we are not convinced that the proposals that have been put to us are in any fashion superior to what is contained in the bill before us this afternoon. I also understand members of the opposition and the Greens have issues regarding the position of the CEO. We think it is incredibly important that the CEO is perceived to have sufficient independence from the executive as well as from the judiciary, and we do not walk away from that fact. The Attorney-General's second-reading speech in the Assembly dealt with that issue quite succinctly.

In respect of the education aspect of the new commission, unlike Ms Pennicuik I am heartened by the fact that education and professional development will be part and parcel of the new commission. It is well located for a range of reasons. I do not have the fears that she has in relation to education and development being overwhelmed or undermined by the fact that it is connected to the complaints process. In fact this is part and parcel of the New South Wales model. It is important to align professional training and education with things coming out of court hearings that are new and cutting edge. We have seen that in the past. I do not think the need to modernise the way we go about our judicial business will be contaminated by the fact that there is a complaints aspect to the commission.

The consultation has been ongoing; in particular there has been a lot of work done with the courts, the bar and the Law Institute of Victoria throughout all stages of the development of this bill. The government will continue to work closely with the heads of jurisdictions to assist them in managing their courts and the community's expectations of a responsive, accountable and impartial justice system. On that basis, I commend this bill to the house.

Mr KAVANAGH (Western Victoria) — I would also like to make some brief comments on the Judicial Commission of Victoria Bill 2010. A lot of valid concerns about this bill have been expressed by Mr Rich-Phillips on behalf of the opposition. I am not a member of the opposition, but he presented a rather strong case that this bill could be a lot better than it is. It does seem to include flaws. It is certainly not perfect, as Ms Pennicuik noted. In particular I am concerned about establishing the power of the Attorney-General over this commission. It seems to be a mistake and a politicisation of what should not be a political body.

Having said all that, this is the last sitting week of this Parliament, and there will not be another opportunity to resubmit this bill if the government is not re-elected. On the other hand, if the opposition feels this bill needs major improvements and it is elected to government at the election, it will have an opportunity to do resubmit it in the near future.

In my maiden speech I said I would try to support the government unless I thought it was fundamentally wrong. On that basis I will put my vote on this bill in with the government's, and I will support Ms Pennicuik's amendments if she presents a good case for them.

Mr TEE (Eastern Metropolitan) — I want to make some brief remarks focusing on some of the comments that have been made by some of the other speakers in the house. What we have today — and this is what Mr Kavanagh alluded to — is an opportunity to plug a significant gap in the delivery of our justice system. We know that judges in all of our jurisdictions play an important role, but it is a role that can have quite a significant impact on the lives and liberty of individuals. The role of judges as a pillar of our democratic system is a fundamental one. This bill tries to fill a gap in our system.

It comes back to the issue that was identified through the Proust process — that is, that what we do not have but should have is an independent body which can investigate the conduct of judicial officers in the Victorian justice system. That is an important principle which this bill seeks to enliven.

Unfortunately the response of Mr Rich-Phillips and the rest of the opposition is a bit overwhelming. On the one hand Mr Rich-Phillips recognised what he says to be

300 complaints which may occur and has acknowledged that there is a vacuum and a need for the community to have confidence that our judicial officers are operating impartially, effectively, fairly and in accordance with the law. He has acknowledged that there is a gap. He says at one level that the demand, the 300 complaints — I am not sure where he got that figure from — would overwhelm the commission; he said there is almost too much for the commission to do. But on the other hand, notwithstanding that he identified this gap, he put forward a proposal which he knows will see the end of this bill. He knows that this is the last opportunity to address this gap, as Mr Kavanagh has indicated. Because of his actions and those of the opposition in moving a reasoned amendment the community will not have an opportunity to have for the first time an independent body to investigate the conduct of judicial officers. That is unfortunate.

Mr Rich-Phillips tried to justify this by requiring, with his reasoned amendment, further consultation. What is disappointing is that Mr Rich-Phillips acknowledged the gap but did not foreshadow an amendment to address it. I give credit to Ms Pennicuik for at least circulating amendments to address her concerns. The opposition has failed to take steps to rectify what it believes are deficiencies in the model the government has put forward. Mr Rich-Phillips said, firstly, that we are going to have too many cases, and secondly, that we should have more consultation.

I will address his point about the 300 cases. The bill anticipates that there might be a significant number of cases. In relation to the Victorian Civil and Administrative Tribunal (VCAT) and the role of judicial registrars, there might be a number of complaints that the commission may need to consider. The bill provides an effective mechanism for delegating functions. In particular clause 7 deals with a delegation by the commission of its functions, including a delegation of those in relation to VCAT to the committee. We have a capacity to delegate functions, which will essentially help with the workload of the commission. I do not think we should in any way excuse the commission from having the heads of the jurisdictions deal with those matters. Mr Rich-Phillips suggested they might have other important work to do, and that is right, but these are important matters that go to fundamental concepts, and it is important that we have the heads of the jurisdictions deal with them provided they have the capacity, as is provided for in the bill, to delegate their functions. The investigation functions can be delegated to investigating panels to do some of that work under clause 7 of the bill.

In terms of the consultation, which is the other leg of the justification that Mr Rich-Phillips provided, there has been significant and ongoing dialogue and consultation. There are a number of bodies and agencies that support the establishment of a judicial commission. We must bear in mind that what we are faced with today is either this model or no model because Mr Rich-Phillips has not provided any amendments. When we have a look at the bodies that support the establishment of a judicial commission we see that all Victorian courts and VCAT support it, and a lot of this work came through a judicial conduct working group, which also supports it. That working group consisted of senior judicial representatives of all the courts, VCAT, the judicial college and the Department of Justice.

We know that that the Judicial Conference of Australia supports a judicial commission. We know that the Law Institute of Victoria supports a commission, as does the Victorian Bar Council. Ms Pennicuik referred to the Senate Standing Committee on Legal and Constitutional Affairs, which in its report of December 2009 supported a judicial commission. The Judicial College of Victoria, in broad terms, also supported the establishment of a Victorian judicial conduct body. The Victorian Ombudsman has said that a specialised body should be established for judicial conduct complaints. The Crime Victims Support Association supports a judicial commission, and there have been a number of individuals who put submissions to the discussion paper in support of it. There has been a vast amount of consultation, and there is general, broadbased support for a judicial commission.

Mr Rich-Phillips raised a concern about the dual functions of the commission — its educative role in addition to the oversight role. Ms Pennicuik circulated a number of amendments but did not seek to reflect in them the New South Wales position, where there the commission has this joint function. I think it is important that the heads of jurisdiction, who are part of the commission and the commission have this oversight role, and part of that oversight role — it is an important role — is that they engage with the community. There is an educational function in terms of the judicial officers but also a broader function. We should not downplay the importance of education by saying, ‘The commission would be too important to do it’, or ‘That would be a downgrading of the function’. In fact it is quite the contrary.

I want to make some brief comments in relation to the appointment of the CEO, which is an issue that both Ms Pennicuik and Mr Rich-Phillips raised. It goes to the issues of accountability, transparency and ensuring

the community is satisfied that people who make a complaint can get a fair go — that there is a fair process and a fair outcome. We have a commission that, even if Ms Pennicuik is successful with her amendments, will include a large number of judges and other lawyers.

The concern that has been raised with us is: if you have that commission appointing the CEO to work with the judges and lawyers to oversight the conduct of judges, does that create a sufficient degree of transparency, openness and accountability? The model that has been put forward is a model which opens up accountability and says that the commission will operate independently of government. It also says there will be a CEO who will be appointed, but not by the commission. I think that is an appropriate tension and an appropriate way of ensuring that the CEO is not coopted and does not become an extension of the lawyers and judges will inevitably dominate the commission, as they do most of these bodies and agencies.

Briefly in terms of the amendments that Ms Pennicuik has foreshadowed relating to the composition of the commission, I suppose our concern is that we have tried to dilute the number of lawyers by requiring that a certain number not be lawyers, which is not the model Ms Pennicuik has put forward. We have also tried to ensure that we put on the commission people with an education background and people with broader organisational experience.

The amendments moved by Ms Pennicuik would not ensure that outcome, and we think that would be unfortunate because it would mean that we would have a more insular, inward-looking group, whereas we need a broader group. I have some sympathy for some of Ms Pennicuik's amendments, and we might get to those, but we believe we should not waste this opportunity to address what we have all identified as a gap and a deficiency. We should grasp the nettle, grasp the opportunity we have got — the opportunity we will not have again — to ensure that we have got a model in place that protects the public.

House divided on amendment:

Ayes, 18

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

Noes, 18

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

Pairs

Vogels, Mr	Lenders, Mr
Drum, Mr	Darveniza, Ms

Amendment negatived.

House divided on motion:

Ayes, 21

Barber, Mr	Murphy, Mr
Broad, Ms	Pakula, Mr
Eideh, Mr	Pennicuik, Ms
Elasmar, Mr	Pulford, Ms
Hartland, Ms	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr (*Teller*)
Kavanagh, Mr	Tee, Mr
Leane, Mr (*Teller*)	Tierney, Ms
Madden, Mr	Viney, Mr
Mikakos, Ms	

Noes, 15

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

Pairs

Darveniza, Ms	Drum, Mr
Lenders, Mr	Atkinson, Mr

Motion agreed to.

The PRESIDENT — Order! The Clerk tells me this is our 500th division in this Parliament.

Read second time.

Committed.

Committee

Clauses 1 to 8 agreed to.

Clause 9

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 9, lines 2 to 17, omit all words and expressions on these lines and insert —

"(1) Of the appointed members —

(a) one is to be an Australian legal practitioner nominated following consultation by the Attorney-General with the President of the Victorian Bar and the President of the Law Institute; and

(b) three are to be persons nominated following consultation by the Attorney-General with the Chief Justice and who, in the opinion of the Attorney-General, have high standing in the community.

(2) In this section —

Australian legal practitioner has the same meaning as in section 1.2.3(a) of the **Legal Profession Act 2004**;

Law Institute has the same meaning as in section 1.2.1(1) of the **Legal Profession Act 2004**;

Victorian Bar has the same meaning as in section 1.2.1(1) of the **Legal Profession Act 2004**.".

This amendment deals with the appointed members of the commission so that the model would basically reflect that of the Judicial Commission of New South Wales. It differs from the provisions under clause 9 of the bill in that the appointed members would be appointed in consultation with the chief justice, and one would be a legal practitioner who would be nominated following consultation between the Attorney-General and the presidents of the Victorian Bar Council and the Law Institute of Victoria. That is set out in subclause (1)(a) of this amendment to clause 9, which is reflective of the situation in New South Wales.

The reasons for moving the amendment are: one, to reflect the New South Wales model; two, to insert some consultation with other bodies rather than simply having an appointment made by the Attorney-General; and three, to ensure that at least one of the appointees is a legal practitioner. The other three appointees do not need to be legal practitioners. Clause 9(3) of the bill states:

(3) The remaining two appointed members must not be Australian lawyers.

My amendment only requires that one would be a legal practitioner and the others could have any expertise whatsoever.

They are the reasons for moving the amendment.

Mr TEE (Eastern Metropolitan) — We will not be supporting the amendment. While Ms Pennicuik has said that only one might be a lawyer, we think it ought to be clearer than that. We, in our amendment, have effectively mandated that two members must not be Australian lawyers. What we are trying to do is make sure that the commission is seen to be fair, that there is the perception of fairness around it and that it is not exclusively the domain of lawyers. But we also want to make sure with our amendment that there are the requisite skill sets. That is why there is a requirement in clause 9 for two of the appointed persons to have expertise in organisational development or the delivery of educational services, and those backgrounds are not reflected in Ms Pennicuik's amendment. On that basis we will not be supporting the amendment.

Amendment negatived; clause agreed to; clauses 10 to 18 agreed to.

Clause 19

The DEPUTY PRESIDENT — Order! Ms Pennicuik's amendment 2 deals with the authority to appoint a chief executive officer of the commission. I consider this amendment to be a test for her amendments 3 to 9, which relate to clause 20.

Ms PENNICUIK (Southern Metropolitan) —

2. Clause 19, lines 12 and 13, omit "Governor in Council" and insert "Commission".

As the Deputy President outlined, this is a test for my proposed amendments to clause 20. All of those amendments have the effect of making sure that the CEO of the commission is appointed by the commission and not by the Attorney-General. It is interesting that clause 19 of the bill states under the heading 'The office of the Commission':

For the purposes of this Act and to assist in the administration of the Commission —

the CEO is basically there to assist in the administration of the commission, as is the role of a CEO of any organisation of which there is a board. The CEO would also make sure that all laws and regulations are adhered to and that the business of the commission is carried out, which in this case is the handling of complaints and the educational functions. That is the job of the CEO.

In that regard it is very important that the CEO is appointed by and answerable to the commission and not to an external person or body such as the Attorney-General. The Attorney-General is a

representative of the executive government and in my view should not be appointing the CEO of the judicial commission. That is a very important separation of the executive and the judiciary.

I do not accept the argument the government is putting forward that having the CEO appointed by the Attorney-General somehow makes it more accountable. That does not make it more accountable at all. The CEO should be accountable to the commission for administering the functions of the commission. That is what the CEO should be doing. Involving the Attorney-General in it is problematic, and that is why I have moved amendment 2 and foreshadowed amendments to clauses 19 and 20, which are about the appointment of the CEO.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — As outlined in the second-reading debate, the coalition parties are concerned about the current mechanism which would allow the Attorney-General to appoint the chief executive. That is not consistent with the separation we would expect between a body with the capacity to review the judiciary and the executive. Ms Pennicuik's amendment goes some way towards providing some separation there, and therefore we will support her amendment 2 and the consequential amendments to clauses 20 and 21.

Mr TEE (Eastern Metropolitan) — The CEO has a significant role in ensuring that investigations are conducted in a way which will give confidence to complainants and the public. We think it is important that the CEO is perceived to have sufficient independence from the judiciary, who we know will dominate the commission by way of their membership. It fulfils the role of the CEO, who will be the employer, and therefore in charge of the public servants who work for the commission. It is important and appropriate that the CEO be appointed by the Governor in Council on the advice of the Attorney-General.

Ms PENNICUIK (Southern Metropolitan) — Just briefly, again I do not support the argument. I note for the committee that this is not the case in New South Wales, and it has not seen fit to alter the arrangement in 34 years.

Mr Tee — They just love it!

Ms PENNICUIK — As far as I am concerned, and I am advised and have found out from my own research, it does not seem to be a problem. But there is a problem with the CEO being appointed by and able to report to the Attorney-General, as stated under clause 25, which we will get to later.

Committee divided on amendment:

Ayes, 18

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

Noes, 17

Broad, Ms	Pakula, Mr
Eideh, Mr	Pulford, Ms
Elasmar, Mr	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Leane, Mr (*Teller*)	Tee, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr (*Teller*)
Murphy, Mr	

Pairs

Drum, Mr	Darveniza, Ms
Vogels, Mr	Lenders, Mr

Amendment agreed to.

Amended clause agreed to.

Clause 20

The PRESIDENT — Order! Given that amendment 2 has been agreed to, I call on Ms Pennicuik to move her amendment 3, which has been tested by her previous amendment. I consider amendment 3 to be a test for amendments 4 to 9.

Ms PENNICUIK (Southern Metropolitan) — I move:

3. Clause 20, line 2, omit "Governor in Council" and insert "Commission".

Amendment 3, as the Deputy President has said, has been tested by amendment 2, which was just passed.

Amendment agreed to.

Ms PENNICUIK (Southern Metropolitan) — I move:

4. Clause 20, lines 3 and 4, omit "on the recommendation of the Attorney-General".

5. Clause 20, lines 14 and 15, omit "Governor in Council on the recommendation of the Attorney-General" and insert "Commission".

6. Clause 20, lines 26 and 27, omit “Governor in Council” and insert “Commission”.

7. Clause 20, line 29, omit “Governor in Council” and insert “Commission”.

8. Clause 20, lines 30 and 31, omit “on the recommendation of the Attorney-General”.

9. Clause 20, page 21, lines 1 to 4, omit all words and expressions on these lines.

Amendments agreed to; amended clause agreed to.

Clause 21

The DEPUTY PRESIDENT — Order! Ms Pennicuik’s amendment 10 deals with the authority to appoint an acting chief executive officer of the commission. This amendment is a test for Ms Pennicuik’s further amendments 11 to 14. This principle has not been tested by the previous amendments because it involves a different position, albeit that the arguments might well be the same.

Ms PENNICUIK (Southern Metropolitan) — I move:

10. Clause 21, line 6, omit “Governor in Council” and insert “Commission”.

This amendment to clause 21 concerns the appointment of the acting chief executive officer. Without repeating my arguments regarding the amendments we have just dealt with, it is basically the same situation — this amendment, if passed, will mean the acting CEO will be appointed by the commission rather than by the Attorney-General. The reasons are as already outlined.

Mr TEE (Eastern Metropolitan) — For the reasons outlined in my previous submission the government will not be supporting this amendment.

Amendment agreed to.

Ms PENNICUIK (Southern Metropolitan) — I move:

11. Clause 21, lines 7 and 8, omit “on the recommendation of the Attorney-General”.

12. Clause 21, line 27, omit “Governor in Council” and insert “Commission”.

13. Clause 21, lines 28 and 29, omit “on the recommendation of the Attorney-General”.

14. Clause 21, lines 30 to 33, omit all words and expressions on these lines.

Amendments agreed to; amended clause agreed to; clause 22 agreed to.

Clause 23

Ms PENNICUIK (Southern Metropolitan) — I move:

15. Clause 23, page 23, line 32, after “investigator” insert “and a brief description of the reasons for the decision in each case”.

This amendment to clause 23(b)(vii) provides that the annual report includes a brief description of the reasons for a decision in each case and details about the number of complaints or part 4 referrals that are substantiated by the commission, an investigating panel or an investigator.

Mr TEE (Eastern Metropolitan) — While there is some sympathy for ensuring that reasons are effectively published, the concerns we have with the drafting of the clause are such that we would have preferred to ensure that there are protections around privacy. We would have sought also to ensure that there is a public interest, because on some occasions and in some cases it may not be in the public interest to publish a description of the reasons for the decision.

The other important observation is that there is nothing in the bill stopping the commission from providing a brief description of the reasons for the decision in each case; in fact we encourage the commission to do so where it is appropriate. We consider that that really ought to be a matter for the commission rather than it being an obligation imposed on its members. For those reasons we will not be supporting the amendment.

Amendment agreed to; amended clause agreed to.

Heading to clause 24

Ms PENNICUIK (Southern Metropolitan) — I move:

16. Heading to clause 24, omit “Commission’s educational functions” and insert “performance of functions of Commission”.

Currently the heading to clause 24 reads ‘Reports on Commission’s educational functions’. However, subclauses (4) and (5) do not refer to educational functions. As I mentioned in the second-reading debate, I drew that to the attention of parliamentary counsel, who have prepared an amendment to the heading so that it better reflects the subclauses.

Mr TEE (Eastern Metropolitan) — We do not oppose this amendment.

Amendment agreed to; amended heading agreed to; clause 24 agreed to.

Clause 25

Ms PENNICUIK (Southern Metropolitan) — Clause 25 provides that:

> The Chief Executive Officer may make any reports to the Attorney-General that he or she thinks necessary or desirable on any matter relevant to the performance of the Commission's functions.

The amendments that have already been made provide that the CEO will be appointed by the commission. This clause fits with the previous provisions by which the Attorney-General would have employed the CEO, who would have reported directly to the Attorney-General. During the second-reading debate a concern was raised about how the clause would operate when the CEO would have been employed to carry out the functions of the commission but then would have the right to report directly to the Attorney-General, basically bypassing the commission. I foreshadow that the Greens will vote against this clause.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Again consistent with the position of the coalition in the second-reading debate, we also do not support the chief executive officer reporting directly to the Attorney-General for the reasons outlined in the second-reading debate — that is, the need to ensure that there is some separation between the executive and the body that will be reviewing the judiciary. Therefore we will also oppose clause 25.

Mr TEE (Eastern Metropolitan) — Particularly now that the CEO will be appointed by the commission pursuant to the amendments that have been made, clause 25 becomes very important. It provides an opportunity — and it is just an opportunity; there is nothing compulsory about it — for the chief executive officer to operate independently of the commission. This now provides the only opportunity for the chief executive officer to step out of the commission, as it were, and provide a report directly to government. This is an important power not necessarily for the Attorney-General but for the chief executive officer to have. It comes back to the importance of the commission being seen to be not simply judges judging judges but to have that broader composition and broader range of powers. We consider it important to have that balance.

Committee divided on clause:

Ayes, 17

Broad, Ms	Pakula, Mr
Eideh, Mr	Pulford, Ms
Elasmar, Mr	Scheffer, Mr (*Teller*)
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr (*Teller*)
Leane, Mr	Tee, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr
Murphy, Mr	

Noes, 18

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

Pairs

Darveniza, Ms	Hall, Mr
Lenders, Mr	Vogels, Mr

Clause negatived.

Clauses 26 to 38 agreed to.

Clause 39

Ms PENNICUIK (Southern Metropolitan) — I move:

> 17. Clause 39, lines 13 and 14, omit "and, if necessary, require the officer to undergo a medical examination".

This is an amendment to clause 39 of the bill. Clause 39 states:

> (1) If the Attorney-General or the head of jurisdiction of a court or tribunal to which a judicial registrar or VCAT officer is appointed or assigned is of the opinion that the officer may be suffering from an impairment, disability, illness or condition that may significantly affect that officer's performance or his or her functions as a judicial officer, judicial registrar or VCAT officer, the Attorney-General or the head of jurisdiction may request that the Commission investigate the matter and, if necessary, require the officer to undergo a medical examination.

My concern with that wording is that it implies that the Attorney-General can require that an officer undergo a medical examination. Subclause (2) states:

> On receipt of a request by the Attorney-General or head of jurisdiction under subsection (1), the Commission must cause the matter to be investigated and determine whether the officer should be required to undergo a medical examination by a registered medical practitioner.

After investigating the matter, the commission should decide whether a judicial officer is required to have a medical examination rather than the Attorney-General deciding, because otherwise it would mean there was too much interference. It leaves the possibility that the Attorney-General can require a judicial officer or an

officer of VCAT to undergo a medical examination. I do not think that is appropriate, particularly as we are setting up a commission to deal with these matters. It should be up to the commission, after it has investigated the matter, to decide whether or not a medical examination is needed, and if it decides it is, the commission should be the authority that requires it.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Ms Pennicuik's amendment adds a degree of clarity around the intention of clause 39(1). It is not an area on which we have a strong view, but to the extent that the amendment seems to clarify the intent of subclauses (1) and (2), we will support it.

Mr TEE (Eastern Metropolitan) — I think we are all in furious agreement in the sense that it is not our intention to provide a power for the Attorney-General to require the officer to undergo a medical examination. It is a matter for the commission to investigate the matter, and if the commission thinks it is necessary, then it will require the officer to undergo a medical examination. We are all on the same page; we just have a different view on the interpretation of that clause.

Ms PENNICUIK (Southern Metropolitan) — Briefly, I think the clause is open to the other interpretation and does not suffer by the loss of this provision, which is clarified by subclause (2).

Amendment agreed to; amended clause agreed to; clauses 40 to 56 agreed to.

Clause 57

Ms PENNICUIK (Southern Metropolitan) — I have a question about clause 57. In his second-reading speech the Attorney-General said that the commission must decide to refer a complaint about a judicial officer to an investigating panel if the commission is satisfied there are reasonable grounds. In clause 57(1)(a) the bill says 'may', whereas the Attorney-General said 'must'.

Mr Tee interjected.

Ms PENNICUIK — 'Must' is different from 'may'. I suppose I am asking the minister to clarify, if he can — and he may need to take some advice — whether there is a discrepancy between what the Attorney-General said in his second-reading speech and what the bill says.

Hon. J. M. MADDEN (Minister for Planning) — My understanding, Deputy President, is it is as set out in the bill.

Ms PENNICUIK (Southern Metropolitan) — So it is that the commission 'may' decide and not 'must'?

Mr TEE (Eastern Metropolitan) — Yes.

Hon. J. M. MADDEN (Minister for Planning) — As set out in the bill.

Clause agreed to.

Clause 58

Ms PENNICUIK (Southern Metropolitan) — I move:

> 18. Clause 58, lines 24 and 25, omit "Unless a report includes recommendations under section 59(1), the" and insert "The".

This amendment to clause 58 would remove the requirement that a report to a complainant can be made unless the report includes recommendations under section 59(1). Clause 59(1) states:

> (1) If the Commission reports on a complaint or Part 4 referral to the relevant head of jurisdiction … the Commission may make recommendations to the relevant head of jurisdiction about how to deal with the matter.

Clause 58(5) sets out many provisions by which the commission must not disclose information, such as protecting the privacy of an individual; ensuring a transparent and accountable process; maintaining longer term public confidence; preventing disruption to the orderly administration of justice; and any other matter, which I think is pretty wide and would probably include 'unless a report includes recommendations under section 59(1)'.

The reason I move the amendment is that I can understand that under some circumstances that might not be desirable, but under other circumstances it may not be an issue. That is why I think what it is trying to protect is already protected under clause 58(5), whereas this blanket provision means that the report to the complainant cannot be made if there is a recommendation under clause 59(1). I hope that is clear.

Mr TEE (Eastern Metropolitan) — The problem we have then is that clause 68 also separately governs the release of information to a complainant where recommendations have been made and responses to those recommendations have been received. If this amendment is successful, what we will have are two separate provisions, which will be inconsistent with each other, dealing with reporting to complainants about the outcomes of cases where recommendations

have been made by the commission. We will not be supporting the amendment.

Ms PENNICUIK (Southern Metropolitan) — I have no further comment.

Amendment negatived; clause agreed to; clauses 59 to 144 agreed to.

Reported to house with amendments.

Report adopted.

Third reading

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

> That the bill be now read a third time.

The ACTING PRESIDENT (**Ms Huppert**) — Order! I am of the opinion that the third reading of this bill requires to be passed by a special majority.

Bells rung.

The PRESIDENT — Order! The question is:

> That the bill be now read a third time.

The division will determine whether a special majority has been obtained.

Mr Viney — On a point of order, President, given that the house has moved to suspend the Leader of the Government — I have to confess I was unaware that this vote was being taken in the way that it is — and given that I have been advised by the clerks that we cannot exercise pairs in this matter — —

An honourable member — We already have.

Mr Viney — The clerks advise me that pairs are not counted in this matter, that there needs to be a statutory majority of members on this side. I will ask the house if it can reconsider this matter and conduct the vote at a time when the Leader of the Government is readmitted to the house. Otherwise the vote is misrepresentative in terms of the result of the election four years ago.

The PRESIDENT — Order! In response to the point of order, I do not believe the proposition that has been put by Mr Viney is unreasonable, but it is a matter for the house.

Mrs Peulich — On the point of order, President, it is my understanding that what the government needs to pass this bill is 24 votes and whether the Leader of the Government is here or not, it will not deliver the numbers.

Mr Kavanagh — On the point of order, President, the exclusion of the Leader of the Government should not be used to alter the numbers at all. As was made clear in the debate, Mr Lenders should be here for any important vote, and this is one of them.

Mr D. Davis — On the point of order, President, it is not our intention to lead to any result other than a fair representation of the house. In this circumstance I am prepared to defer the vote to a different point in the cycle that suits all members of the chamber.

Mr Atkinson — I desire to move by leave that this vote be suspended and that the vote be recommitted on the next day of meeting.

The PRESIDENT — Order! I hear the member, but I will get back to him. I believe what we have here is the will of the house to suspend the division until the next day of meeting. I therefore direct that the bill be relisted on the notice paper for the third-reading question to be put on the next day of meeting.

Mr Atkinson — On a point of order, President, with respect I do not understand how the Presiding Officer can make that ruling on behalf of the house. I think it would need a determination of the house and for the President to accept that ruling. We are all going in the same direction, but I do not see how the Presiding Officer can truncate the debate; the house has to make that expression.

The PRESIDENT — Order! Given the statements that have been made, it is my view that it is the will of the house that we proceed in the direction we have. I do not believe we need to formally vote on that. I understand the point, but I do not believe it is actually necessary in these circumstances. There is already a question before the Chair.

Mr P. Davis — On a point of order, President, somebody needs to move that so much of the sessional and standing orders be suspended as to allow the President to direct that proceedings be suspended until the next day of sitting.

The PRESIDENT — Order! The Clerk assures me that my ruling is in fact correct and that I have the capacity to do it. Unless I get the feeling from the house that we ought not to proceed that way — that we ought to proceed another way — we will continue in the way I have already outlined. It is up to the house whether it wants to move a motion.

Mr P. DAVIS (Eastern Victoria) — I think we have done that. By leave, I move:

> That so much of standing orders be suspended as to permit the President to direct that the bill be relisted on the notice paper and for the third-reading question to be put again on the next day of meeting.

Mr P. Davis's motion agreed to.

ROAD SAFETY AMENDMENT (HOON DRIVING) BILL

Second reading

Debate resumed from 16 September; motion of Hon. M. P. PAKULA (Minister for Public Transport).

Mr KOCH (Western Victoria) — It is with pleasure that I make a contribution to the debate on the Road Safety Amendment (Hoon Driving) Bill 2010. This bill amends the original scheme that commenced operation on 1 July 2006. The original bill introduced back in 2006 focused directly on the menace of hoon driving. The word 'hoon' is a slang term defined in the *Pocket Macquarie Dictionary* as someone who is aged between 17 and 35 years and is a street-rough hooligan, loutish and often expressing antisocial behaviour. That makes us appreciate that identifying drivers in their senior years as hoons is drawing a pretty long bow.

The purpose of these amendments is to establish sanctions such as vehicle impoundment, immobilisation and forfeiture in relation to road safety offences. The amendments deal with dangerous and careless driving and driving vehicles at speeds greater than 45 kilometres per hour above any posted speed limits, and they also extend the vehicle impoundment scheme for drink and drug-driving offences, which are currently contributing to far too many driver deaths annually. Astoundingly drink-driving now accounts for between 20 and 30 per cent of driver deaths on Victorian roads each year, and drug testing shows positive results as high as 40 per cent. These statistics continue to demonstrate the need for greater penalties and enforcement and consequently the need to take radical action, such as impounding offenders' vehicles in order to protect not only the offenders but other innocent road users who use the roads legally as they go about their daily lives. These statistics floored me, as I am sure they did a number of members of this house.

The main provisions of this bill include clause 4, which amends the principal act, being the Road Safety Act 1986, to extend the period of time that a vehicle can be impounded or immobilised by a member of Victoria Police from two days, or 48 hours, to seven days. Clause 6 provides new powers to Victoria Police members to search for and gain access to vehicles believed to be used in hoon driving offences and to ask any owners of premises being searched to provide information as to the whereabouts or location of the vehicle being sought. Clause 8 allows police to search premises without a warrant, including but not limited to garages, where the police officer reasonably believes a vehicle is stored, and it makes it an offence for a person who is directed to provide information about the location of the vehicle to decline to do so.

Importantly there are two exceptions under new section 84GA. Proposed subsection (2) provides that for the purpose of searching for and gaining access to a motor vehicle the police can only open unlocked doors. If garage doors are locked and police believe the car is behind those doors, they are not allowed to enter. It should also be noted that under 84GA(3) the police do not have a right as part of a search to enter any part of a building if it is used for residential purposes. It is important that these two exceptions have been included in the bill.

Clauses 10 and 11 will allow a Victoria Police officer or a person authorised by Victoria Police to fit a steering wheel lock to immobilise a vehicle that has been identified as being used in this illegal manner. Clause 15 makes it an offence for a person to copy or try to copy a key to such a steering lock. Hopefully this will put an end to those who have been illegally tampering with these interlocks or copying keys to gain the use of the vehicles after they have been seized. Clause 17 sets out new circumstances in which vehicles may be forfeited, particularly beyond the first offence. Where a second offence takes place within the initial 48 hour impoundment it will result in a further court impoundment for up to three months, and a third offence may well see the court ordering a forfeiture of the motor vehicle forever.

Clause 41 allows the Minister for Roads and Ports to revoke a road declaration in relation to land that is not required for Melbourne City Link, thereby freeing up land to be used for other purposes.

The opposition has a couple of amendments to the bill, and I ask that they be circulated.

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

Mr KOCH — I will refer to the amendments, which deal with the periods of impoundment under clauses 4 and 16, a bit later.

Our concerns with the bill are in relation to clause 6. The new Victoria Police powers do not extend to asking a person whether they know who is in possession of the vehicle. Our concern is that the new powers may be easily circumvented by the person being questioned by police. Under clause 15 the keys for steering locks must be identifiable and marked 'Not to be copied' or similar. This situation is not dissimilar to that which applies in Tasmania, where the suppliers of these steering lock keys do not reproduce them because they are aware that this type of key has a stand-alone, single legal use. Immobilising a vehicle may be an alternative to impoundment where circumstances dictate, especially where the vehicle owner resides a long way away from the central parking facility. Currently that central parking facility for all cars impounded is in Melbourne, at a central location in Preston.

As a member and deputy chair of the parliamentary Road Safety Committee I think it is important that there be further scrutiny of road users, particularly those younger drivers who do not show respect for other drivers and continue to drive in a manner considered careless or dangerous. They should be deterred from this behaviour. As a committee we are always looking at methods that offer safer travel to Victorians and that limit, where possible, the risk of accidents, traumatic injury and loss of life. Our recent support of the introduction of electronic stability control, more commonly known as ESC, and side curtain airbags to all new passenger, off-road and forward-control vehicles in Victoria by 1 January 2011 is another attempt to lower accident rates, thereby reducing personal injury and saving lives and at the same time ensuring that our hospital resources might be used to their best advantage.

The number of road deaths this year is 10 per cent higher than at the same time last year. Again, over the weekend we lost three motorcyclists and an elderly passenger. Yesterday, unfortunately, we lost another two Victorians on our roads. I should imagine this gives us all great concern. This loss of life is happening in the absence of hoon behaviour, but we know that hoon driving is of particular concern as it always takes place on roadways frequented by other motorists and usually with a large audience in attendance. It is natural in these circumstances that injury and loss of life are not far away, and there is also the nuisance hoon driving causes to those in close proximity.

The one thing that is always missing when these types of bills come before the house is the alternative off-road venues afforded to younger people where they can express themselves with their vehicles, especially with activities set around burnouts; short, straight-line drag racing; and generally arcing up the modified vehicles which are often the passion of both young men and women.

Speeding on open roads — careless and dangerous driving at large — is a real issue, but some consideration should be given to finding venues that can accommodate these spin kings, revheads and enthusiasts of street racing, be they male or female, away from built-up areas where the safety issues can be accommodated and where they can test and show off their indulgences. Unfortunately a lot of money is spent in this area. In many cases a motor vehicle is a young person's sole possession, and those who keep vehicles of this calibre want to show them off in the community on a regular basis. This is giving us great concern. This phenomenon is not new, but its incidence has certainly grown to a point where sensible controls must be put in place, and that is what this bill, in its proposed amended form, endeavours to achieve.

In closing, I have to say that the opposition does not oppose the bill but would prefer to have the proposed amendments supported. As I mentioned earlier, the amendments relate to the timing situation, particularly in relation to the impounding of motor vehicles of offenders who have undertaken the practice of hoon driving. For that we would be seeking a little bit more support, because there is little doubt that the hip-pocket nerve is probably something that these young people are very familiar with. They have not got a lot of money, and if we make this an expensive exercise and impound their cars for a longer period of time, I think there will be an opportunity for us to be able to manage this situation a little bit better. In saying those couple of things, I wish a speedy passage for the bill through the house.

Mr BARBER (Northern Metropolitan) — These are fairly small amendments to a piece of legislation that has been around for five years. I think I have just been invited to talk a little bit more philosophically about what it is that we are trying to achieve here. Certainly in terms of the administration of justice the bill does raise a few issues that I want to spend some time talking about.

Given that we have the word 'hoon' in the title, it is worth thinking about exactly what sorts of behaviours we are talking about and what drives them. Mr Koch a minute ago talked about the types of behaviours being

speeding and burnouts, usually in the presence of an appreciative audience, and his suggestion was that we should find a safe space off-road where those same behaviours could be carried out without harm to the general public. I picked up on an article that was published in the *Age* back in September by Peter Gebhardt, a former County Court judge and now self-described poet, where he said:

> The culture, indeed worship, of cars is ubiquitous; the advertising of cars is ubiquitous; the advertising of the power and aggression of cars is ubiquitous.
>
> Speed is king — the grand prix and its celebrities tell us so. Why would we think that the 'hoons' wouldn't be drawn into such a persuasive culture? They have, after all, little else to which they can attach their lives. That, too, is a cause for scrutiny, because it bears down on the educational system and the absence of worthwhile tasks to attract their allegiances.

Clearly that gentleman and the Greens are in no doubt that we are dealing with a much deeper problem here that goes much deeper than simply offering carrots and sticks — the sticks being contained in this bill and the carrots being some other sort of environment to act out these behaviours under a socially approved system.

This bill, though, intends to upgrade some of the features of the original act to combat antisocial driving such as illegal drag-racing, high-level speeding, burnouts and doughnuts. Apart from the punishment for those offences, the particular measures impound, immobilise and at some point require the forfeiture of vehicles. This can occur at two stages. It can occur immediately on the detection of an alleged offence by a police officer — at the roadside, as it were. They can impound a vehicle for 48 hours under the current act, 7 days as proposed by the government and 30 days as proposed by the coalition amendment.

If I understand this part of the mechanism, it is mainly for the purpose of stopping the immediate behaviour, because the person then still goes to trial. After the trial not only do they receive the punishment of the court but the court could also order further impoundment or forfeiture of their vehicle. It appears to me — and everybody I have spoken to seems to agree — that the purpose of the immediate impoundment of the vehicle, the on-the-spot impoundment, is not punishment per se, because the person has not been found guilty yet, but is an attempt to break a behaviour that is occurring right there and then and that will quite possibly occur immediately after the police leave the scene or in coming days or weeks.

That is quite an interesting concept when we talk about the justice system, which normally grabs people, puts them through the courts and punishes them for being guilty. Here we are talking about an active intervention being taken by the police to stop someone who has been driving like a hoon — and stopping them immediately. The argument would have to be that under the current bill we stop them from doing that for 48 hours so that they calm down, and then they can get their vehicle back. I suppose if the cops grab someone for a firearm offence — firing off shots in their backyard in the dark — they take the firearm from them too. If the same logic is followed, I imagine that the firearm would be kept from them until such time as they went to trial.

But here we are moving on a slippery slope with something that we all know is much more deadly than a firearm in the sense that the number of people affected by motor vehicle accidents every year is much greater than the number of people who are shot or killed with firearms. That particularly goes to other offences such as travelling more than 70 kilometres an hour over the speed limit and obviously second and subsequent offences in the same category, including unlicensed driving, blood alcohol content offences and illicit drug offences.

There are two tiers of offences: those I just mentioned as tier 1 offences, and tier 2 offences. The majority of offences that were previously relevant offences for the purposes of impoundment are now tier 2 offences, including actual drag-racing and certain speeding offences.

Later in this process we also make it mandatory for the court to make impoundment or immobilisation orders after someone has been convicted. That is not mandatory sentencing of the person per se but a mandatory impoundment of the thing that they used to commit the crime, being their car. In a way it is a mandatory penalty to be applied, but it is not mandatory sentencing of the person, if you like.

That then operates in a number of different tiers, according to different offences, which other speakers and the second-reading speech make quite clear, so I will not try to explain all that. I just say that we note with caution this attempt to constrain the court's discretion, particularly as the court is in the best position to decide what are the necessary steps to be taken. They will be doing that in addition to making their own decision about impoundment orders, fines, loss of demerit points, licence cancellation or even imprisonment.

To confuse things further, the bill extends beyond these so-called hoon behaviours to persons found guilty or convicted of offences when those offences are being

committed for the second or subsequent time. That includes alcohol and drug offences and driving while unlicensed. It is particularly aimed at a person who has had their licence cancelled or suspended. It does not apply to a person who has merely failed to renew their drivers licence or permit.

When someone is found guilty of a tier 1 offence there will be a mandatory minimum 28-day impoundment of their vehicle. It is clear now that while the original bill was about hoon driving, the impoundment regime is now being used in another way to deter recidivist behaviour in relation to other driving offences.

The second confusing question becomes: if we have just fined them, suspended their licence or even jailed them, why are we impounding their car now, not as a form of prevention but as a form of punishment? Is it that we believe those fines or possibly even jail itself will not have the necessary punitive effect and that we then have to say, 'Hang on, we had better take their car off them as well'? I think that is for others to explain; I am simply pointing out how this bill seems to be evolving and in some ways is contradictory. I will just make the point that this approach to justice could be expanded out endlessly to a whole range of different areas where someone commits an offence and we also try to seize from them the means of the offence, if you like.

I come back to the immediate roadside impoundment issue and how it has applied since 2005. Section 84F of the principal act provides that:

> (1) If a member of the police force believes on reasonable grounds that a motor vehicle is being, or has been used in the commission of a relevant offence, he or she may —
>
> (a) seize the motor vehicle or require it to be surrendered; and
>
> (b) impound or immobilise the motor vehicle for the designated period; and
>
> (c) authorise any person under section 84J to assist in seizing, impounding or immobilising the motor vehicle.

This bill will extend that designated period from 48 hours to 7 days, but the coalition is now arguing for 30 days through its amendment.

Obviously the vehicle must be seized within 48 hours of the offence or, if a notice is served, within 10 days of the notice. This is the third crosscutting issue that we get into. The Scrutiny of Acts and Regulations Committee (SARC) reports that meting out punishment in the form of impoundment and the costs associated with that — that is, paying to have your vehicle released from the pound — prior to a finding of guilt may be contrary to the charter right to be presumed innocent. I am not saying that simply seizing someone's car is punishment or is meant to be punishment; it is obviously meant to be a deterrent. We are suggesting that a police officer, in order to break some pattern of behaviour that is ongoing, needs to grab the car without necessarily grabbing the person, who will have their trial at a later date.

Therefore it is not even clear if the charter right to be presumed innocent is actually being breached here, because there is no presumption of guilt. It is simply stopping someone in the middle of what might be a series of continuing offences. SARC had some further observations on that, but I do not propose to go too far into that issue, because it is clear that that is not the issue on which this bill is going to hang. The bill has been here for quite a while; it is just that the principal act was introduced prior to the development of the charter of human rights.

There are some safeguards: a senior officer has to review the decision, and there are appeal rights. This bill narrows the appeal rights under section 84O of the principal act to something called exceptional hardship grounds. Obviously if a person is later found to be not guilty of the offence, they will not be charged ultimately for the cost of impounding the vehicle. Under the old act you could appeal if you were substantially affected by the impoundment, but now you have to be suffering exceptional hardship. That would prevent a person from arguing exceptional hardship where the person had already been disqualified from driving or had his or her licence suspended. It might result in hardship, but you should have thought about that the last time you did it.

Secondly, we will only allow a court to consider an application relating to the person's employment when a vehicle is essential, not merely convenient, for the person's employment. That is a narrowing but not a complete narrowing.

It also requires the court to have regard to the safety of the public and the public interest in preventing the use of a motor vehicle that the court considers is reasonably likely in all the circumstances to be used for further driving offences.

I suppose we are setting up a regime where the court makes some sort of judgement about what someone might do. I have been there before. I have had bail conditions applied to me with those conditions being that I not simply return to the court, which is what bail

is for, but also that I do not go back into East Gippsland forests, sometimes defined as everything north of the Princes Highway, because I might commit another offence, being getting arrested for stopping another clear-fell logging operation in East Gippsland. Certainly at the time I argued that was not the purpose of bail conditions: it was not to stop me from committing another offence; it was simply to make sure I turned up at court.

There are some quite murky lines being crossed here. If anybody gets the idea I am concerned about that, I am not as concerned as I might be if it was a different subject. What we are talking about here is something that I encounter almost once a week, which is low-level examples of hoon driving, not always with great audiences but seemingly for the pleasure of burning a bit of rubber in a suburban street at times of the day or night or week when you really wonder what is going on in that person's mind.

Further in this area there are some lines to be drawn. Certainly there are now search and questioning powers associated with the impoundment process which start to interrelate with the area of what might happen when you are brought before a court. The bill provides police with powers to search premises without a warrant, with some of the exceptions that Mr Koch outlined earlier on. They can seize the vehicle. For the purposes of seizing the vehicle, the bill empowers the police to enter and search a garage address or any land where it is reasonably thought the vehicle might be stored.

There are also questioning powers that give the police the power to direct an adult person to give information about the whereabouts of a vehicle so that it can be located for impoundment, immobilisation or forfeiture. It is an offence not to comply or to provide false or misleading information, the scenario being that the police observe what they believe is an offence. Clearly they know something about the person or they see where they go or they perhaps know where they live. Perhaps it is the only yellow Monaro in Walpeup, so they have a fair idea of where to go to find it, but when they get there they find that it is not there and the person says, 'I lent it to my mate', or simply refuses to say where their vehicle is parked.

Coming back to some of those great Wimmera bachelor and spinster balls that Mr Koch is now reflecting on from his heyday — —

Mr Koch — I think you are doing the reflecting.

Mr BARBER — The concern here would be that, yes, we support the right of the police to impound that car, but are they then going to use the physical evidence associated with that car to convict someone?

It was not so long ago — in fact it was in relation to the Plant Biosecurity Bill — that we, the Greens political party, referred to the issue of calling for information from farmers where that information was needed in order to stop a plant biosecurity incident. We raised the concern that that person could later be prosecuted and yet you actually wanted them to give you the information about the nature of the outbreak. This is another example of that. They may in fact be leading the police to the prime source of evidence in a prosecution against them. It is surprising that SARC did not raise this issue, because it did in relation to plant biosecurity. In any case, that is why we have the Greens political party: we take a lot of interest in these sorts of issues.

Mr Viney interjected.

Mr BARBER — What was the giveaway, do you reckon? All those how-to-vote cards at the polling booth? We are a political party. Our presence here in the chamber is the other giveaway. We have developed an enthusiasm for the human rights charter and done our best to promote it and raise its status in this place. The Attorney-General had to virtually apologise for the charter by the time he brought it in, and we have done nothing but seemingly beat it up and bash it around ever since it arrived. Clearly that is going to be on the agenda of the next Parliament, possibly at the time we form the next version of the Scrutiny of Acts and Regulations Committee.

However, there is a derivative use of immunity in this bill. New subsection 84GB(4) provides that:

> Any information, document or other thing obtained as a direct or indirect consequence of a person complying with a direction —

will not be admissible.

The bill also allows steering wheel locks to be used as an alternative to impoundment. Currently only wheel clamps are in use, and that makes it difficult to move the vehicle. According to the minister's second-reading speech in the other house, this kind of immobilisation is already used in Tasmania. The bill also expedites the process for selling a forfeited or uncollected vehicle where it has not been collected for two months. Currently a lengthy process as to the consent of any security holders over the vehicle must first be obtained. Their interests are now extinguished, but they will be paid out to the extent of any of their interest.

To conclude, the minister explained in the second-reading speech that:

> The imposition of vehicle impoundment, immobilisation and forfeiture sanctions for hoon driving offences has proven to be effective in discouraging dangerous driving behaviour.

In fact there was a statistic in the speech, which said:

> … 94 per cent of detections of hoon driving offences were in relation to first-time offenders …

I am not sure that that statistic proves the point, and, as I have said, since forfeiture in the first instance is not punishment but crime prevention, the minister's argument is almost the opposite — that is, the deterrent effect is not enough so we are simply taking people's cars off them in an aim to physically stop them doing what they are doing. In any case we are strengthening the penalties for those who believe the penalties will prove to be effective.

On the issue of the coalition's circulated amendments, which seek to strengthen the preventive or possibly deterrent effect of impoundment, I will wait until the committee stage and allow both sides to make some further arguments on them before declaring our position.

Mrs PETROVICH (Northern Victoria) — I rise to speak on the Road Safety Amendment (Hoon Driving) Bill 2010. The purpose of this bill is to establish sanctions such as vehicle impoundment, immobilisation or forfeiture in relation to road safety offences, including dangerous or careless driving or excessive speed of more than 45 kilometres an hour above the posted speed limit, and to extend the vehicle impoundment scheme to drink and drug-driving offences.

I will not go through the main provisions of the bill in detail, because that has been most ably done by previous speakers, but there are a couple of points I would like to highlight which relate to issues around my electorate. They relate to examples of why this legislation is important but also perhaps where this addresses only part of the problem and is only part of the solution to that problem. I have raised previously in this house the issue of hoon behaviour in Northern Victoria Region. This relates to Bendigo, Sunbury and areas of the Macedon Ranges where what can be seen as quite quiet rural areas become unliveable or dangerous roads.

The real face of this was recently highlighted to me. On a number of occasions I have been out and about in the Sunbury area in particular. A lady had spoken to me and also to the endorsed Liberal candidate for the Assembly seat of Macedon, Tristan Weston, about the issue of hoon behaviour in the Goonawarra Estate. She explained to me that on most evenings she was concerned for the safety of herself and her young family because hoons used the stretch of road where she lives as a drag strip. This was pretty evident from the tyre marks all over the road where people had been doing burn-outs and skidding. This was in a very quiet suburban area.

On that particular occasion a number of people spoke to me about how they felt their lifestyle was being impacted on by this behaviour. The house two doors down, which was under construction, had 24-hour security posted on that property because there had been so much activity around that area. People had been congregating there, but the house had also been burgled and vandalised on a number of occasions. This was all happening in a quiet little suburban area in Sunbury. I have to say that it is not only a dangerous thing to happen to people but there is also a cost impost on the builder, owner-builder or whoever built that home given the effect the 24-hour security would have had on the price per square of the family home that was being constructed.

I am getting a little bit tired of this government and the Minister for Police and Emergency Services, Bob Cameron, relentlessly telling the community that we have had sufficient police numbers over the last 11 years. One of the responses I have to give him is in relation to the amount of activity that is going unchecked in these quiet suburban streets when residents call asking for police assistance — there is a delay or police simply tell them they do not have sufficient numbers to attend these incidents so the behaviour continues. It is evident that we do not have enough police on duty; we do not have enough to fill the rosters. We continue to have increasing crime rates as a result of that. It is pretty evident from the statistics that a higher than average crime rate occurs when there is a low police presence. This is in no way a criticism of our Victorian police force; it is doing its level best to do what it can with a great shortage of resources.

After 11 years of this government I do not think the Labor mantra — that is, that Victoria is a safer place to live, work and raise a family — is true. We have a community which is now afraid. In many cases people are quite afraid in their own homes.

There is a lovely estate in Sunbury. The locals call it the cricketers estate because the streets are named after famous Australian cricketers. I was there at the weekend. One home has been put on the market because a car lost control and ended up on the nature

strip of that home. The residents of that home were concerned that the car may have just as easily come through their front room.

Previously on that same stretch of road there was a car that got out of control. It lost its bumper bar on a power pole — the people in the car were eventually caught because, unfortunately for them, they left behind their bumper bar which had their numberplate on it. While they fled, the police had a little bit of time to catch them. We never said that hoon behaviour was smart behaviour.

Last week on National Police Remembrance Day it was mentioned to me that cars are weapons. Just as people use guns and knives and other things, cars used inappropriately, in an out-of-control manner or involving behaviours that are unsafe, cause deaths. We know there are such things as inadvertent accidents and that unfortunately people die in car accidents, but speeding and hoon behaviour dramatically increase risks, and not only to the drivers. There is a very real risk to other road users and pedestrians. I have mentioned those cases in Sunbury. There are some people who are asleep in their beds when this happens or who are trying to sleep in their beds — it is pretty noisy when these activities are going on.

As Mr Koch mentioned, venues accommodating drags and burnout competitions in a supervised way that are off the road would be of great assistance. We have to remember there is a great difference between hoon behaviour and organised motorsports. Those who participate in organised motorsports are trained in defensive driving and have an understanding of controlling vehicles. They do not just get in the car and go from zero to whatever speed they reach on the first occasion. In an informal situation young people who congregate get into a group mentality where they egg each other on. It is time we put a stop to this.

The coalition is not opposing this piece of legislation. We would like to see this strengthened by introducing, at the earliest possible convenience, additional police officers, which is part of the coalition's policy, to get more police on the beat, in vans and out on the streets. That visibility will have the effect that is required. Driver education is a crucial part of the process of addressing hoon behaviour. On that basis, I will conclude and commend the bill.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 3 agreed to.

Clause 4

Mr KOCH (Western Victoria) — I move:

1. Clause 4, line 5, omit "7" and insert "30".

The figure 30 will precede the word 'days'. We do not see this as a big amendment, but it is sensible and it will align the provision with other penalty periods in the law. We strongly believe this will have a further impact as a deterrent for hoon drivers. It also aligns with our hoon driving policy which we released in January and in which we state that the vehicle of a person found to be hoon driving should be impounded for a longer time than 7 days, specifically 30 days. Our policy states also that any offender of the hoon driving law would not only have their vehicle impounded for 30 days but would also have to undertake a road safety course.

It is pretty evident that the hip pocket nerve controls a lot of this behaviour. This will be expensive. It will have fines associated with it, including for towage and the storage charge for the impoundment, which will have to be borne by the offender. If I were an offender, I would consider this period of impoundment a great deterrent. Increasing the impoundment period from 48 hours or two days to seven days is not a big enough deterrent. If we do not have strong enough penalties, the people who offend will on many occasions read it as a bit of a badge of honour amongst their mates. Hoon driving is considered to be a fair spectator sport, and a badge of honour is pretty important to some of those who choose to go down this track.

It is important that the house give consideration to aligning penalty periods. The suggestion of 28 days appears to have no foundation. It cannot be substantiated. It appears to be a number that has come from someone's head as a multiple of four weeks, but it has no parallel in other penalties. On those grounds we on this side consider a longer period to be warranted. People on our side of politics consider the government to be somewhat soft on offences to deter people from carrying out these activities. It appears it is snubbing its nose at law enforcement officers who obviously do their best to make our roads as safe as possible for all road users.

I encourage other members to make contributions on this matter. As I said, it is important that the period of impoundment be longer so that it is a greater deterrent. It will also align the penalty with other penalty periods. We need to do everything we can to make these people

recognise that having a licence to drive on a road is not a right. It is important that we settle this down and put in place some sensible penalties that will deter these people so that they toe the line. If it comes down to costs and they have to bear the costs, this will make offenders or those who wish to offend reconsider their position before they go down that track.

Mr BARBER (Northern Metropolitan) — I have just a couple of extra questions. Mr Koch talked about the impoundment of cars as having a deterrent effect at this first stage. A deterrent usually applies to criminal penalties. I am interested in the government's view on why this is done. I understand that the aim is to stop behaviour that is occurring and is likely to continue. If that is the case, what is it about 48 hours versus 7 days versus 30 days that the government would argue for one way or another? What is the evidence base for a right period of impoundment?

Hon. M. P. PAKULA (Minister for Public Transport) — I will deal first with the amendment and then I will endeavour to answer Mr Barber's question. The government does not support either of the amendments proposed by Mr Koch. I believe he dealt with both during his contribution.

Mr Koch — One tests the other.

Hon. M. P. PAKULA — Yes. The government has opted for 7 days rather than 30 days. It is important to remember that the imposition of this immobilisation or impounding of a vehicle is occurring prior to any finding of guilt against the relevant driver. As I think was pointed out during the second-reading debate, the imposition of a longer sanction of 30 days raises issues under the Charter of Human Rights and Responsibilities. Beyond that, issues might arise also about applications for compensation if the vehicle is impounded or immobilised for an extended time, such as a month, and later, the person is found by the courts to have been not guilty of the alleged offence.

On the move from 28 days to 30 days for the court-imposed sanction, I make a couple of points. Mr Koch says there seems to be no logic behind making it 28 days. We consider that there seems to be no logic behind moving it from 28 days to 30 days, other than to have the number conform with opposition policy.

Mr Koch — No, with other penalties.

Hon. M. P. PAKULA — Mr Koch says 'with other penalties', but I suggest that the main reason it is proposed is because it conforms with opposition policy. Beyond that, Mr Koch would know that in any case the Chief Commissioner of Police can apply for the period of impoundment or immobilisation to be longer than 28 days and up to three months in total. We do not consider that change necessary.

In the process of summing up and in an attempt to answer Mr Barber's point and question, we do consider this to be not just about preventing behaviour continuing but also as a deterrent. We consider seven days impoundment strikes an appropriate balance between the rights of the alleged offender and the effective discouragement of dangerous driving behaviour. We recognise that this reform will need to be monitored over time to gauge its success. That is something we intend to do. We expect it to deliver improved road safety outcomes, but we consider seven days to strike the appropriate balance between the rights of an alleged offender and road safety.

Mr BARBER (Northern Metropolitan) — I take the minister's point about a later issue in relation to clause 16, but we are not voting on that clause yet. In relation to clause 4, it seems that this bill, as I detailed, does a number of extraordinary things. It does things that do not necessarily apply in other areas of criminal justice. It gives the police the power — at the moment through the principal act — to effectively seize your car for 48 hours. If you get caught by the police for allegedly doing burnouts on a Friday night, you can come in and get your car back on Monday morning.

What we are being told is that the 48-hour penalty does not have enough of an impact on what we know is very problematic behaviour that is deeply rooted in a very small subculture. We know that young males are more dangerous drivers overall, yet we are not willing to take their licences off them. However, we are willing to take some extraordinary measures in relation to hoon drivers. I have accepted that premise. Every time I hear someone screaming down my street in the middle of the night I accept it even more.

However, it seems to me that we are now into a question of graduation. The 48-hour penalty means that you can get caught on Friday night and get your car back on Monday morning. The seven-day penalty means you can get caught on Friday night, ring up all your mates, boast about it and get your car back the following Friday. It is a badge of honour for some of these guys to have been caught by the police, chased by the police or have gotten away from the police. I am not part of the subculture, but I think they live for all of this macho stuff. That is the essence of it.

This is a macho, speed-driven, power-based culture to which we are responding in a similarly macho way —

by taking their cars and in some cases physically crushing them. I do not know what difference it makes whether you sell the car, take the car off them or crush it, but apparently there is some sort of deterrent effect in seeing the source of your power or manhood getting crushed flat. Clearly we are dealing with psychology here.

For that reason I am not necessarily convinced that just one week of impoundment is going to do what we want it to do. There are safeguards in place that mean that if you are found innocent, you will not be out of pocket, although you may have been without your car. The right to have a car is not covered under the Charter of Human Rights and Responsibilities as far as I am aware. I support the coalition's first amendment.

Mr KOCH (Western Victoria) — If I could just comment on a couple of the minister's responses to Mr Barber's question. I am concerned about using the Charter of Human Rights and Responsibilities in a manner that protects idiots. I do not think that is what the Charter of Human Rights and Responsibilities is about. I think we have to use the Charter of Human Rights and Responsibilities more to protect our community than to protect people within the community who are not law abiding and who have no wish to be law abiding.

Further, I would like to suggest to the minister that the opposition has not just pulled up 30 days to suit its policy — 30 days is a recognised penalty period within our legal system, and we have shaped our policy around those situations. I certainly disagree with the proposal that 7 days is an effective period of time to discourage this behaviour; I am sure that the community expects more. I appreciate the penalty period has gone from 48 hours, or 2 days, and is now proposed to be 7 days, but Mr Barber's argument really stands up. If you do your burnouts on Saturday night, you can possibly have your car back the next Friday and away you go again the next weekend. I do not see that this will be a deterrent to those who, for whatever reason, participate in this behaviour.

Committee divided on amendment:

Ayes, 19

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

Noes, 17

Broad, Ms	Pakula, Mr
Eideh, Mr	Pulford, Ms
Elasmar, Mr	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Leane, Mr	Tee, Mr
Madden, Mr (*Teller*)	Tierney, Ms (*Teller*)
Mikakos, Ms	Viney, Mr
Murphy, Mr	

Pairs

Coote, Mrs	Darveniza, Ms
Hall, Mr	Lenders, Mr

Amendment agreed to.

Amended clause agreed to; clauses 5 to 15 agreed to.

Clause 16

Mr KOCH (Western Victoria) — I move:

2. Clause 16, line 28, omit "28" and insert "30".

In clause 16 at line 28 we are omitting '28' and inserting '30' days. My argument in relation to the second amendment I have moved is along the same lines. It is to achieve what we see as a sensible outcome. It will align with penalty periods existing in other bills. The minister has indicated to me that he does not believe clause 4 tests clause 16; that is fine. It is our intention that it would. It is purely the time period of 30 days versus a period of 28 days for which there appears to be no rhyme or reason. It has nothing to do with our policy, as inferred with clause 4. Our policy reflects what is common practice in penalty periods.

Mr BARBER (Northern Metropolitan) — During the second-reading debate I expressed that we have concerns in relation to judicial discretion. That being the case, we have no particular reason to want to start tinkering with this clause the government has put forward. We are not completely comfortable with the concept, but there is no particular reason for us to support changes to it either, so we will not be supporting the amendment.

Committee divided on amendment:

Ayes, 16

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

Noes, 20

Barber, Mr	Murphy, Mr
Broad, Ms (*Teller*)	Pakula, Mr
Eideh, Mr	Pennicuik, Ms
Elasmar, Mr	Pulford, Ms (*Teller*)
Hartland, Ms	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Leane, Mr	Tee, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Pairs

Coote, Mrs	Darveniza, Ms
Hall, Mr	Lenders, Mr

Amendment negatived.

Clause agreed to; clauses 17 to 43 agreed to.

Reported to house with amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

EDUCATION AND CARE SERVICES NATIONAL LAW BILL

Committee

Committee resumed from earlier this day.

The DEPUTY PRESIDENT — Order! The committee will resume its consideration of the Education and Care Services National Law Bill 2010. The committee will recall that when the bill was last before the committee earlier this day progress was reported. Amendments have subsequently been submitted on behalf of the Treasurer and by Ms Lovell and they have been circulated. They propose to insert new clauses dealing with the tabling of the national authority's annual report in Victoria and the disallowance of regulations in Victoria.

New clause AA

Hon. M. P. PAKULA (Minister for Public Transport) — On behalf of the Treasurer, I move:

Insert the following new clause to follow clause 14 —

"**AA Tabling of annual report**

In addition to the requirements of section 280 of the Education and Care Services National Law (Victoria), the Minister must make arrangements for the tabling of the annual report of the National Authority, and the report of the public sector auditor with respect to the financial statement in the report, in each House of the Victorian Parliament.".

It is my understanding that this amendment has been the subject of discussion with the opposition, and I understand there is broad agreement to it.

Ms LOVELL (Northern Victoria) — I thank the government for adopting this amendment from the Liberal-Nationals coalition. It is the same as the amendment to the schedule of the bill that we moved earlier today. The government indicated at that time that it would be prepared to support the amendment if it related only to Victoria and not to the schedule of the bill, which would have impacted upon other states that were part of the national law. We thank the government for recognising the importance of tabling the annual report in the Victorian Parliament, and we will support the government amendment that has now been brought forward, which replicates the amendment moved earlier by the coalition.

New clause agreed to.

New clause A

Ms LOVELL (Northern Victoria) — I move:

1. Insert the following new clause to precede clause 15 —

'**A Disallowance of regulations**

Despite sections 303 and 304 of the Education and Care Services National Law (Victoria), those sections apply in Victoria as if —

(a) for sections 303(4) and (5) there were substituted —

"(4) A regulation disallowed in Victoria under subsection (3) ceases to have effect in Victoria on the day of its disallowance."; and

(b) for section 304(1) there were substituted —

"(1) The disallowance of a regulation in Victoria has the same effect as a repeal of the regulation."; and

(c) in section 304(2) —

(i) after "section 303" there were inserted "in Victoria";

(ii) after "revived" there were inserted "in Victoria".'.

This amendment replicates one that was moved earlier by the Liberal-Nationals coalition to the schedule of the bill which would have affected all jurisdictions under

the national law. We now move the same amendment, but it is to the Victorian section of this legislation so it will relate only to Victoria. This amendment is about the disallowance of regulations by either house of the Victorian Parliament without the support of other jurisdictions.

As I said earlier, the legislation as it is revokes Victoria's ability to have the final say over the law in this state without the approval of other states. Victoria must retain the supremacy of this Parliament over legislation and regulations in Victoria. This Parliament must retain the right to veto anything that it does not consider to be in the best interests of Victorian children. We should be able to do so without the approval of other states.

Victoria's children are the most important sector of our community for which we can create legislation. The highest standards must be set for the regulation of services that provide education and care to our children in their early years. As I said earlier, a precedent has been set with Victoria retaining power over the regulation of livestock management. That precedent was set in March this year with the Livestock Management Bill. The coalition moved an amendment to that bill similar to the one moved today. It allowed the Victorian Parliament to have the final approval or veto over regulations which govern the management of livestock in this state. The Greens and the Democratic Labor Party supported that amendment in this chamber, and it was accepted by the government in the lower house.

The Liberal-Nationals coalition believe it is even more important that Victoria retains its right to have the final approval or veto of regulations that deal with the important issue of regulating children's services in this state. The government and the Greens have already indicated that they will not be supporting this amendment. It is disappointing that the government and the Greens do not see the issue surrounding the regulation of early childhood services as being as important as the Liberal-Nationals coalition sees it.

Ms HARTLAND (Western Metropolitan) — The Greens believe child care is an incredibly important issue. As I stated before, we support the not-for-profit sector of community child care. We understand there are obviously private providers, but when the child-care community comes to us and says it is comfortable with this bill I have to accept that because it is one of the major providers in this field, and it believes there is the capacity to be involved in the regulations. I am confident about the job it will do around that. But I would say again that it is time the government brought in draft regulations to the Parliament so that these kinds of situations could be avoided.

Ms LOVELL (Northern Victoria) — I do not believe this amendment is about support for either the private sector or the community sector for child care in Victoria; this is about the regulation of child-care services in general. The Liberal-Nationals coalition supports both the private providers and the community providers. We also support the government services that are run in this area. We just want to see the highest possible standard set under regulations in this state to provide affordable, safe and appropriate child care for Victorian children.

Ms Hartland said that the community service is the major provider. That is incorrect. The private sector provides more than 53 per cent of services in Victoria, compared to 34.6 per cent by the community sector and 11.8 per cent by the government. This is not about playing off one sector of providers against another. We have a child-care sector that is made up of community, private and government providers, and we need to make sure that the regulation that affects all of them provides Victorian children with a safe and appropriate early childhood education and care experience without supporting one sector over the other.

I understand the Greens philosophical objection to child care for profit, or the private provision of child care, but the importance of the private child-care sector in the provision of child-care services right around Australia needs to be noted. In Victoria that sector provides 53.5 per cent of the services. In New South Wales the figure is close to 70 per cent, and in Queensland it provides 60 per cent of the services. Currently we cannot do without the private providers. If they were driven out of business, the community sector would not be able to provide the number of places that would be needed and families would be even further impacted on; there would be a severe shortage of places. I disagree with Ms Hartland's point that this is about supporting one sector over the other; it is about early childhood services in general.

Ms HARTLAND (Western Metropolitan) — I would like Ms Lovell to explain to me how these regulations would drive the private sector out of business.

The DEPUTY PRESIDENT — Order! Ms Lovell does not need to respond.

Mr JENNINGS (Minister for Environment and Climate Change) — I am happy to stick to what I think the issue should be. The issue that we should be

contemplating at the moment is whether this amendment is required or not. The government is not of the view that this amendment is desirable for the reason I expressed in my previous contribution to the committee — that is, that national template legislation as drafted by the Victorian government on behalf of the Council of Australian Governments should satisfy that test.

The template legislation allows for the establishment of not only a legislative framework but also a regulatory framework that is nationally consistent and is predicated on the jurisdictions opting in one by one to the agreement that has been struck. The Victorian government's view is that the best way to achieve national quality standards and a quality framework is to maintain that undertaking in establishing this template legislation and the regulations that will flow from it. We do not intend to vary from that template and that national framework at the first hurdle.

Ms LOVELL (Northern Victoria) — It is important to note that we are not debating something that we know about because these regulations are still to be developed. It is about protection for the future and what may be changed in regulations in the future. It is also important to note that while Victoria is the host state for the legislation, we were told at the briefing by the minister's office that New South Wales will be the host state for the regulations. The regulations will not be hosted here in Victoria. For that reason it is most important that Victoria retains its right to have the final say over the regulation of Victorian services.

Committee divided on new clause:

Ayes, 15

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

Noes, 20

Barber, Mr	Murphy, Mr (*Teller*)
Broad, Ms	Pakula, Mr
Eideh, Mr	Pennicuik, Ms
Elasmar, Mr	Pulford, Ms
Hartland, Ms	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Leane, Mr (*Teller*)	Tee, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Pairs

Guy, Mr	Lenders, Mr
Hall, Mr	Darveniza, Ms

New clause negatived.

Postponed schedule clause 280 and amendment

Ms Lovell's amendment 1 withdrawn by leave; schedule clause agreed to.

Reported to house with amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

TRANSPORT ACCIDENT AND ACCIDENT COMPENSATION LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 16 September; motion of Hon. M. P. PAKULA (Minister for Public Transport).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to make some comments on the Transport Accident and Accident Compensation Legislation Amendment Bill. The bill makes a range of amendments to the Transport Accident Commission scheme and the WorkCover scheme, adopting a number of significant and in some cases minor amendments to the two schemes.

With respect to the Transport Accident Commission (TAC) scheme, the bill provides that a person who is injured in a transport accident and who is convicted of a drug-driving offence will have their compensation reduced by one-third. It provides that if the TAC fails to determine the degree of impairment suffered by a transport accident victim within six years of the accident, the impairment is deemed to be zero.

The bill provides that claimants entitled to compensation as a result of accidents that occurred before 16 December 2004 have the option to buy out their weekly impairment benefit annuity entitlements as lump sums. It provides that domestic partners of pregnant women who are injured as a result of transport accidents have the same equivalent entitlement to child care assistance as their injured partner would have.

The bill provides that a child who is injured as a result of a transport accident who did not make a claim or have a claim made on their behalf within the required

statutory time frames has three years from attaining the age of 18 in which to make a claim. It provides that only a natural person who has a serious injury or dies as a result of a transport accident can claim damages under the TAC scheme.

The bill further provides that no compensation is payable in respect of an accident other than for medical and like services to the driver of a motor vehicle who is convicted of dangerous driving causing death or serious injury, and finally it provides that any information or document obtained pursuant to a section of the act may be used in respect of any other section of the act.

With respect to the amendments to the WorkCover scheme, the bill updates the definition of 'pre-injury average weekly earnings' to include piece rates, commissions and specific non-pecuniary benefits, including payments for motor vehicles, residential accommodation, health insurance and school fees.

The bill provides for a change of name for the body corporate from Victorian WorkCover Authority to WorkSafe Victoria. It seeks to simplify and streamline the test to determine whether a contractor is deemed an employee for WorkCover purposes. It removes the requirement for a premium to be paid by both the principal and incorporated contractor with respect to contract workers.

The bill makes a number of technical corrections arising from the Accident Compensation Amendment Bill 2009, which the Parliament dealt with earlier this year. It allows for the Governor in Council to make orders for the legal costs in respect of serious injury and common-law matters, and it introduces a new power for the minister to issue directions with respect to fees.

On the whole the coalition parties will not be opposing this legislation, but we have two primary concerns that we will be seeking to have addressed by way of amendments, and we will proceed to a committee stage following the second-reading debate. If those amendments are available, I request they be circulated.

Opposition amendments circulated by Mr RICH-PHILLIPS (South Eastern Metropolitan) pursuant to standing orders.

Mr RICH-PHILLIPS — The first concern the coalition parties have with respect to the bill is it has been brought forward as the government's final tranche of amendments arising from the Hanks review. The Hanks review was the review undertaken by Peter Hanks, QC, with respect to the Accident Compensation Act. It was to be a wide-ranging review of the existing legislation. It reported around two years ago, and the government responded 12 months ago. The principal recommendation made in the Hanks review was for a clean rewrite and simplification of the WorkCover legislation.

This side of the house regards it as regrettable that the government has elected not to adopt that principal recommendation of the Hanks review for a clean, plain-language rewrite of the accident compensation legislation. What we saw with the 2009 bill that was debated by the Parliament earlier this year was in fact an expansion of the existing legislation rather than a fresh rewrite which picked up Hanks's recommendations. The bill that the Parliament is being asked to deal with this afternoon is a similar exercise in amendments upon amendments rather than providing a clean, complete, consolidated rewrite of the legislation.

The coalition parties have said that in government that one of our priorities in the WorkCover area will be to deliver that principal recommendation from Hanks for a clean, consolidated, plain-language rewrite of the accident compensation and associated WorkCover legislation to ensure that all parties which operate under the WorkCover system — the authority, employers and employees — have a clear understanding of their rights and responsibilities under the legislation and a clear understanding of how to achieve outcomes under the legislation, which seems to be an increasingly difficult issue for parties to WorkCover matters.

The coalition has a couple of specific matters about which it is concerned with respect to the legislation and which are the subject of the amendments that I will seek to move later. I would like to address those now. The first matter to which we will be seeking to bring about an amendment to is the proposal in the bill that the name of the body corporate be changed from the Victorian WorkCover Authority to WorkSafe Victoria. This is a matter that was touched on in part in the legislation dealt with by the Parliament in February of this year, which provided for WorkSafe Victoria to be used as a trading name of the Victorian WorkCover Authority. While the coalition did not oppose that particular provision at that stage, we had some reservations about WorkSafe Victoria being used as the name for the collective activities of what is currently the Victorian WorkCover Authority. This bill now seeks to take that practice further by formally changing the name of the body corporate to WorkSafe Victoria.

Our objection to this particular provision relates to the overlap between what is an enforcement arm, being what is currently known as WorkSafe Victoria, and what is an insurance arm, which is currently effectively known as the WorkCover scheme administered by the

Victorian WorkCover Authority. It is our view that there are important separations between the enforcement arm, WorkSafe, and the insurance arm, WorkCover, which will be diminished by a change of name to WorkSafe Victoria.

An analogy that I would draw with the WorkSafe situation is that which exists between the Transport Accident Commission and Victoria Police. We have a very clear distinction between the function the TAC performs, being the provision of accident compensation and rehabilitation for transport accident victims, and the enforcement surrounding transport matters. The latter is not within the purview of the TAC; it is separately carried out by Victoria Police. That is an entirely appropriate division between enforcement of road safety matters and the provision of insurance and compensation activities through the TAC.

It is our view that there should be a similar structural separation between the enforcement activities in the occupational health and safety area and the insurance activities associated with the WorkCover scheme. While they currently operate within the one body corporate, we believe that having the dual designations of WorkSafe for enforcement in the occupational health and safety arm of activities and the WorkCover labelling for the insurance operations is appropriate. As such we do not support the government's proposal that all operations and the body corporate now be labelled as WorkSafe Victoria, because it blurs the boundaries between what in our view are two very distinct elements of operations by the body corporate.

We will be seeking by way of amendment to preserve Victorian WorkCover Authority as the name of the body corporate, which accurately reflects the principal activities of the organisation in providing for rehabilitation and compensation via the insurance business. I note this is a matter on which the coalition has received a range of representations expressing the view that the adoption of the name WorkSafe Victoria for all operations blurs the bounds. We have had representations from employer groups and representations passed on from employee groups expressing concern about the proposal in the bill, which has led to our decision to seek an amendment.

The other key area that we are looking to amend, relates to clause 28 of the bill, which is the proposed update of the sharefarmer provisions in the Accident Compensation Act. The amendment would insert a rewrite of section 11 in the principal legislation. The way in which the proposed clause 28 and the consequential section 11 in the principal act are structured is that they will provide that a sharefarmer will be determined to be a worker for the purpose of this act if they are entitled to receive less than one-third of the income from the land which is the subject of a sharefarming agreement.

We have received representations from the United Dairyfarmers of Victoria and the Victorian Farmers Federation indicating that this particular test of whether a sharefarmer is a worker for the purposes of WorkCover is effectively out of date and redundant by virtue of the fact that the nature of farming in Victoria has changed substantially over the last decade to 15 years. Dairy deregulation has been a large part of that. The representations we have received suggest that the one-third of income from the land test is no longer appropriate due to the consolidation of farms.

We have much larger dairying operations in Victoria than was once the case and, accordingly, to base an assessment of whether a person is a worker simply on whether they receive one-third of the income from land that is being farmed is not an appropriate basis upon which to make such an assessment, because a sharefarmer may be party to an agreement on a small farm, where they will be receiving a large proportion of the income from that farm, or they may have a similar-size farming operation that takes place on a larger property and receive a proportionally smaller share of the income. It does not alter the manner of the operations they are undertaking; it merely relates to the size of the property on which they are ultimately undertaking the sharefarming activities.

It is our view that it is an inappropriate test to apply to determine whether a sharefarmer is a worker for the purposes of this clause. What we will be seeking to do by way of an amendment is to insert a provision that will change the test from being whether the sharefarmer is entitled to receive one-third of the income from the land to a test where a person would be deemed to be a worker for the purposes of the legislation if they are not considered to be a primary producer for the purposes of the Income Tax Assessment Act 1936. The reason this test of primary producer has been adopted is because it is a well-accepted test within the farming community and rather than seek to introduce a new test with new criteria, it was deemed appropriate that a test which draws on an existing definition of 'primary producer' would be appropriate to determine whether a person is a worker for the purposes of the Accident Compensation Act.

As such, if this amendment is accepted by the committee, the test would become simply whether a person is not a primary producer for the purposes of an Australian Taxation Office assessment. Then they

would be deemed to a worker for the purposes of WorkCover, rather than by the one-third test. We believe this is a simple way of putting a contemporary test into determining whether a sharefarmer should be deemed a worker for the purposes of the Accident Compensation Act.

Allied to that amendment is a further amendment in clause 28 with respect to determining the remuneration upon which a premium is payable where a sharefarmer has been deemed to be a worker. We are seeking here to change the existing provision which provides that any cash that is received under a sharefarming agreement from a landowner by a sharefarmer who is not deemed to be a worker would be remuneration for the purposes of calculating a premium. We have received submissions to the effect that a more appropriate basis for assessing remuneration for the purposes of a premium would be to net out the expenses that a sharefarmer will incur while undertaking activities associated with their sharefarmer agreement, notwithstanding the fact that they have already been deemed a worker by virtue of this provision.

What we will be seeking to do by way of amendment is to insert in section 11(2) of the principal act that the test is one of cash paid or payable by the landowner to the sharefarmer, less expenses which are paid or payable by the sharefarmer, with the definition of 'expenses' to be drawn again from the commonwealth taxation legislation definition of general deductions with respect to primary production, excluding deductions associated with remuneration drawn from the definition contained in the Accident Compensation (WorkCover Insurance) Act 1993.

The intent there is to exclude the costs of primary production that are incurred by a sharefarmer so that the remainder that is subject to assessment as remuneration for WorkCover purposes reflects the actual employment and labour costs associated with a sharefarming arrangement, which is consistent with the basis on which that premium is assessed in other workplaces. We believe that provision would put the assessment of a premium for a sharefarmer who is deemed to be a worker on a closer footing to that which applies to other workplaces.

With respect to other matters contained in the bill, concerns have been expressed about other contract provisions which the bill seeks to simplify and clarify. We have received representations that suggest the desired clarity is not being achieved, and in the absence of the underpinning guidelines we have no clear picture as to whether that desired clarity will be achieved. Concerns have also been expressed with respect to the ministerial capacity to set fees, whether there will be a capacity to pass on the cost of administration and enforcement activities which are undertaken by the Victorian WorkCover Authority and whether those costs will now be passed on to self-insurers. Further concerns have been expressed to us with respect to the default zero impairment assessments pursuant to the TAC amendments and whether that provision may disadvantage claimants where the TAC has failed to make a required assessment.

On the whole the coalition parties will not oppose this legislation, but I note that we have concerns with respect to the proposed name change of the Victorian WorkCover Authority and concerns about the proposed sharefarmer provisions, and we will be seeking to bring about amendments to those provisions when the bill reaches the committee stage.

Ms PENNICUIK (Southern Metropolitan) — The Transport Accident and Accident Compensation Legislation Amendment Bill 2010 before the house today is a bill of 165 clauses and 185 pages which amends the Transport Accident Act and the Accident Compensation Act. Many of the amendments are quite technical in nature — there are consequential amendments to amendments.

I have to concur with the remarks of Mr Rich-Phillips that we spent quite a lot of time on the Accident Compensation Amendment Bill earlier this year, which members would remember we had some issues with and on which I moved something like 13 amendments. That bill was a result of a review by Peter Hanks, QC, and he did a very thorough job of reviewing the act and making recommendations. Members will be aware that I did not agree with every recommendation that Peter Hanks made, but generally I agreed with them. I particularly agreed with his recommendation that the act be simplified and rewritten, so it is concerning to see the accident compensation part of this bill appearing to add more complexity and more volume to the Accident Compensation Act. Although some of the amendments in this bill are supportable and good amendments, they add to the volume and complexity of the Accident Compensation Act. We have not got anywhere down the track of simplifying it and putting it into plain language.

I had a briefing with the department. We went through the bill in quite a lot of detail, and some of the stuff was not necessarily as clear as it could be. I subsequently consulted with stakeholders, particularly the unions, regarding the provisions in the bill, and even those union people who work in the compensation area for a

living and live and breathe the Accident Compensation Act were not quite sure about the meaning of some of the amendments, and they have gone to and fro with the WorkCover Authority on these amendments. In some ways it is impossible to go through a bill of 165 clauses and 185 pages in the chamber and in the committee stage and assure oneself when through one's briefings and consultations one cannot totally assure oneself that the bill does not do any harm. I am very concerned that the bill does not do any harm because it is about compensation for injured workers, an issue dear to my heart.

There are some provisions that are clearly to the benefit of workers, but there are others that are not so clear. In particular there is an amendment by way of clause 21, which inserts a new section 5A into the Accident Compensation Act, which goes to the calculation of pre-injury average weekly earnings, averaging them over a period of 52 weeks. Based on what might happen if a worker is only being employed for 4 weeks, what might happen in the subsequent 48 weeks? What might happen might be of benefit to the worker, but what might happen might not be of benefit to the worker. The employer could say, 'Actually this person was working five days a week for 4 weeks, but I was really only intending to have them for two days a week for the next 48 weeks'. That is not going to be of benefit to the worker, and it is very difficult for me to see how this is a benefit over and above the existing provision in the act as it stands. That is one of the queries I have about the accident compensation part of the bill.

The bill changes various definitions to eliminate anomalies or inconsistencies with other acts such as the Relationships Act. The bill clarifies the status of specific classes of workers, including students, contractors and outworkers, to deter bogus arrangements to avoid premium obligations. It makes various amendments about pre-injury average weekly earnings, one of which I have mentioned; and it amends various sections to deal with exclusion from the jurisdiction of courts, which appear okay. The bill makes amendments to permit the late making of legal orders to introduce the fixed cost model for certain plaintiff litigated costs and regarding hold harmless clauses.

The amendments all appear okay and no alarm bells have been rung about them. I have a concern about clause 21 which I have raised. I have a concern also about clause 127, which appears to reverse an amendment to section 93CD of the act made by the bill debated in April. Before April the payment of the difference between 75 per cent of pre-injury average weekly earnings and 75 per cent of current weekly earnings to workers on weekly payments before the second entitlement period was increased to 80 per cent. Clause 127 seems to revert to 75 per cent, which is not to the benefit of workers. I do not understand the rationale for that when we are being assured that the calculations and amendments made by this bill are designed to be of benefit to workers. That amendment does not appear to be so.

I have prepared amendments to clause 21. In committee I will query the minister about clause 127. I am happy to have those amendments circulated.

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

Ms PENNICUIK — Similarly to Mr Rich-Phillips, I have a concern about the change of the name of the Victoria WorkCover Authority to WorkSafe. Back in April I moved an amendment to the original bill. From my experience in the area of occupational health and safety, WorkSafe is and is known in the community as the regulator of occupational health and safety. It concerns itself with preventing injury and disease in the workplace and regulating occupational health and safety in workplaces. The Victorian WorkCover Authority collects premiums and compensates injured workers. They are two very different functions, and they should be completely separate functions. There seems to be a view that those two functions should be merged, which is not desirable, and I do not support it. It is not desirable to have the aims of an insurance body, which may be to reduce its costs or the premiums paid by employers, influencing the activities of the regulator, which are to regulate occupational health and safety to prevent injury and disease, quite apart from the activities of the insurance arm.

Consequently, like Mr Rich-Phillips, I have prepared extensive amendments to the bill, mainly to clauses 36 to 43 and consequential clauses later in the bill, so that that name change will not be made. That will be to the benefit of the scheme and the community, so that the community understands what WorkSafe is, what the Victorian WorkCover Authority is and that they are two different things.

The amendments relating to the Transport Accident Commission (TAC) which are made by this omnibus bill do not take up as much space as the amendments to the Accident Compensation Act part of the bill. They include introducing in clause 5 time limits for making impairment determinations, child-care assistance for partners of injured pregnant women, requiring injured

children to make a final claim within three years of attaining 18 years of age and some other provisions which I want to query in committee. One is to clause 12, a new provision which provides that documents obtained may be used in other proceedings or for other claims. TAC annuity recipients prior to 16 December 2004 will be able to cash out their entitlements. That is something I referred to at the departmental briefing, but I was not entirely satisfied about the rationale for this and whether this will be to the benefit of TAC annuity recipients or to the benefit of the TAC.

Clauses 3 and 4 of the bill reduce compensation payments for people convicted of certain transport offences. Clause 3 provides that someone who is convicted of dangerous driving occasioning death or serious injury will be compensated for only their medical costs and will be precluded from other compensation. Clause 4 reduces by one-third compensation for those convicted of drug driving. I notice that if that is able to be disproved that would be reversed. I am concerned about this.

Sitting suspended 6.30 p.m. until 8.03 p.m.

Mr ELASMAR (Northern Metropolitan) — I rise to support the Transport Accident and Accident Compensation Legislation Amendment Bill 2010. The proposed amendments seek to modernise and simplify methods currently in use that determine the amount of compensation payable to a person who is presently receiving benefits.

The Transport Accident Commission (TAC) conducted an internal review of its procedures and processes. The purpose of the review was to improve the effectiveness and efficiency of the scheme and the delivery of benefits to those injured in transport accidents. The review revealed a number of inconsistencies. It proposed improvements in the application of benefits to recipients who are currently receiving weekly annuity payments for injuries suffered as a consequence of transport accidents which occurred before 16 December 2004, giving them the option to instead receive a lump sum payment.

The bill also prescribes a six-year time limit for a claimant to apply to the TAC for an impairment determination. This is equivalent to the statute of limitation period for common-law actions. The changes incorporate a schedule to provide a quick and easy, user-friendly method of calculating how much is accorded to various workers' pre-injury average weekly earnings.

This will assist both workers and employers in determining how an injured worker's pre-injury average weekly earnings should be calculated. For the first time workers who are in receipt of a salary package are to have its value included in the calculation of pre-injury average weekly earnings. Such benefits will include non-compulsory superannuation payments, residential accommodation, the use of a motor vehicle, health insurance and education fees.

The bill also clarifies that a worker's current weekly earnings, which are to be deducted from any weekly compensation payments received by the worker, are to include, for parity with the calculation of pre-injury average weekly earnings, overtime and shift allowances, piece rates and commissions paid or payable to the worker during the relevant week in addition to the worker's base rate of pay. This will involve using a formula based on the fringe benefits tax, with which the majority of employers and many workers are already familiar.

Fundamental to the application of these new methods of calculation is the determination of who is a worker and who is an employer. This is because a person who is a worker has a right to coverage for work-related injuries under the scheme. Correspondingly, a person who is an employer has premium and other obligations.

The Brumby Labor government is committed to the principle of a fair go for injured workers in Victoria. It has sought expert advice and has an established framework for improvements to the Accident Compensation Act 1985. This bill also amends the Accident Compensation Act to effect a legal name change for the organisation from the Victorian WorkCover Authority to WorkSafe Victoria.

These amendments will ensure that the Victorian workers compensation scheme is modern, effective and able to be implemented using a comprehensive schedule for determining a fair and just application of a $90 million-per-year reform package to improve the benefits of injured workers and their families. The amendments will improve the overall efficiency of the WorkSafe scheme while ensuring its long-term viability. I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 agreed to.

Clause 2

The DEPUTY PRESIDENT — Order! Clause 2 is the commencement clause. Both Mr Rich-Phillips and Ms Pennicuik have proposed amendments to this clause encompassing the renumbering of provisions which is dependent on certain clauses being omitted by the committee. Mr Rich-Phillips is seeking to omit clauses 37, 39 and 42. Ms Pennicuik wishes to omit these three clauses and also clause 127.

As it will not be clear from my point of view whether the renumbering is required until the omission of these clauses has been tested I suggest the committee postpones consideration of clause 2 at this stage.

Clause postponed.

Clause 3

Ms PENNICUIK (Southern Metropolitan) — I have a question for the minister on clauses 3 and 4. I say that because they are pretty well the same thing. The changes to the Transport Accident Act are such that under clause 3 if a person is convicted of dangerous driving occasioning death or serious injury, they would be compensated only for medical costs and, in clause 4, if they were convicted of drug-driving offences, they would have a one-third reduction in their compensation. I ask the question as to the origin and rationale of these clauses, because I looked at the objects of the Transport Accident Act and did not notice in the objects the objective of punishing people for criminal offences.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the import of these clauses, and I will deal with 3 and 4 together, is that the effect is to line up driving under the influence of drugs with driving under the influence of alcohol and to line up dangerous driving causing death with the offence of culpable driving. It is about equating those provisions with one another.

Ms PENNICUIK (Southern Metropolitan) — I suppose my question is: should it be the object of the Transport Accident Act to punish people for these convictions or should it be the criminal justice system that does that?

Hon. M. P. PAKULA (Minister for Public Transport) — I have a twofold response. In effect the act already does that, as I have indicated, in regard to drunk driving and culpable driving. But one of the objects of the act is to reduce the incidence of the kind of driving that causes accidents of that nature. I suppose my basic answer to Ms Pennicuik's question is: yes, we believe that is one of the objects.

Clause agreed to; clauses 4 and 5 agreed to.

Clause 6

Ms PENNICUIK (Southern Metropolitan) — I have a question for the minister on clause 6, which is about the redemption of the impairment benefit annuity in respect of pre-16 December 2004 transport accidents. I asked some questions about this in the briefing. What concerns me is whether this is going to be to the benefit of recipients rather than the benefit of the TAC (Transport Accident Commission). I ask the minister to perhaps outline to me the rationale for this and how the government feels it will be of benefit to recipients of impairment benefits.

Hon. M. P. PAKULA (Minister for Public Transport) — I have before me what looks to be a rather interesting formula, so if Ms Pennicuik will bear with me, I will seek some advice.

I am advised that the answer to Ms Pennicuik's question is: yes, it is to the benefit of the recipient because it provides the recipient with the option to redeem rather than receive an annuity. If the beneficiary wishes to receive an annuity, the beneficiary can receive an annuity. This provides them with the choice to redeem, if that is what they want.

Ms PENNICUIK (Southern Metropolitan) — Could the minister outline the benefit of redeeming? If they choose to redeem it, how would that be of benefit?

Hon. M. P. PAKULA (Minister for Public Transport) — As in many similar circumstances I believe it is the choice of and in the interests of some persons to receive a lump sum payment rather than an annuity, if that is what they would prefer.

Ms PENNICUIK (Southern Metropolitan) — Finally, is the reason perhaps to clear the decks of some that are pre-2004?

Hon. M. P. PAKULA (Minister for Public Transport) — That might be one of the consequences of this provision. The aim is to provide people with choice, but one of the side effects of that would be that it clears the decks somewhat.

Clause agreed to; clauses 7 to 11 agreed to.

Clause 12

Ms PENNICUIK (Southern Metropolitan) — Clause 12 seems to insert a new section into the Transport Accident Act to provide that documents relating to claims can be used for any other purposes,

for any other proceedings or claims for compensation, damages, indemnity or other payments. My question to the minister is: what is the rationale for that, and will it impact on a person's right to not have a charge brought up against them because of something to do with a document?

Hon. M. P. PAKULA (Minister for Public Transport) — For Ms Pennicuik's benefit, I am advised that the section provides that, for instance, a document that is used in a no-fault claim can also be used in a court matter, a common-law matter. It effectively confirms what happens in practice and mirrors what exists in the Accident Compensation Act.

Ms PENNICUIK (Southern Metropolitan) — I suppose what I am getting to is whether a document could be used against a person if it was not acquired for that purpose.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the provision is for the sake of nothing more than practicality. Without this kind of provision, if you obtain documents for one kind of claim in regard to an incident, you might have to go through the process of doing it all again. It just means that a document that can be used for one kind of claim in regard to a transport accident can also be used for other kinds of actions.

Ms PENNICUIK (Southern Metropolitan) — Thank you, Minister.

Clause agreed to; clauses 13 to 20 agreed to.

Clause 21

The DEPUTY PRESIDENT — Order! Ms Pennicuik has an amendment 9, which is a test for her amendments 10 to 14 to the same clause.

Ms PENNICUIK (Southern Metropolitan) — Will the Chair indulge me and allow me to ask the minister a question before I move the amendment, as has been the practice in the past?

The DEPUTY PRESIDENT — Order! Yes.

Ms PENNICUIK (Southern Metropolitan) — Clause 21 inserts new section 5A, which reads in part:

> (2) If a worker has been continuously employed by the same employer for less than 4 weeks before the injury, pre-injury average weekly earnings, in relation to that worker, may be calculated having regard to —
>
> (a) the average of the worker's ordinary earnings that the worker could reasonably have been expected to have earnt in that employment, but for the injury, during the period of 52 weeks after the injury expressed as a weekly sum; and —

also paragraph (b).

It has been raised in consultations with me that while this could be a benefit to the worker, it could work the other way and not be a benefit to the worker if the employer suggests that the worker was going to work fewer hours in the future than they had in the past four weeks. Stakeholders have told me they prefer the current provision in the act, which provides that pre-injury average weekly earnings are calculated for the period they worked. In my briefings I was advised by the department that these provisions are all meant to work for the benefit of the worker; I ask the minister to seek some advice on whether this could be used for the disbenefit of a worker.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that it is for the benefit of the worker. I also understand, or understood, that Ms Pennicuik has been advised of that as well. It is designed to benefit a worker who was injured only a short period into a new employment relationship by basing pre-injury average weekly earnings on projected earnings. The removal of this provision would disadvantage certain injured workers. This is a clause that is designed to benefit workers, and it will be operationalised in the same way as the current section 5A(3). I am not sure whether that satisfies Ms Pennicuik's concerns.

Ms PENNICUIK (Southern Metropolitan) — The minister is correct in that that is what I was told at the briefing, but it has been raised with me by workers' representatives that they are not totally assured of that, so I said I would raise it with the minister to make sure that his comments regarding this clause make it clear that it is meant to benefit workers and not otherwise.

Hon. M. P. PAKULA (Minister for Public Transport) — I took the opportunity to listen to some of Ms Pennicuik's comments during the second-reading debate. I do not want to misquote Ms Pennicuik, but to paraphrase the particular concern she raised as I recall it. It was that a worker might have worked a lot of hours in the four weeks and then the employer will say, 'Yes, but in the future they were only going to work a smaller number of hours'. What Ms Pennicuik needs to remember is that it is based on whatever is the more beneficial calculation. If the more beneficial calculation is based on the four weeks work they have done, then that is what will be calculated. It is designed to benefit the worker, and that is the way it will work in practice.

The DEPUTY PRESIDENT — Order! Is Ms Pennicuik persisting with her amendment?

Ms PENNICUIK (Southern Metropolitan) — No, Deputy President, given what the minister has said, I will not persist with the amendment.

The DEPUTY PRESIDENT — Order! Does that include amendments 10 to 14?

Ms PENNICUIK (Southern Metropolitan) — It does, Deputy President.

Clause agreed to; clauses 22 to 27 agreed to.

Clause 28

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips will move his amendment 9, which I regard as a test for his further amendments 10 and 11 on the same clause.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — With respect to your guidance, Deputy President, amendments 10 and 11 relate to the scenario where a sharefarmer is assessed as being a worker for the purpose of WorkCover and the basis on which remuneration would be calculated if they are assessed to be a worker, whereas amendment 9 relates to the test that would be applied to determine in the first instance if they are a worker or not. As such I believe they are separate matters for the purposes of amendment.

The DEPUTY PRESIDENT — Order! I am prepared to take them as separate matters.

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

9. Clause 28, lines 16 to 22, omit subparagraph (i) and insert —

 "(i) is entitled to receive as consideration a share of the income derived from the land whether in cash or in kind or partly in cash and partly in kind and is not a primary producer within the meaning of Schedule 2G to the Income Tax Assessment Act 1936 of the Commonwealth; or".

The purpose of amendment 9 is to change the test that is applied to determine whether a sharefarmer is deemed to be a worker for the purposes of the WorkCover scheme. I do not wish to rehash the second-reading debate. The amendment seeks to replace new section 11(1)(a)(i) with the above new provision.

The purpose of this amendment is to replace the existing test as to whether a sharefarmer is deemed to be a worker, which is that less than one-third of the income derived from the land is payable to the sharefarmer, and inserts a new test, which is that the sharefarmer is not deemed to be a primary producer as defined under commonwealth taxation law. The reason we are seeking to do this is that the representations we received indicated that the one-third of income test is redundant given the structural changes in the farming sector, particularly in the dairying sector, over the last decade since deregulation. Working from the definition of 'primary producer' under the commonwealth taxation legislation is a better test for determining whether someone should legitimately be classified as a worker or not.

Hon. M. P. PAKULA (Minister for Public Transport) — The government will not be supporting the amendment. I am grateful to Mr Rich-Phillips for not rehashing all of the arguments in the committee. In return I will keep my comments brief.

There has been a great deal of debate about the appropriate test of whether a sharefarmer is deemed to be a worker. The government believes the test proposed by Mr Rich-Phillips is an inappropriate one. It would reduce the number of sharefarmers covered as workers under the scheme, forcing them to pay their own premiums. We believe that would create disadvantage and unfairness, particularly for sharefarmers on lower incomes, who are protected under the current test and covered as deemed workers under the scheme. In difficult times like that of drought or locust plagues, where production is reduced, sharefarmers who are primary producers would be liable to pay a premium. It would create uncertainty and increase red tape for landowners, who would have difficulty obtaining the necessary information to apply the primary producer test because it requires an examination of the sharefarmer's operations and activities. For all those reasons we will be opposing the amendment.

Ms PENNICUIK (Southern Metropolitan) — I am not entirely decided on this amendment. I note the minister said he feels this amendment would disadvantage sharefarmers and I think he said result in fewer of them being deemed to be employees. Is that what the minister said?

Hon. M. P. PAKULA (Minister for Public Transport) — Yes.

Ms PENNICUIK (Southern Metropolitan) — Can he quantify that?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that these amendments were received today, so the minister's office does not have the figure as to how many fewer sharefarmers would be deemed to be workers as a consequence of the change. But it stands to reason that a large number of individuals take primary production status for the tax advantage that that provides, and as a consequence of this change there would be a significant reduction in the number that would be covered for the purposes of this bill. Frankly I have to say that would be the purpose of the change.

Amendment negatived.

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

10. Clause 28, page 47, line 11, after "farmer" insert "less expenses paid or payable by the share farmer".

I will proceed with amendment 10, which I see as a test of amendment 11 as well. The substance of this amendment is to change the basis on which a premium is struck where a sharefarmer has been deemed to be a worker. What it seeks to do relates to new section 11(2), which currently states:

(2) For the purposes of this act and the Accident Compensation (WorkCover Insurance) Act 1993, where, under this section, a share farmer is deemed to be a worker and an owner of land is deemed to be that share farmer's employer in respect of a particular contract, then only the cash paid or payable under the contract by the owner to the share farmer is deemed to be remuneration.

What the amendment seeks to do is change the definition of remuneration in that clause by providing that the remuneration is the cash paid or payable less expenses paid or payable. The purpose of this amendment is to net out those primary production costs that are incurred by a sharefarmer that are not, of their nature, remuneration. If a sharefarmer incurs costs in buying stock or grain or other inputs to the sharefarming enterprise that they are conducting, those costs should be deducted from the total income that the sharefarmer receives through the sharefarming activities before remuneration is assessed for the purposes of striking a premium.

Amendment 11 inserts a definition of expenses which would be operable if amendment 10 were adopted by the committee. This definition of expenses is also drawn from commonwealth taxation law with a view to excluding remuneration. If there is a third party employed by a sharefarmer, that remuneration cost would not be included as a deducted expense to ensure that that is captured within the remuneration calculations of this clause for the purposes of striking a premium, but other costs which are regarded by the Australia Taxation Office as deductions against the sharefarming enterprise — to the extent that they relate to the land and primary production — would be deductible as costs, so you are left with a net amount that more accurately reflects the remuneration associated with the share farm enterprise and can therefore use that as a basis for striking a WorkCover premium.

Hon. M. P. PAKULA (Minister for Public Transport) — The government will not support this amendment. To put it in context, the current test in section 11 of the principal act provides that if a sharefarmer is deemed to be the worker of a landowner, the deemed remuneration is the amount in cash and/or kind that is paid or payable by the landowner to the sharefarmer. Under this bill we are in effect removing the in-kind element so that only cash payments will comprise the deemed remuneration. To paraphrase, what the opposition is saying is that that improvement does not go far enough and it wants to propose the further change that is outlined by and contained in the amendment to effectively also exclude the sharefarmer's expenses, meaning that expenses should be defined to mean general deductions.

What we would say to that is that exclusion of both in-kind payments and general deductions or expenses from deemed remuneration would mean, effectively, a double deduction and would result in a substantial decrease in the landowner's rateable remuneration. The proposed Income Tax Act general deductions test is a broad test. It goes further than excluding the non-labour component of a contract amount. For instance, it would exclude a sharefarmer's capital write-offs and expenses that might relate to the carrying on of the business generally, and we say that would unfairly result in a landowner paying too much of a reduced premium — if that is not a double negative.

Mr Drum — Too little.

Hon. M. P. PAKULA — Too little. We say that what this bill does is clarify and improve the situation for the landowner but that the amendment proposed by the opposition goes too far.

Ms PENNICUIK (Southern Metropolitan) — I have listened to Mr Rich-Phillips and the minister, and I think I am swaying to the side of the minister with regard to this amendment.

Amendment negatived; clause agreed to; clauses 29 to 35 agreed to.

Clause 36

The DEPUTY PRESIDENT — Order! I invite Mr Rich-Phillips to move his amendment 12, which I regard as a test of his amendments 13 and 14 on the same clause. They relate to the issue of the authority's name change to WorkSafe Victoria. It should also be noted by the committee that there are proposed omissions of clauses 37, 39 and 42, and amendments to clause 43 that are linked to the same issue. Ms Pennicuik has identical amendments to this clause and the subsequent clauses, but the opposition is given priority over a minor party in this situation.

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

12. Clause 36, line 3, omit "**Change of name of Authority**" and insert "**Repeal of section 18A**".

The substance of this amendment is to preserve the Victorian WorkCover Authority as the name of the body corporate responsible for the WorkCover scheme in Victoria. As I indicated during the second-reading debate, it is our view that it is appropriate that the name of the body corporate reflect its role as a provider of rehabilitation and compensation activities separate to the WorkSafe Victoria label, which is applied to the enforcement and occupational health and safety activities of the entity. Without rehashing the second-reading debate, that is the reason we are proposing that the Victorian WorkCover Authority remain the name of the body corporate; hence this amendment and the other consequential amendments.

Ms PENNICUIK (Southern Metropolitan) — As outlined by the Deputy President, I have circulated a similar, if not identical, amendment to the one before the chamber. We will be supporting the amendment moved by Mr Rich-Phillips because we also believe that the Victorian WorkCover Authority should continue to be known as the Victorian WorkCover Authority, which reflects its main business as an insurer and rehabilitation agency, quite distinct from WorkSafe, which regulates occupational health and safety and works in the prevention of injury and illness in the workplace. They are two distinct activities and should remain so. That has long been our policy.

Hon. M. P. PAKULA (Minister for Public Transport) — I think I can see the way this is going. Notwithstanding that, for the record let me indicate that the government does not support either the amendment circulated by Ms Pennicuik or the one moved by Mr Rich-Phillips in this regard. The bill was designed to give effect to the legal name change of the Victorian WorkCover Authority to WorkSafe Victoria.

The major reform to change the brand was enacted in the Accident Compensation Amendment Act 2010. It took effect from 5 April 2010. The use of the single WorkSafe brand has a high level of awareness and acceptance in the Victorian community. We think that going back to having two separate brands undoes some of the gains made in recent years and has the potential to undermine worker and employer trust in what is a well accepted WorkSafe brand. We think it makes sense to have a single brand. There has been extensive consultation. The Victorian Employers Chamber of Commerce and Industry, for instance, has indicated that it has no difficulty with this change.

Mr Barber interjected.

Hon. M. P. PAKULA — You are not the only people in the chamber, Mr Barber.

We believe the change being proposed by this bill is an important one. The move to a single brand over the last five years has been very effective. It underpins WorkSafe's occupational health and safety (OHS), workers compensation and return-to-work activities. WorkSafe has run awareness campaigns over the last five years. The community says continually that WorkSafe is a brand that it knows and trusts for both OHS and for workers compensation and return-to-work activities. For these reasons, not least of which is that the substantive change was made in the Accident Compensation Amendment Act, the government will not be supporting this amendment.

Committee divided on amendment:

Ayes, 19

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

Noes, 17

Broad, Ms	Pakula, Mr
Eideh, Mr	Pulford, Ms
Elasmar, Mr	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Leane, Mr	Tee, Mr (*Teller*)
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr (*Teller*)
Murphy, Mr	

Pairs

Drum, Mr	Lenders, Mr
Vogels, Mr	Darveniza, Ms

Amendment agreed to.

The DEPUTY PRESIDENT — Order! I ask Mr Rich-Phillips to move his amendments 13 and 14 together, because from my viewpoint they have already been tested by amendment 12.

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

13. Clause 36, lines 4 to 35 and page 54, lines 1 to 3, omit all words and expressions on these lines.

14. Clause 36, page 54, line 4, omit "(5)".

Amendments agreed to; amended clause agreed to.

Clause 37

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips's amendment 15 and Ms Pennicuik's amendment 18 propose the omission of this clause, which relates to the same issue tested in amendments to clause 36. In that respect they are inviting the committee to vote against the clause standing as part of the bill.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I invite the committee to vote against this clause.

Clause negatived.

Clause 38 agreed to.

Clause 39

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips's amendment 16 and Ms Pennicuik's corresponding amendment 19 again propose the omission of the clause. In my view, that relates to the same issue already tested in clauses 36 and 37. I seek to put the clause to the test. Both Mr Rich-Phillips and Ms Pennicuik are inviting the committee to vote against the clause.

Clause negatived.

Clause 40 agreed to.

Clause 41

Ms PENNICUIK (Southern Metropolitan) — I have a question for the minister on clause 41. Clause 41 provides that instead of the board meeting frequently, it do so only at the request of the director. Why is that amendment being put forward?

Hon. M. P. PAKULA (Minister for Public Transport) — The provision is basically to provide the board with greater flexibility — for instance, at the moment there is provision for 10 meetings a year, which means in effect they occur monthly. Sometimes there are matters that cannot wait for a month, so the provision is now the most flexible it can be. When a matter requires a meeting — in other words, when a director asks for there to be a meeting and the director would agree if there were a matter that requires a meeting — the board can meet.

Ms PENNICUIK (Southern Metropolitan) — Why is there not a minimum number of meetings per year — as in two a year, four a year or something like that?

Hon. M. P. PAKULA (Minister for Public Transport) — It is because it is the view of the government and, I dare say, of the board itself that it is most appropriate for board meetings to be able to be scheduled with the flexibility needed and at the discretion of any director of the board calling one or requesting one.

Clause agreed to.

Clause 42

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips, by way of his amendment 17, and Ms Pennicuik, by way of her amendment 20, propose the omission of this clause. In my view it relates again to the issue already tested in clauses 36, 37 and 39. Mr Rich-Phillips and Ms Pennicuik are inviting the committee to vote against the clause standing part of the bill.

Clause negatived.

Clause 43

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips, by way of his amendments 18 to 20, and Ms Pennicuik, by way of her amendments 21 to 23, again propose identical amendments to this clause which relate to the same issue already tested by way of the amendment to clause 36 and the omission of clauses 37, 39 and 42. As the opposition is given the first priority in this situation, I call on Mr Rich-Phillips to move his amendments 18 to 20 to clause 43.

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

18. Clause 43, lines 3 to 9, omit all words and expressions on these lines.

19. Clause 43, line 10, omit "(3)".

20. Clause 43, lines 19 to 32 and page 57, lines 1 to 18, omit all words and expressions on these lines.

The DEPUTY PRESIDENT — Order! Is there any discussion in respect of the amendments proposed? If not, I will put them to the test.

Hon. M. P. PAKULA (Minister for Public Transport) — Are they consequential?

The DEPUTY PRESIDENT — Order! Yes, in my view they are consequential.

Amendments agreed to; amended clause agreed to; clauses 44 to 79 agreed to.

Clause 80

Ms PENNICUIK (Southern Metropolitan) — In my consultations with the unions on this bill an issue was raised about clause 80. I refer the minister to page 91 of the bill and proposed new section 99(7). It has been raised with me that where in proposed subsection (7) it says:

> If the liability to the person lawfully entitled to payment of the costs specified in this Division has already been discharged —

it should say 'section'. It is a bit technical, but referring to the current section 99 it has been queried whether by saying 'division' rather than 'section' is a disbenefit to the worker. It is not entirely clear to me, but I did commit to raising it. I presume the minister would be able to take some advice on the issue, and to help him it is in regard to payments for medical and like services under division 2B of the Accident Compensation Act.

Hon. M. P. PAKULA (Minister for Public Transport) — I note for Ms Pennicuik's benefit that the provision refers, as she rightly points out, to 'costs specified in this division'. The start of clause 80 is about the insertion of a new division 2B in part IV of the act. Given that clause 80 inserts a new division, I would have thought proposed section 99(7), which refers to this division, would not be of concern.

Ms PENNICUIK (Southern Metropolitan) — As I said, it is of concern to some people who raised it with me. If, for the benefit of the committee, the minister could outline the purpose of that new division, that would be helpful.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the new division is a restructure of what was a very long section 99. It is referred to as a 'division' for drafting clarity and for no other purpose.

Ms PENNICUIK (Southern Metropolitan) — The threshold question is that it does not reduce any benefit to workers; it replaces what is already there. That is the threshold question.

Hon. M. P. PAKULA (Minister for Public Transport) — It does not reduce any benefit to workers.

Clause agreed to; clauses 81 to 82 agreed to.

Clause 83

The DEPUTY PRESIDENT — Order! Both Mr Rich-Phillips, by way of his amendments 21 to 24, and Ms Pennicuik, with her amendments 24 to 27, again propose identical amendments involving renumbering within this clause. This relates to the omission of clauses 37, 39 and 42. I ask Mr Rich-Phillips to formally move his amendments 21 to 24 to clause 83, and I indicate again that these are consequential.

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

21. Clause 83, page 106, line 26, omit "83" and insert "80".
22. Clause 83, page 107, line 3, omit "83" and insert "80".
23. Clause 83, page 108, line 7, omit "83" and insert "80".
24. Clause 83, page 109, line 9, omit "83" and insert "80".

The DEPUTY PRESIDENT — Order! There has been some discussion with respect to the amendments.

Amendments agreed to; amended clause agreed to; clauses 84 to 107 agreed to.

Clause 108

The DEPUTY PRESIDENT — Order! Both Mr Rich-Phillips, by way of his amendments 25 to 29, and Ms Pennicuik, by way of her amendments 28 to 32, propose identical amendments which relate to earlier amendments first tested in clause 36 and then in the subsequent proposed omission and amendment of clauses. Given that the opposition has first priority in this matter, I ask Mr Rich-Phillips to move his amendments 25 to 39 to clause 108.

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

25. Clause 108, lines 28 and 29, omit "**References to non-WorkCover employers in Part VIA**" and insert "**Amendment of definition of tail claims**"
26. Clause 108, lines 30 to 36 and page 140, lines 1 to 26, omit all words and expressions on these lines.
27. Clause 108, page 140, line 27, omit "(4)".

28. Clause 108, page 140, line 28, omit "— and insert ', in paragraph (b), for "whether under this Act, at common law or otherwise" **substitute** "under this Act (other than section 242AB or 242AD) or damages at common law as permitted by and in accordance with section 134AB or 135C".'.

29. Clause 108, page 140, lines 29 to 34 and page 141, lines 1 to 35, omit all words and expressions on these lines.

Amendments agreed to; amended clause agreed to; clauses 109 to 122 agreed to.

Clause 123

The DEPUTY PRESIDENT — Order! In respect of clause 123 both Mr Rich-Phillips, by way of his amendments 30 to 33, and Ms Pennicuik, by way of her amendments 33 to 36, propose identical amendments involving renumbering within this clause. This relates to the omission of clauses 37, 39 and 42. Again, the coalition has priority in pursuing amendments. I call on Mr Rich-Phillips to move his amendments 30 to 33, which again I regard as consequential amendments.

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

30. Clause 123, line 6, omit "44" and insert "41".

31. Clause 123, line 12, omit "80" and insert "77".

32. Clause 123, line 20, omit "98" and insert "95".

33. Clause 123, line 27, omit "99" and insert "96".

Amendments agreed to; amended clause agreed to; clauses 124 to 126 agreed to.

Clause 127

Ms PENNICUIK (Southern Metropolitan) — My concern about clause 127 is that it appears to reduce payments to injured workers on payments after the second entitlement of 104 or 130 weeks from 80 per cent to 75 per cent of pre-injury average weekly earnings for pre-April 2010 injuries. That would mean that for an injury that occurred before April 2010 section 93CD as in force before the commencement of the 2010 amendments would apply. I have looked at section 93CD, which provides 80 per cent. Pre-April 2010 section 93CD provided for the payment of the difference between 75 per cent of the pre-injury average weekly earnings and 75 per cent of the current weekly earnings to workers on weekly benefits beyond the second entitlement period. Why does the government wish to reduce that from 80 per cent to 75 per cent?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised as follows. The Accident Compensation Amendment Act 2010 substituted section 93CD with a new section 93CD which provides for a more transparent process for workers to apply for a continuation of their weekly payments into the second entitlement period. The new provision applied to injuries sustained on or after the commencement of that amendment act, being 5 April this year. The intention was to preserve the right under the old section 93CD for workers injured before 5 April 2010 to apply for a continuation of payments in the second entitlement period. However, the amendment act did not preserve that right. That was a drafting oversight. Clause 127 of this bill is designed to rectify that drafting error.

If the clause is omitted, as proposed by Ms Pennicuik's amendment, then workers injured before 5 April 2010 would not have any legal right to apply for continuation of weekly payments in the second entitlement period, and that would deprive those workers with longer term disabilities of their fair entitlement to ongoing weekly payments. I believe that Ms Pennicuik's amendment is ill conceived.

Ms PENNICUIK (Southern Metropolitan) — I have not invited the committee to vote against this clause; I have just asked the minister a question. Given the minister's answer about rectifying a drafting error, my question is: does clause 127 preserve the 80 per cent as in the April amendment act or does it revert to 75 per cent?

Hon. M. P. PAKULA (Minister for Public Transport) — It preserves the 80 per cent.

The DEPUTY PRESIDENT — Order! Does Ms Pennicuik wish to invite the committee to vote against the clause?

Ms PENNICUIK (Southern Metropolitan) — No. Given the minister's answer, I am prepared not to do that.

Clause agreed to; clauses 128 to 131 agreed to.

Clause 132

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips and Ms Pennicuik both propose a significant number of amendments which are largely identical and involve consequential renumbering within clause 132 related to the omission of earlier clauses. As clauses 37, 39 and 42 have been omitted but clause 127 has been retained in the bill, I call on Mr Rich-Phillips to move his amendments 34 to 57 to clause 132.

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

34. Clause 132, page 161, line 24, omit "51" and insert "48".
35. Clause 132, page 161, line 29, omit "53" and insert "50".
36. Clause 132, page 162, line 2, omit "55" and insert "52".
37. Clause 132, page 162, line 12, omit "59" and insert "56".
38. Clause 132, page 162, line 17, omit "63(1)" and insert "60(1)".
39. Clause 132, page 162, line 23, omit "93" and insert "90".
40. Clause 132, page 162, line 31, omit "64" and insert "61".
41. Clause 132, page 163, line 6, omit "80" and insert "77".
42. Clause 132, page 163, line 14, omit "76" and insert "73".
43. Clause 132, page 163, line 18, omit "46" and insert "43".
44. Clause 132, page 163, line 24, omit "66" and insert "63".
45. Clause 132, page 163, line 29, omit "67" and insert "64".
46. Clause 132, page 164, line 3, omit "69" and insert "66".
47. Clause 132, page 164, line 8, omit "73" and insert "70".
48. Clause 132, page 164, line 19, omit "74" and insert "71".
49. Clause 132, page 164, line 30, omit "75" and insert "72".
50. Clause 132, page 165, line 7, omit "103" and insert "100".
51. Clause 132, page 165, line 13, omit "104" and insert "101".
52. Clause 132, page 165, line 20, omit "105" and insert "102".
53. Clause 132, page 165, line 27, omit "112" and insert "109".
54. Clause 132, page 165, line 32, omit "115" and insert "112".
55. Clause 132, page 166, line 2, omit "56(2)" and insert "53(2)".
56. Clause 132, page 166, line 9, omit "132" and insert "129".
57. Clause 132, page 166, line 11, omit "56(2)" and insert "53(2)".

Amendments agreed to; amended clause agreed to; clause 133 agreed to.

Clause 134

The DEPUTY PRESIDENT — Order! Both Mr Rich-Phillips, by way of amendments 58 to 62, and Ms Pennicuik, by way of her amendments 62 to 66, propose identical amendments which relate to earlier amendments first tested in clause 36 and then in the subsequent omission of or amendment to clauses. Again, I defer to the opposition as having priority in this situation and call on Mr Rich-Phillips to move his amendments 58 to 62, which again I regard as consequential.

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

58. Clause 134, line 3, omit "**certain references**" and insert "**definition of WorkCover insurance policy**".
59. Clause 134, lines 4 to 9, omit all words and expressions on these lines.
60. Clause 134, line 10, omit "(2)".
61. Clause 134, lines 14 and 15, omit "a WorkSafe insurance policy" and insert "an insurance policy issued or deemed to be in force in accordance with this Act".
62. Clause 134, lines 16 to 32, omit all words and expression on these lines.

Amendments agreed to; amended clause agreed to; clauses 135 to 165 agreed to.

Postponed clause 2

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips and Ms Pennicuik have proposed a significant number of amendments which are largely identical and involve consequential renumbering within clause 2 relating to the proposed omission of clauses which have now been tested. Given that clauses 37, 39 and 42 have been omitted but the committee voted to retain clause 127, I call on Mr Rich-Phillips to move his amendments 1 to 8, which relate to postponed clause 2.

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

1. Clause 2, lines 10 to 14, omit "49, 51, 53, 54, 56(2), 64, 65, 66, 67, 83, 84, 85, 86, 87, 93, 110, 111, 112 and 127), Part 4 (other than sections 135, 136, 137, 139, 140, 141, 142, 143, 144, 146, 147, 151 and 152), sections 159 and 161" and insert "46, 48, 50, 51, 53(2), 61, 62, 63, 64, 80, 81, 82, 83, 84, 90, 107, 108, 109 and 124), Part 4

(other than sections 132, 133, 134, 136, 137, 138, 139, 140, 141, 143, 144, 148 and 149), sections 156 and 158".

2. Clause 2, line 18, omit "93" and insert "90".

3. Clause 2, lines 20 and 21, omit "51, 56(2), 66, 127, 154, 155, 156, 157, 158, 160 and 162" and insert "48, 53(2), 63, 124, 151, 152, 153, 154, 155, 157 and 159".

4. Clause 2, lines 23 and 24, omit "110, 111, 112, 139, 140, 142, 143, 144, 146, 147, 151, 152, and 153" and insert "107, 108, 109, 136, 137, 139, 140, 141, 143, 144, 148, 149 and 150".

5. Clause 2, line 26, omit "67" and insert "64".

6. Clause 2, lines 29 and 30, omit "64, 65, 135, 136, 137 and 141" and insert "61, 62, 132, 133, 134 and 138".

7. Clause 2, lines 32 and 33, omit "53, 54, 83, 84, 85, 86 and 87" and insert "50, 51, 80, 81, 82, 83 and 84".

8. Clause 2, page 3, line 1, omit "49" and insert "46".

Amendments agreed to; amended clause agreed to.

Reported to house with amendments.

Report adopted.

Third reading

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

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! I am of the opinion that the third reading of this bill is required to be passed by an absolute majority. In order that I may determine whether the required majority has been obtained, I ask those members who are in favour of the question to stand where they are.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

FAIR TRADING AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL

Second reading

Debate resumed from 16 September; motion of Mr LENDERS (Treasurer).

Mr GUY (Northern Metropolitan) — I rise to speak on the Fair Trading Amendment (Australian Consumer Law) Bill 2010. In doing so I announce that the coalition will not be opposing the bill. My understanding is that the bill will apply the Australian Consumer Law as a law in Victoria, comprising schedule 2 to the commonwealth Competition and Consumer Act 2010, which was previously entitled the Trade Practices Act 1974, and regulations made under section 139G of that act. The bill will also repeal or amend certain provisions of the Fair Trading Act 1999 and make consequential amendments to other acts.

In its review of Australia's consumer policy framework in 2008 the Productivity Commission recommended an adaptation of a single generic consumer law to apply throughout Australia. This was accepted by COAG (Council of Australian Governments) in the national partnership agreement to deliver a seamless national economy. The federal, state and territory governments have agreed to complete that process to implement the Australian Consumer Law by 31 December 2010. It will commence in all jurisdictions on 1 January 2011. The Australian Consumer Law was established by two acts of federal Parliament which amended and renamed the Trade Practices Act 1974. It will include national productivity safety regimes, civil pecuniary interest penalties, enforcement powers, options for representative actions and prohibitions of false or misleading testimonies.

The coalition had a few concerns with the bill, particularly in relation to the Consumer Action Law Centre's (CALC) concern that the regulation-making power under the bill could be used to expand the permissible hours of operation of telemarketers and door-to-door salespeople. As many members in this chamber know, unsolicited door-to-door selling is a current issue.

CALC had expressed concern over the government's arrangements for the Victorian Consumer Law Fund, particularly that the director of Consumer Affairs Victoria can make recommendations to the minister on the funds distribution and also be a recipient of distributions. My understanding is that CALC proposes an independent advisory committee to make recommendations rather than the director. It is also of

concern that special purpose grants may be made to the director or a non-profit organisation and that it precludes businesses from being eligible to receive grants.

All in all, the coalition parties believe the bill will give effect to Victoria's COAG obligations to adopt the Australian Consumer Law. Continuing discussions concerning the government's arrangements for the Victorian Consumer Law Fund will determine whether amendments to the bill need to be proposed in the Council, but at the end of the day the coalition does not oppose this bill, principally because we believe in reforming consumer law despite the deficiencies that may remain in it.

Ms MIKAKOS (Northern Metropolitan) — I am pleased to rise today in support of this bill, which seeks to give effect to one of the most comprehensive consumer law reforms and modernisation processes in Australia's history. The bill inserts a new part 2 into Victoria's Fair Trading Act 1999 to apply the Australian Consumer Law as the law of Victoria. As a result of this and the application of the Australian Consumer Law in each jurisdiction across Australia, uniform consumer protection laws will apply nationally.

The bill further repeals those parts of the Fair Trading Act which will be replaced by provisions of the Australian Consumer Law. It amends Fair Trading Act provisions to ensure the Australian Consumer Law may be enforced and administered by Consumer Affairs Victoria.

In terms of its background, this landmark Australian Consumer Law is a key part of the legislative and regulatory reforms of COAG (Council of Australian Governments) to deliver a seamless national economy. The Australian Consumer Law is the result of a process of cooperation between the Australian government and the states and territories through the Ministerial Council on Consumer Affairs. It draws on the 2008 Productivity Commission review of Australia's consumer policy framework, best practice existing in various state and territory consumer laws and the consultations that have been undertaken during the past two years. As part of this review, the Australian Consumer Law will replace inconsistent provisions spread across 17 commonwealth, state and territory laws into a single national law.

In the COAG national partnership agreement to deliver a seamless national economy all the jurisdictions agreed to complete the legislative process to implement the Australian Consumer Law by the end of this year so as to allow it to commence in all jurisdictions on 1 January 2011.

In terms of background, the Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010 was the first of two acts to implement the Australian Consumer Law. It includes the unfair contract provisions of the Australian Consumer Law which came into effect in Victoria on 1 July this year through the Fair Trading Amendment (Unfair Contract Terms) Act 2010.

The second stage of the Australian Consumer Law was implemented through the Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010, which received royal assent on 13 July of this year. This act provides that the Australian Consumer Law became a schedule of the new commonwealth Competition and Consumer Act 2010, which will be the new name of the commonwealth Trade Practices Act 1974. It is expected that each jurisdiction will enact legislation to implement the Australian Consumer Law by the end of this year.

This is an exciting prospect. For the first time consumers will have the same protections and expectations about business conduct wherever they are in Australia. The new national consumer law is expected to provide a higher level of protection for Australian consumers and address weaknesses in existing laws. The Productivity Commission estimated that this reform could provide benefits to the Australian community of between $1.5 billion and $4.5 billion a year.

As someone who practised law and dealt with businesses that operated across more than one jurisdiction, I think this will also be of great benefit to businesses because they will have only one set of consumer protection obligations they will need to become familiar with rather than needing to become familiar with a whole lot of different obligations across a number of jurisdictions. This will be of benefit to consumers, because when we have complex laws, red tape and different provisions in different jurisdictions, the costs of becoming familiar with all those provisions and complying with them is ultimately passed onto the consumer.

In regard to the Victorian bill, in July 2009 the Premier signed the intergovernmental agreement for the Australian Consumer Law. Consistent with this agreement, the bill will insert a new part 2 into Victoria's Fair Trading Act. It sets out the procedures for the implementation of future amendments to the Australian Consumer Law or related regulations and

allows state or territory governments to propose amendments.

The bill confirms that the director of Consumer Affairs Victoria will be the regulator for the purposes of the enforcement and administration of the Australian Consumer Law in Victoria and sets out the jurisdiction of the Victorian courts, particularly the Victorian Civil and Administrative Tribunal, to deal with disputes arising under the Australian Consumer Law.

The Australian Consumer Law includes provisions that are equivalent to the current consumer protection provisions in the Trade Practices Act 1974. These core provisions are mirrored in almost all fair trading acts of other state and territories and include laws prohibiting misleading or deceptive conduct, unconscionable conduct, false or misleading representations, unsolicited supplies, pyramid schemes and harassment and coercion.

I now turn to a few specific aspects of the Australian Consumer Law that will be applied by this bill. The bill will repeal most of the provisions governing statutory implied conditions and warranties in part 2A with part 3-2 of the Australian Consumer Law to include new national consumer guarantee provisions. It will also repeal part 2B of the Fair Trading Act dealing with unfair contract terms. Whilst many of the provisions in part 4 of the Fair Trading Act will also be replaced with provisions in the Australian Consumer Law, the new unsolicited selling provisions were heavily influenced by the Victorian law. They cover unsolicited sales practices such as door-to-door selling, telephone sales and other forms of direct selling that do not occur in a retail context.

I am sure many members would attest that we get many complaints from consumers who get annoyed by door-to-door sales people and unsolicited phone calls. These reforms build upon a whole range of reforms already in this area as they relate to restrictions upon telephone calls to what are regarded as reasonable business powers.

Important reforms were introduced by the federal Labor government in relation to the do-not-call register. I encourage members to become familiar with these provisions if they are not already familiar with them and to let their constituents know about them, because I find that elderly people in particular get upset about very aggressive telephone canvassing and door-to-door salespeople who they feel can be quite intimidating on occasions.

I have had cause to deal with a few cases of misleading things being said to consumers and have followed these issues up with the relevant companies involved, because it is important that consumers are not misled into signing up to any of these types of contracts. The new provisions have clear requirements for the way consumers can be approached, the disclosure obligations associated with the making of an agreement and supplier obligations about post-contractual behaviour.

The Australian Consumer Law introduces for the first time a national product safety system ensuring consistent protection from unsafe products for all Australians. As part of this move the bill repeals most of part 3 of the Fair Trading Act.

Ultimately the Australian Consumer Law simplifies the law with regard to consumer protection and makes it clearer for both consumers and businesses across Australia to understand. The more informed consumers are, the better the choices they make, which ultimately drives competition and innovation in our markets and helps build towards a seamless national economy.

It is important to note while debating the bill that this government has a strong record when it comes to consumer protection. It is a really positive step that we are getting more national consistency with these types of reforms. It is great that we have this move to national consistency, but it is also important to acknowledge that over many years this government has supported a range of reforms to strengthen consumer protection. Some of them have involved some of the matters I have alluded to, such as putting in place provisions in relation to calling hours for unsolicited selling agreements and restrictions on people being canvassed through door-to-door sales.

I note in the provisions of this bill that there are some functions that state and territory ministers will retain. As the host jurisdiction for the Australian Consumer Law it is necessary for the commonwealth to assume responsibility for enacting any amendments or subordinate legislation under the Australian Consumer Law. Regulations made by the commonwealth Minister for Competition Policy and Consumer Affairs will, however, be subject to the voting and consultation rules set out in the intergovernmental agreement.

The only exceptions to this rule will be interim product safety bans, compulsory recall notices and public warning statements, which may be issued by state and territory ministers for consumer affairs, and calling hours for unsolicited selling agreements, which can be varied by subordinate instruments made in participating

jurisdictions, but not including agreements made over the telephone. They are important exceptions to the general rule provided for in the bill.

As a consequence of the approach that has been adopted where we are applying the Australian Consumer Law passed by the federal Parliament there will be some limits on the Victorian government's ability to make amendments to the Australian Consumer Law after it becomes law in Victoria. It is important to acknowledge that. If there are future amendments to the Australian Consumer Law, they will be enacted by the commonwealth Parliament and will come into effect automatically in the states and territories that have applied the Australian Consumer Law.

However, clauses 8 to 14 of the Intergovernmental Agreement for the Australian Consumer Law provide a mechanism for any jurisdiction to recommend changes to the Australian Consumer Law and for mandatory consultation with all jurisdictions in relation to such changes. Clauses 15 to 19 set out voting procedures for approving any amendments to the Australian Consumer Law. These clauses are considered to be sufficient to mitigate any risks to the future amendment of the Australian Consumer Law.

In addition to the requirements in the intergovernmental agreement the bill also protects Victoria against unwanted future amendments to the Australian Consumer Law by enabling the Governor in Council, by order, to exclude the operation of a future amendment to the Australian Consumer Law in Victoria.

In relation to the activities to which the Australian Consumer Law will not apply, the bill preserves certain provisions that currently exempt particular activities from the scope of the Victorian Fair Trading Act. These provide for recreational service providers to limit their liability for death and serious injury where services are not fit for their purpose and for legal services to be exempt from the requirement to provide an itemised bill within seven days. That is because this matter is already separately addressed by the Legal Profession Act 2004. There is also a provision for contracts for gas and electricity to be exempt from formal requirements that apply to unsolicited selling agreements. These provisions are necessary to maintain the status quo in the absence of an agreed national approach as to whether, and in what form, the exemptions should be retained.

The Australian Consumer Law also contains a regulation-making power allowing the commonwealth minister to exclude the operation of the consumer guarantees in division 1 of part 3-2 of the Australian Consumer Law as it relates to electricity, gas and telecommunications supplies. As I understand it there is currently no intention to create such a regulation. However, in the future an exclusion may be considered to the extent that there is other legislation specific to these industries that provides the same or equivalent protection.

On the issue of the consumer law fund the bill contains legislative provisions to allow courts to pay any civil penalties and unclaimed consumer redress moneys into a trust fund to be known as the Victorian Consumer Law Fund. Other contributions to the fund could include money appropriated by the Parliament for the purposes of the fund and interest received on money invested in the fund.

The Victorian Consumer Law Fund will have two main functions. Firstly, it will be a mechanism by which court orders to refund consumers who have suffered as a result of a trader's misconduct can be administered in a fashion most likely to result in consumers actually receiving the refunds. Payments would be made into the fund for this purpose as a last resort where it is unlikely that a trader will be in a position to pay refunds directly to all affected consumers. Secondly, it will allow civil penalties paid into the fund by traders who have breached the Australian Consumer Law to be reinvested into research, education and other purposes aimed at improving consumer protection and to further the purposes of the Australian Consumer Law.

In conclusion, this is an important reform. It is a historic reform to strengthen consumer protection laws in Australia and to achieve greater uniformity and harmony. I commend the bill to the house.

Mr BARBER (Northern Metropolitan) — The Greens will support the bill. It is important that adequate protection is afforded to consumers who are vulnerable to exploitation because of unfair contract terms, misleading or deceptive conduct and unsolicited sales. We need a strong regulatory regime to secure product safety. An integral part of consumer protection is this new Australian Consumer Law (ACL).

The bill is designed to harmonise consumer law in Australia. It is worth noting that a number of provisions are moulded on existing Victorian consumer law. The implementation of the Australian Consumer Law will mean that regardless of where they are in the country people can expect largely the same level of protection and to have the same kinds of remedies available to them. A number of other members have already talked

about — in Ms Mikakos's case, quite expansively — the origin and history of this legislation. The Australian Consumer Law is contained in schedule 2 of the commonwealth's Competition and Consumer Act 2010, which is the new name for the old Trade Practices Act. The bill incorporates the ACL into Victoria's Fair Trading Act and repeals and amends various provisions of that act accordingly.

In terms of how the law will operate in Victoria I note two things. Firstly, a modification of the Australian Consumer Law at the commonwealth level, either by an act or by regulation, will not automatically take effect in Victoria. Clause 10 of the bill will give the government of the day two months to exclude any part of a modification by making an order to be published in the *Government Gazette*. This is quite interesting given the debate we had on a bill earlier today about Council of Australian Governments arrangements and the ability of this Parliament to disallow certain provisions. Seemingly what we are allowing here is for states to disallow federal law.

Secondly, there is still scope for responsive action to be taken to deal with state-based product safety risks. For example, on a recommendation by the director of consumer affairs the state minister can order an interim ban, recall or safety warning notice to protect the public from unsafe products or goods.

On the whole there is much that we support in the bill. I will focus on three issues that need highlighting, one of which will lead to the amendments we intend to move. I am quite happy for them to be formally circulated now.

Greens amendments circulated by Mr BARBER (Northern Metropolitan) pursuant to standing orders.

Mr BARBER — Clause 20 of the bill provides for the establishment of a trust fund called the Victorian Consumer Law Fund, which will collect and distribute money in relation to the ACL. Such a mechanism is needed to give effect to the enforcement and remedial provisions of the ACL, but it is not provided for in the commonwealth legislation.

The Victorian government is to be commended on having the foresight to legislate to create this fund. The consumer law fund will receive money from four sources: firstly, appropriations by the Parliament; secondly, civil monetary penalties paid by suppliers pursuant to a court order for contravention of the ACL; thirdly, moneys paid by suppliers pursuant to a court order to redress loss or damage to a group or class of consumers affected by the supplier's wrongful conduct — these are called non-party consumer orders; and fourthly, interest derived from money in the fund, as it earns interest while it is there. Payments can be made from the fund for the purposes of paying out eligible non-party consumers who make claims within a specified time period, making special purpose grants and paying for the fund's administration expenses.

I return to the non-party consumer claims. Where a court has ordered a contravening supplier to pay a certain amount into the fund for the purposes of non-party consumer claims the court order must, amongst other things, specify what is to happen to any money that remains at the end of the claim period. This may include returning some of the residual to the supplier, making some or all of the residual money available for special purpose grants or to cover the costs incurred by an administrative fund, or any other treatment that the court considers appropriate. To continue our theme of the day, that is an appropriate amount of judicial discretion.

The Consumer Action Law Centre (CALC), which is a very diligent group — not only in respect of looking after the rights of consumers but also in respect of being involved in the Victorian legislative process — has expressed some objections to one of these provisions because it could result in suppliers recouping some of their ill-gotten gains and profiting from their wrongful conduct in circumstances where all affected consumers cannot be found or where they cannot all claim compensation, which is often enough the case. The Greens agree that disgorgement of these profits would in many cases be preferable, but we believe this is a matter that can comfortably be left to the court's discretion.

New section 102C(2)(f) leaves much scope for judicial discretion in this regard and by no means obligates the courts to order that the remaining money be returned to the supplier. The court can be guided by principles of equity in determining whether a refund to the supplier is appropriate in the circumstances. There are a number of existing legal doctrines, such as the cy-pres doctrine, that the court can apply in this sort of class action context to stipulate that if a trust fund's original purpose fails, the funds should be applied to the next-best use.

In a class action situation it means that leftover funds should be applied to the next best compensation use. In the United States of America, where these sorts of class actions are common, there is a sizeable area of legal doctrine around this. Leftover funds have been used for things like consumer advocacy, consumer services and research and education in order to indirectly benefit the

absent class members. In the United States it is generally held that strong policy reasons and case law militate against returning the excess funds to the defendant, although that is a matter for the court's discretion. For this reason we do not oppose the provision in the bill, although we certainly acknowledge the Consumer Action Law Centre's concern.

On special purpose grants, another area of concern to CALC and one which we share relates to the director's power to make recommendations to the minister about who should receive a special purpose grant. Proposed new section 102D provides that grants may be made from the Victorian Consumer Law Fund to the director of Consumer Affairs Victoria (CAV) or to not-for-profit organisations for the purpose of improving consumer wellbeing, consumer protection or fair trading or for any other purpose consistent with the objectives of the Australian Consumer Law.

Moneys paid into the fund pursuant to a non-party order of the like that I just talked about cannot be paid out for this purpose until the period for non-party consumer claims has expired. There is, if you like, some conflict of interest between the minister approving grant applications solely on the recommendation of the director when the director could be a beneficiary. That leads to the main part of this concern, which is that it is a kind of cost-shifting exercise with the core functions of CAV now being funded through this purpose; although I acknowledge that the core functions of CAV dovetail with the core purposes of this fund.

The minister gave an undertaking in the other house that special purpose grants would not be used to fund the day-to-day operations of CAV but, as I said, that is something of a movable feast.

Mr Tee interjected.

Mr BARBER — It is called cost-shifting. The amendments we have circulated would set up an independent body tasked with the making of recommendations both to reduce the risk of the fund being used for unintended purposes — or cost-shifting, as I have put it — and to ensure that the process is also open and transparent.

We are proposing that an independent advisory committee, similar to that which exists in the Consumer Credit Fund context, be established. That fund operates in a similar way to the Consumer Law Fund proposed in the bill. It receives money from appropriations of Parliament, civil penalties and pursuant to tribunal orders. Money may be paid out of the fund on the determination of the minister following the recommendation of the committee for education and research or for the provision of advice about credit.

Since 2003 Consumer Affairs Victoria has been the recipient of a number of grants, but the committee has not always approved CAV's funding applications. I think members would at least concede that that is highly analogous to this new fund that I am trying to set up here. The Consumer Credit Fund has paid out over $2.3 million in grants, so they are not small amounts of money. The Victorian Consumer Law Fund, from which grants can be paid for a broader range of purposes, may be dealing with even greater amounts of money at times.

Our amendments would provide that the minister may make payments out of the fund on the recommendation of a majority of members of an independent advisory committee. My proposed new section 102F would establish the advisory committee. It is modelled on section 86AC of the Credit (Administration) Act 1984, which set up the Consumer Credit Fund. That is a 1984 bill, so it was the wisdom of the Cain government that created the original fund, and I am seeking here to emulate that provision in a new bill. It will not replace existing legislation; it is a completely new bill that is adopting the same principles of that class of 1984.

That committee — if I say this now, I will not have to say it during the committee stage — will comprise two persons appointed by the minister and with an interest in the provision of education, advice or assistance to consumers; two persons appointed by the minister from names submitted by a prescribed body representing the interests of suppliers; and two persons appointed by the minister from names submitted by a prescribed body representing the interests of consumers. It could not be fairer in terms of its structure. The power to prescribe the representative bodies of the committee members exists in the general regulation-making power of the principal act, so I do not have to seek to change that.

The bodies would need to be truly representative of consumers and suppliers. From what I have been told, this arrangement works well with the Consumer Credit Fund. Current nominees on that committee include nominees from the Credit Union Service Corporation, the Australian Bankers Association and the Consumer Action Law Centre. Just to be clear, those members are not necessarily representatives of those bodies but they are nominated by those bodies. This is quite a familiar arrangement which we have under many acts.

Subsection (2) of my amendment provides that the committee members hold office for a period not

exceeding three years and on the terms and conditions prescribed by the regulations. This means that the Governor in Council can make regulations if necessary and at the government's discretion for the remuneration of committee members, which is something I obviously cannot do with an upper house amendment. But it will be at the government's discretion to do so because section 102E permits the director to approve payment from the fund for any reasonable expenses incurred in administering the fund. My argument is that the fund could be used to pay some sitting fees or expenses of the committee members.

Subsections (3) and (4) of my amendment mirror the equivalent provisions in the Credit (Administration) Act, which prohibit a committee member from participating in a recommendation for payment from the fund to a body of which that person is an officer, employee or member. That is a standard independence and conflict-of-interest provision.

I note the coalition — and Mr Guy echoed this when he spoke before — expressed some concerns about this. The coalition has a chance to crystallise that concern by voting for my amendment. As I have said, the government should not find anything particularly objectionable in it either.

The third main area I am interested in highlighting is the regulation-making power in relation to telemarketing. Blissfully this bill will shorten the hours during which door-to-door marketers and telemarketers can operate or call on people, as the new legislation terms it. At the moment people have to put up with salespersons knocking on their door or phoning them from 9.00 a.m. until 8.00 p.m. If you live in an area that is regularly targeted by telemarketers, you will know what a drag that is, especially if you are giving the kids a bath.

While I am quite happy to ignore telemarketers, when someone knocks on your door you want to at least find out who it is. You would not want to have one kid, much less two kids, in the bath while that sort of thing is happening, yet that seems to be the time, in my area at least, when they come to visit. That happens up to 5.00 p.m. on Saturdays and in the case of telemarketing calls up to 5.00 p.m. on Sundays. There is absolutely no peace to be had if you are in one of those sorts of areas that seem to attract the interest of particular types of doorknockers. The *Age* newspaper seems to be one of the regulars, and electricity and gas companies are making the same effort in my area.

Business interrupted pursuant to standing orders.

EDUCATION AND TRAINING REFORM AMENDMENT (SKILLS) BILL

Council's amendments and Assembly's amendments

Returned from Assembly with message agreeing to certain Council amendments, requesting agreement with further Assembly amendments and disagreeing with the remaining amendments.

Ordered to be considered next day.

ADJOURNMENT

The PRESIDENT — Order! The question is:

That the house do now adjourn.

Nagambie Kindergarten and Early Childhood Services: funding

Ms LOVELL (Northern Victoria) — The matter I wish to raise is for the attention of the Minister for Children and Early Childhood Development and relates to the 2010–11 renovation and refurbishment grants for kindergartens. Given that there are just four weeks until Parliament is dissolved and the government moves into caretaker mode, my request of the minister is that she immediately announce the recipients of the 2010–11 renovation and refurbishment grants and ensure that Nagambie preschool and child-care centre receives a grant under this program.

Nagambie preschool and child-care centre applied for a grant from the third round of the 2009–10 renovation and refurbishment grants, but unfortunately it was not successful. The centre has subsequently applied for a funding grant from the current round of 2010–11 grants. The centre is in a precarious position. It is the only kindergarten and child-care provider in Nagambie, a township whose population is expected to explode in the next few years due to significant housing developments. Demand for kindergarten and child care has increased enormously in Nagambie in recent years. The centre is doing its best to meet this demand, but is limited because it only has one room.

Despite the kindergarten's best efforts it will be forced to scrap its Friday occasional care session in 2011 to accommodate three and four-year-old kindergarten programs. Next year's three-year-old kindergarten class is full, with 29 children putting up their hands to participate in this program, and families are facing a waiting list for four-year-old kindergarten in 2011.

The centre is only able to provide occasional child care. It would love to offer long day care to meet the needs of this growing community; however, it simply cannot do this with just one room. There is potential to expand the centre and add a second room. An additional room would enable the centre to significantly improve the provision of early childhood services in Nagambie by giving it the capacity to co-locate services, including maternal and child health and early intervention services, with the preschool and the potential to provide much-needed long day care. As things stand now the centre will not be able to increase four-year-old kindergarten hours from 10 to 15 hours per week by 2013 without drastically cutting back its three-year-old kindergarten hours and occasional child care. This would not be accepted by the Nagambie community.

Nagambie preschool and child-care centre is in urgent need of this state government funding grant so it can expand its facilities and meet the needs of local families, but unfortunately it is not alone in its plea for assistance. There is a growing list of kindergartens in urgent need of funding to expand their facilities so they can cope with the increasing demand for kindergarten and move towards achieving 15 hours of four-year-old kindergarten.

It is up to the Brumby government to make sure that the federal Labor government provides Victoria with adequate funds to address this infrastructure backlog, which has come about due to the federal government's 2007 election policy to increase kindergarten hours. Funding grants must be allocated as soon as possible to the kindergartens in greatest need, including Nagambie. I request that the minister immediately announce the recipients of the of 2010–11 renovation and refurbishment grants and ensure that Nagambie preschool and child-care centre is a recipient of one of these grants.

Prospect Road, Bendigo East: electrical safety

Mr DRUM (Northern Victoria) — My adjournment matter is for the Minister for Energy and Resources, Mr Batchelor. Over the last few weeks I have been called out to an industrial estate in Bendigo East to witness firsthand the unsafe working conditions that exist in the Prospect Road precinct. The tenants of these factories have for a number of years now been fighting with Powercor and also trying to get Energy Safe Victoria to work out exactly why it is that lethal doses of direct current electricity are randomly surging through the factories causing hundreds of thousands of dollars damage to equipment and machinery, resulting in lost business — not to mention the electric shocks which workers have been receiving and which have caused hospitalisation — and the cost of the stress that these small businesses have been dealing with.

I have a series of statutory declarations from workers who have suffered electrical shocks — for example, on 19 July 2007 a microwave was being serviced when for no reason it suddenly caused electrical shocks even when it was turned off. The same worker involved in that incident suffered electrical shocks from a welder and was hospitalised as a result. Another worker in another factory has indicated through a statutory declaration that he has had welders that have burnt out, grinders and drills that have exploded in flames, power points that have exploded in flames, junction boxes that have caught fire, security systems that have burnt out, telephones that have burnt out, electrical scales that have not kept calibration, light globes continually bursting and also fuses continuing to break.

Another worker who has signed a statutory declaration has spoken of examples of electrical shocks from power points, visitors receiving shocks while leaning against a metal door frame — these are all in different factories — a showroom carpet catching fire because of the surges coming through, fuses continuing to trip and purchases of up to $100 000 in equipment simply burning, even though they have been turned off. Three compressors in this precinct have blown up since May this year. These people have been treated like absolute criminals. That is a snapshot of what is going on in this precinct.

These businesses have tried to see their local members in the Assembly, Jacinta Allan and Bob Cameron, the Minister for Regional and Rural Development and the Minister for Police and Emergency Services respectively, and they have been totally given the flick, which does not surprise those people living in Bendigo. This problem does not seem to be going away; it seems to be getting worse. They feel as though they have been abandoned by their local members and the appropriate government agencies.

My request is that the minister travel to Bendigo and have a look at the damage in this precinct. It is very easy to see where there have been explosions and where burnouts have taken place. It is obvious that WorkSafe Victoria is not doing enough to track down the problem. I call on the minister to personally get involved to try to fix the problem.

Bushfires: neighbourhood safer places

Mr KOCH (Western Victoria) — My issue is for the Minister for Police and Emergency Services and relates to his responsibility to ensure that towns are well

prepared and bushfire ready for the coming summer. The establishment of safer places, where residents can assemble if their personal fire plans are inadequate during a bushfire, was an integral part of the 2009 Victorian Bushfires Royal Commission interim report released in August 2009. Despite this, many towns in western Victoria are still seeking to have safer places provided. The Brumby government has failed in its support of local councils and the CFA (Country Fire Authority) in establishing safer places to secure and make available locations throughout western Victoria. This is a serious concern to many communities, which believe the government has offered them only lip-service on this issue.

Many residents of Dunkeld in western Victoria are alarmed by the decision to designate the town's Anglican church as a safer place. Many of the locals in Dunkeld, with longstanding links to the CFA, have suggested that the town's memorial park would be a far safer location for the community to gather in the event of bushfire. Local CFA brigade secretary, Peter Flynn, has questioned the validity of the process used to reach the decision, claiming it overlooked the opinions of the local community. He has also described the site selected as inadequate and has said the views and expertise of his local brigade were ignored.

Mr Flynn said establishing a safer place at the memorial park was the preferred community option and indicated he was surprised when it was unexpectedly knocked back in favour of the Anglican church. Of particular concern is the restricted size of the open space on the selected site. The large open area providing protection at the memorial park overcomes this problem. Sadly this is another example of where government agencies, with many of their personnel not being locals, ignore the knowledge and expertise of long-term active community members who understand their local areas.

The minister must better support local councils and make resources available to them as they endeavour to establish safer places for their communities. The meaningless financial contributions given to councils in support of securing these safer refuges demonstrates another cost shift at the expense of ratepayers. My request of the minister is that he inform local councils and communities in western Victoria of how he will better support their efforts to establish safer places in local communities in the event of bushfire. This summer's bushfire season is fast approaching, and heavy winter rain has created fuel loads that will increase the threat of wildfire on severe, extreme and catastrophic fire-risk days.

Environment: container deposit legislation

Ms HARTLAND (Western Metropolitan) — My adjournment matter is for the Minister for Environment and Climate Change. I draw to the minister's attention the 2009–10 national litter index by Keep Australia Beautiful, which was released last week. The latest national litter index demonstrates the need for a 10-cent deposit on bottles, cans and cartons in Victoria. Litter in Victoria has increased in volume in each of the last two years, against a national trend of decreased litter volumes. In South Australia the expansion of the drink container deposit scheme two years ago has led to an immediate reduction of litter.

The best way to understand the difference a 10-cent deposit scheme would make is to check the 'dirty dozen' figures — the volume of litter per 1000 square metres — for Victoria against that of South Australia. In Victoria seven 'dirty dozen' litter items would attract a 10-cent deposit under the Greens' scheme: plastic soft drinks, glass bottles of alcohol, cans of alcohol, cartons of milk or juice, glass soft-drink bottles, metal soft-drink cans and plastic plain water containers. In South Australia no items fully covered by their container deposit scheme made it into the dirty dozen.

Three items in South Australia's dirty dozen were partially covered by container deposits. The bigger the exemption, the bigger the volume of litter. Victoria's dirty dozen list also includes alcohol cans, soft-drink cans, glass soft drinks and plain water containers, which do not appear in South Australia's dirty dozen at all because they attract a 10-cent deposit. Some of them dropped off South Australia's dirty dozen list after South Australia expanded its container deposit scheme in 2008 by doubling the deposit to 10 cents and including a larger range of containers.

The only good news is that Victoria does a lot better than South Australia in preventing illegal dumping. South Australia has four times the volume of illegally dumped material than Victoria. Victoria's efficient kerbside rubbish and recycling system probably accounts for much of the lower incidence of illegal dumping. A drink container system would make the kerbside system more cost effective and efficient for every local council in Victoria.

I note that the minister has also recently released his Victorian litter report. That report quantifies litter by item rather than volume. Nevertheless it shows a 5 per cent increase in drink container litter and suggests that the actual litter for drink containers may be much higher but that the large size of drink containers means they are more likely to be targeted by clean-up

programs. My request of the minister is to reconsider his opposition to the 10-cent deposit system and to bring a bill to the house in 2011.

Electricity: powerline maintenance

Mr VOGELS (Western Victoria) — I raise an issue for the Minister for Energy and Resources, Peter Batchelor, and it concerns the safety of the linesmen who work on the maintenance of Victoria's powerlines. When powerline maintenance occurs, the power to the grid or lines where work is being carried out is disconnected and other precautions are taken to ensure worker safety. This was a simple operation when the power was provided by a single generator such as Powercor. This issue has been raised with me by someone who works in the industry, and that is why I would like the minister to investigate whether with multiple feed-in suppliers the safety of linesmen is being put at risk.

We have encouraged multiple entities to feed into the grid the excess power they produce from solar, wind, waste and so on. I think this is a good thing; it is all commendable. However, it is much more difficult to regulate. If the grid in a certain area needs maintenance, what action is taken to ensure that all these individual sources of feed-in power are not feeding in energy while maintenance is under way? When I heard Mr Drum speak on his adjournment matter I wondered whether this issue had something to do with his matter.

The action I seek from the minister is very simple. It is to clarify what safety precautions are taken to ensure the safety of those workers in this vital industry and to ensure that their safety is not put at risk.

Murrumbeena–Neerim roads, Murrumbeena: traffic management

Mrs COOTE (Southern Metropolitan) — My adjournment matter this evening is for the Minister for Public Transport, Mr Pakula. It is to do with a very bad intersection in the railway station area in the city of Glen Eira, the intersection of Murrumbeena and Neerim roads in Murrumbeena. The RACV recently conducted a survey of 8000 Melburnians, and it will come as no surprise to this chamber to learn just how many of them reported severe problems with intersections of train lines and roads and general gridlock in and around a number of railway stations. However, the overwhelming number of people said that the worst intersection of all was that of Neerim and Murrumbeena roads in Murrumbeena.

The RACV has called upon the government to put in a grade separation at the intersection to make certain that the traffic does flow despite the confluence of roads and the railway line. It is absolutely gridlocked for pretty much most of the day.

The *Caulfield Glen Eira Leader* of 21 September reported that:

> Murrumbeena Traders Association president Sue Foley said the intersection was 'dangerous and frustrating'.

Paul Burke from the Glen Eira council is reported as saying it was 'a real problem'. Even the VicRoads regional director, Duncan Elliott, is quoted as having said parking was removed in March to improve the intersection's 'safety and operation', but that has not worked either.

As a parting gesture to this the 56th Parliament and as a matter of urgency because we have such a short time left, I ask the minister to collaborate with his colleague and factional ally the Minister for Roads and Ports, Mr Pallas, to resolve this impasse.

Police: Bendigo

Mrs PETROVICH (Northern Victoria) — My adjournment matter is for the Minister for Police and Emergency Services and member for Bendigo West in the Assembly, Bob Cameron. On Friday, 24 September, at 4.20 p.m. and in full view of businesses, shoppers and motorists, an assault took place on the corner of Bull and Hargreaves streets in Bendigo. A relative assisted the victim to the Bendigo police station to report the incident. The relative spoke to me about this incident and her firsthand experience of the seriously underresourced police station in Bendigo.

Two attempts were made on two different days to report the incident, but each time the victim was asked to return to the station to complete the report at another time as the only officer available was already busy taking other statements. This family member persevered and, after taking the victim to the doctor, returned to the police station two more times. A full report has now been taken. I would like to say from the outset that neither the victim nor the family member are critical of the police. It is clear that this station in Victoria's largest inland city is drastically understaffed.

There are a number of points I would like to highlight to the police minister. One is the fact that this assault occurred in the middle of the day. Secondly, it is a fact that violence and violent crime can be reduced by a visible police presence. Thirdly, it is a fact that if the

victim and family member had not persevered, this violent crime would have gone unreported. Fourthly, it is a fact that the Bendigo police station barely has enough police officers to cover its roster as long as no officer is on leave, away sick or required in court.

The irony of this case is that it took place in the Bendigo West electorate of the police minister, Bob Cameron, and was reported to me by Anita Donlon, the Liberal candidate for this seat; she is the relative who assisted the victim of this assault. This assault has been upsetting and has had an impact on the family member. It highlights the critical shortage of police in Bendigo, where on many occasions there is only one operational police van servicing a population of 100 000 people.

Bendigo's population has increased by more than 10 000 people in the last decade, and it has grown at the rate of 2.1 per cent. Police numbers have unfortunately not kept pace under the watch of the current government and Mr Cameron. The action I seek from the minister is that he address the chronic shortage of police in Bendigo as a matter of urgency and give this growing and vibrant community a solution that meets the increased policing demands of the current population.

Water: Werribee irrigation district

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Water. It may come as news to you, President, that the Committee for Wyndham is a strong and powerful voice for the people of that municipality in the western suburbs of Melbourne. The committee has come out very strongly in recent times saying that the state government has to do more to ensure the future viability of the Werribee irrigation district following the presentation of options to the growers from the long-awaited report on the Western Irrigation Futures project.

The chairman, Peter Hudson, whom I am sure Mr Koch knows well, recently stated in a media release that:

> The Werribee irrigation district has been and still is a very significant supplier of fresh vegetables to Victoria and is recognised in 'Melbourne 2030 vision for green wedges' as an intensive agricultural area — at least until 2030 and needs more than what been offered in the 'options'.
>
> The reality is that growers are being forced to use water that has salinity levels up to 2000 EC thus increasing the soil salinity and sodicity levels and costs through expensive soil management practices.

This is clearly something that is intolerable in an area which is so important to the food chain of Melbourne, particularly as the food bowl is so close to Melbourne itself. The media release further states:

> Mr Hudson went on to say:
>
> This is at a time when the growers were to get EC levels of 1000 or below. The salinity impact and costs associated with the present recycled water from the western treatment plant and proposed base EC level of 1500 is not sustainable for the future of vegetable growing.

That is clearly an attack on the livelihoods of a good many people in the Werribee South area, but it is also a major concern for those who are interested in placing fresh vegetables on the plates of Melburnians. It is something that affects all people, not just those in the Werribee South area.

The Committee for Wyndham has questioned whether:

> … the current water source from the western treatment plant will provide water of a quality and at an affordable cost consistent with the sustainability of the Werribee irrigation district for vegetable growing.

This is something the government has to address as a matter of urgency. This is an issue that has been going on for far too long.

Mr Koch — Years and years.

Mr FINN — Years and years, as Mr Koch says. It has been going on for far too long, certainly for the entire 11-year period of government. It is well and truly time for the government to come to the party on this issue, and I ask the minister to commit to a long-term supply of water fit for the purposes of Werribee South irrigators and to ensure that salinity levels are able to be retained at an EC (electrical conductivity) level of 1000 or less.

Edithvale-Seaford wetlands: mosquito control

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Water. It is an issue that probably has some relevance to several portfolios; it is in relation to the Edithvale wetlands and the need to review the mosquito control measures. The Seaford wetlands cover an area of some 158 hectares and the Edithvale wetlands about 103 hectares. They have a critical flood storage capacity that is supposed to protect the surrounding and downstream properties from inundation. The wetlands are an essential part of the regional drainage system in receiving, retaining and diverting stormwater and other surface run-off. They contribute to protecting the water quality of Port Phillip Bay by retaining and naturally treating stormwater and other surface run-offs at limited cost.

Unfortunately, potentially due to climate change — I am not sure — there is a greater problem with mosquito controls, and they are certainly inadequate. I raised this matter with the Minister for Water in December 2009, and recently the matter was again drawn to my attention by some Seaford residents, including Steve Gardener, Melinda Shelley and young Jack Shelley, a one-year-old victim of mosquito bites. The matter was also drawn to my attention by Cr Donna Bauer, the endorsed Liberal candidate for the Assembly seat of Carrum. She has been in touch with several mothers in the area who are concerned about their babies and children being bitten by mosquitoes and not being able to enjoy the opportunities the wetlands present.

It is a very popular area for cycling, and there are lots of walking paths. This is the direction for development of the area; however, it seems that there is only one person allotted to this vast area to monitor the breeding and control of mosquitoes. His name is Eddie, and he is a very busy boy. The framework dates back to 2004. It is inadequate, possibly due to climate change — I am not sure — and it needs to be reviewed as a matter of urgency.

With summer approaching, additional measures need to be taken to make sure that mothers, babies and children in the area are well protected as well as ensuring that other people who use the wetlands and the various recreational opportunities along there, not just in Seaford but all the way to Edithvale, are protected. Wetlands are going to become a more popular and common way of managing water, so this will continue to be a problem. I call on the responsible minister to liaise with his counterpart, the Minister for Health, to make sure the framework is reviewed and that additional measures are adopted to control mosquitoes.

Responses

Mr JENNINGS (Minister for Environment and Climate Change) — I have 33 written responses to adjournment matters which range in chronological date from 13 April 2010 to 3 September 2010.

Ms Hartland raised a matter for my attention, continuing an ongoing discussion, if not a debate, that she and I have about the appropriate analysis that should be attributed to litter control and resource recovery in Victoria. I thank her for recognising in her contribution Victoria's success in relation to kerbside collection and resource recovery, although she then went on to use national data sources to construe an argument in support of her policy position. As she knows, the national forum of environment ministers is considering the application of a container deposit levy scheme and has been undertaking a regulatory analysis of that and other options during the course of 2010. Should I have the good fortune to be the Minister for Environment and Climate Change in 2011, I will be mindful of what the consideration of that might be in terms of responding to those issues in the coming year.

The following matters were raised by members, and I will refer them appropriately to my colleagues.

Wendy Lovell raised a matter for the Minister for Children and Early Childhood Development seeking the immediate announcement of the recipients of the 2010 renovation and refurbishment grants for kindergartens.

Damian Drum raised a matter for the attention of the Minister for Energy and Resources, and he subsequently advised me that he is sharing some of the material that he quoted in his contribution in relation to statutory declarations. He will furnish that material to the Minister for Energy and Resources to encourage him to review the current electrical safety condition of the Prospect Road precinct in Bendigo West.

David Koch raised a matter for the attention of the Minister for Police and Emergency Services seeking additional support for small towns in western Victoria to create neighbourhood safer places.

John Vogels raised a matter for the attention of the Minister for Energy and Resources seeking his support for additional guidance on safety matters in the electrical industry.

Andrea Coote raised a matter for the attention of the Minister for Public Transport seeking unfettered speed of access to another shopping precinct she is particularly concerned about near the Murrumbeena railway station.

Donna Petrovich raised a matter for the attention of the Minister for Police and Emergency Services seeking his support for additional police resources in Bendigo.

Bernie Finn raised a matter for the attention of the Minister for Water seeking his support for the provision of better quality water, as he described it, to support the food production and horticultural sector in the western suburbs of Melbourne, in particular in Wyndham.

Mr Finn — Werribee South, to be precise.

Mr JENNINGS — It is in Wyndham. Mr Finn started off with Wyndham.

Mrs Peulich raised a matter for the attention of the Minister for Water seeking the provision of additional support and resources to Eddie from Edithvale in dealing with marauding mosquitoes in the Edithvale wetlands.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 10.31 p.m.