PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 16 August 2012

(Extract from book 12)

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By authority of the Victorian Government Printer

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The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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

Legislative Council committees

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

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

Legislative Council standing committees

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

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

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

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

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

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

 # Participating member

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

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

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The Hon. D. M. DAVIS

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

Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

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

Deputy Leader of The Nationals:
Mr D. DRUM

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

THURSDAY, 16 AUGUST 2012

Thursday, 16 August 2012

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.30 a.m. and read the prayer.

CONDOLENCES

George Robert Crawford

The PRESIDENT — Order! I have the sad duty of advising the house of the death on 7 August of George Robert Crawford, a member of the Legislative Council for the Province of Jika Jika from 1985 until 1992. I ask that members rise in their places for 1 minute as a mark of respect for Mr Crawford and his passing.

Honourable members stood in their places.

PETITIONS

Following petition presented to house:

Planning: Yarrambat and Diamond Creek land

Petition to the Legislative Council:

This petition is of materially impacted stakeholders of 201–219 (5 acres) and 175–199 (40 acres) Ironbark Road, Diamond Creek, adjoining 40–60 (14½ acres) Pioneer Road, Yarrambat, and 221–233 (8 acres) Pioneer Road, Yarrambat. These Victorian petitioners draw to the urgent attention of the house that the outstanding urban reticulated infrastructure and associated planning anomalies/irregularities and errors for the above acreage lands remain uncorrected. The lands' promised closest fit zone translation in year 2000 should have been residential 1. Instead, they were back-zoned into environmental rural and consequently now rural conservation, the most restrictive of all zones. As continually pointed out, this occurred against applicable provisions in legislation, e.g., the Water Act and others, which protected the lands' distinctive prepaid-for infrastructure (directly and indirectly), capacity and capability.

Failure of equitable correction caused wrongful omission from the new Diamond Creek urban growth boundary (UGB) and/or other new growth strategies. It threatens to now omit these lands from the new Yarrambat township structure plan boundary. The first three properties have/had a unique dual supply of reticulated urban infrastructure. They adjoin the boundaries of both suburb/township which enables inclusion as urban within the Diamond Creek UGB or Yarrambat township structure plan (or related). The petitioners' lands were gazetted by the Governor in Council (that is cabinet) in the 1970s as an extension to both the Plenty Yarrambat Urban Waterworks Trust district and urban district before the works could begin and the properties charged. The trust's obligations and duties were transferred to the MMBW, Melbourne Water and then YVW.

Failure to acknowledge and act on the above facts is inequitable, unreasonable and unsustainable, making it increasingly costly and difficult to correct. See latest petitions tabled in this house — Water Amendment (Entitlements) Bill 2009 on 10 December 2009 and 3 February 2010 and the UGB inclusion on 26 November 2009 and 2 June 2011, the latter to this Baillieu government. Also note continual submissions/presentations to new processes including correspondence to all levels of government, ministers and MPs to date — new Water Amendment (Governance and Other Reforms) 2012 Bill, OSISDC parliamentary inquiries on Livability Options and Growing the Suburbs, the Ministerial Advisory Committee on Improving the Planning System, inclusion in the UGB as an anomaly, logical inclusions in the UGB, logical inclusions in the UGB and the growth corridor plan. The new planning zone reforms now further threaten our lands' situation.

The petitioners reiterate that new livability objectives, conservation, green wedge, open space, landscape, utility need or other new (or old) community aspirations should not be used to exclude any of the above listed lands from the UGB, 'just' planning corrections or fair decisions. All aspirations can be equitably included in the overall development plans of any residential area. This ensures equal urban land values, irrespective of final site-specific land use. Alternatively, entitlements and lands capabilities can be equitably transferred to achieve the above. It is therefore unacceptable to confiscate or erode them in any way via new legislation, strategy or policy including new reformed zones and new Melbourne metropolitan strategy as residential growth.

Prayer

The petitioners request that the Legislative Council urge the Premier of Victoria, the Honourable Ted Baillieu, and the Victorian state government urgently to:

ensure the above lands are not adversely impacted by the Water Amendment (Governance and Other Reforms) 2012 Act and that all the stakeholders' rights and entitlements remain fully preserved including via savings provisions in the 1989 Water Act, 1994 Water Industry Act, Planning and Environment Act and all previous, subsequent and interrelated acts;

ensure other new bills, legislation, policies or strategies do not adversely impact on these lands;

include them in the UGB and rezone to residential one (or township) and their equivalent in the proposed reformed zones irrespective of final site-specific land use;

ensure their protection in their entitled urban water and sewerage district boundaries (and catchments) and inclusions in all servicing strategies for residential development and land use;

ensure reinstatement/honouring of the lands prior year 2000 planning and infrastructure provisions;

compensate where necessary, investigate the matters and meet with stakeholders for facilitation.

By Mr BARBER (Northern Metropolitan) (4 signatures).

Laid on table.

PAPERS

Laid on table by Clerk:

Parliamentary Committees Act 2003 —

Government Response to the Public Accounts and Estimates Committee's Report on the Review of the 2009–10 and 2010–11 Annual Reports.

NOTICES OF MOTION

Notice of motion given.

Mr ONDARCHIE having given notice of motion:

The PRESIDENT — Order! Mr Ondarchie's motion is obviously a comprehensive motion. I am concerned about point 7, which is the one about members familiarising themselves with their electorates and so forth. That could perhaps be one of his debating points in the debate but ought not be part of the motion. At the moment the motion will stand, but Mr Ondarchie might look to revise it in the days ahead.

Further notices of motion given.

Mr RAMSAY giving notice of motion:

Mr Leane interjected.

The PRESIDENT — Order! I appreciate Mr Leane's enthusiasm for the project and his encouraging the government to build it; however, I suggest that we have heard the interjection on a number of occasions now, and it has probably outlived its usefulness.

Mr RAMSAY having given notice of motion:

An honourable member — I hope that was not a prop.

The PRESIDENT — Order! So do I.

Further notices of motion given.

Notices interrupted.

SUSPENSION OF MEMBER

Mr Leane

The PRESIDENT — Order! Mr Leane will take leave of the chamber for half an hour for using a prop. The basis of that is that I have called him to order a couple of times on the issue of a particular interjection and he has then sought to reflect on the Chair by using a prop to convey the same interjection. It is not on.

Mr Leane withdrew from chamber.

NOTICES OF MOTION

Notices resumed.

The PRESIDENT — Order! I thank Mr Ondarchie for indicating to me that he will remove paragraph 7 from the first motion he gave notice of today, which was the one I had some concern about. The motion that appears on the notice paper will have all of its other parts, which were certainly in order, but he has agreed to take out the part that reflected on members of the opposition. I thank him for that, because it ensures that the standard of our motions remains high.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 28 August 2012.

Motion agreed to.

MEMBERS STATEMENTS

Gaming: machine monitoring fee

Hon. M. P. PAKULA (Western Metropolitan) — Today is the start of the new venue-operated model for electronic gaming machines, the first day after the end of the duopoly and the beginning of what I think is a better structure for the operation of electronic gaming machines in the state of Victoria. Unfortunately for many operators, especially smaller regional clubs, the transition is going to be much harder than it should be as a result of the massive hike in the monitoring fee — $64 per machine per month rather than $29 — imposed by Minister for Gaming, Mr O'Brien.

I have had correspondence from many venues, most of which do not want their names released because of the retributive attitude of this government. A sample of their comments include that the monitoring fee for gaming is unfair and poorly timed; that the fee, as another venue says, is grossly unfair; that the fee, as another says, is a kick in the guts to their club; that the fault, as another says, lies entirely with the government; and that the hike, as yet another comments, shows a complete disregard for clubs and a lack of transparency in the way the Baillieu government is managing the gaming changes in Victoria.

The minister took no notice of me when I warned that the cost of his failure to intervene in the legacy fee dispute between Tatts, Tabcorp and Intralot would ultimately be borne by clubs. Perhaps, given the reaction of clubs, he will start listening now.

National disability insurance scheme: federal policy

Mr FINN (Western Metropolitan) — In public life we sometimes see things we wish we had not seen, things that paint us all in a bad light. The recent performance of Prime Minister Julia Gillard on the national disability insurance scheme (NDIS) is certainly one of those things. Personally speaking, it left me angry and disgusted. Never did I think we would see the leader of this nation lower herself to playing cheap politics with the future of people with disabilities, their families and carers. Does the Prime Minister have the first idea of just how much these people need the NDIS and just how important the NDIS is to so many thousands of vulnerable Australians? Perhaps just as importantly, does she realise how grossly offensive her actions are?

We all know Ms Gillard is in political trouble, we all know she is as popular as piles, and we all know her tenure as Prime Minister could end at any tick of the clock. Perhaps what we did not know were the depths to which she would sink in an attempt to give her flagging public image a boost and to try to show her caucus colleagues that she is not the political basket case most of them are convinced she is. We know all that, but to use those with disabilities as a pawn in some sort of tawdry game of self-promotion is beneath contempt. Victorians with disabilities, their families and carers deserve so much more than a Prime Minister who exploits their very real human problems for her own political advantage. It does not get much lower than that. Australia deserves better.

City of Frankston: Keep Australia Beautiful awards

Mr TARLAMIS (South Eastern Metropolitan) — I would like to take this opportunity to congratulate the Frankston City Council on its wins in the recent 2012 Keep Australia Beautiful Victoria sustainable cities and clean beaches awards. Frankston City Council won awards in both the clean beaches and sustainable cities categories. Frankston foreshore received the prestigious award for Clean Beach of the Year for the second year running. Frankston City Council can take pride in this award. It is testament to its ongoing commitment to the maintenance and preservation of this pristine and beautiful waterfront. Also under the clean beaches category, Frankston City Council received the award for Community Government Partnerships for its hosting of the Asia-Pacific Ironman Championships. In the sustainable cities category, Frankston City Council's environmental education and volunteer support officer, Debbie Coffey, received the Dame Phyllis Frost award, with Frankston City Council also receiving the Energy Efficiency Award for its warm mix asphalt trial.

City of Kingston: Keep Australia Beautiful awards

Mr TARLAMIS — On a related matter, I would like to congratulate the City of Kingston on receiving two awards in the Clean Beach of the Year category of the 2012 Keep Australia Beautiful awards, those being the Friendly Beach Award and the Pam Keating Environmental Sustainability award. Both awards were received for Victory Park in Chelsea. After comprehensive community consultation, Kingston City Council undertook an extensive upgrade of Victory Park. The upgrade included the use of recycled and energy and water-efficient products, and turned the park from barren land into a family-friendly space enjoyed by locals and visitors alike.

City of Casey: Keep Australia Beautiful awards

Mr TARLAMIS — On another related matter, I would also like to congratulate the City of Casey on receiving the 2012 Keep Australia Beautiful Sustainable Cities Pam Keating Environmental Sustainability award for Selandra Community Place, an 8-star, zero-energy display home in Cranbourne East which features interactive displays, DVD animations and take-home information cards which encourage sustainability.

Olympic Games: Australian athletes

Mrs PEULICH (South Eastern Metropolitan) — I will on a future occasion join Mr Tarlamis in congratulating those councils on some wonderful achievements. I just hope that Mr Tarlamis learns the actual boundaries of those municipalities — I was a bit concerned that he had sent the results of a Carrum survey out throughout the Frankston Assembly electorate.

I turn now to the matter on which I wish to speak, and that is to commend the United Kingdom on its outstanding staging of the 2012 Olympics Games. Of course it would be remiss of all of us not to also congratulate all the athletes who represented Australia in the United Kingdom across all sporting codes — our

medallists and qualifiers have made us all very proud. We must not forget those who helped along the way to get our athletes to the Olympics, being their coaches, volunteers, families, friends and supporters, and of course the taxpayers and the nation. Hopefully their efforts and the endless hours invested in our athletes have been rewarded. The Australian Olympic team finished the games with 7 gold, 16 silver, and 12 bronze medals, for a total of 35. Whilst the tally is disappointing to many, it is still an achievement of which we should be very proud.

Two memorable moments for me, apart from the entire games and being able to now get to bed a little earlier, were Sally Pearson's reaction after waiting for what must have seemed like an eternity to see if she had won the 100-metre hurdles, and Anna Meares winning the cycle sprint gold medal and, subsequently, the graciousness of her great rival, Victoria Pendleton, at the medal ceremony — that truly encompasses the Olympic ethos and the spirit of the games.

I would like to congratulate all of the athletes and say that we hope that the Olympic Games return to Melbourne at some time in the future, and I hope I am still alive when it does.

Melbourne electorate: by-election

Mr BARBER (Northern Metropolitan) — I would like to congratulate Jennifer Kanis on becoming the member for Melbourne in the Assembly after a well-fought campaign. I am sure, like all members of this Parliament, she will find her community service to be very rewarding.

The Greens ran a positive campaign in the Melbourne by-election on issues the Melbourne community cares about, like public transport, school funding and planning for our city's future. The voters came to us in droves, with many people voting for the Greens for the first time. The Greens' vote went up and Labor's vote went down, and, for the first time ever in a state election in Victoria, we won the primary vote.

I thank everyone who worked so hard on this campaign. Our primary vote has grown and will continue to grow, and if the same swings are repeated in the next federal election, we will retain the federal seat of Melbourne, where Adam Bandt has also achieved much for his electorate. Cathy Oke will continue to represent the people of Melbourne as a City of Melbourne councillor, and she will build on her fantastic record of achievement.

Smoking: regulation

Hon. D. M. DAVIS (Minister for Health) — Today I am pleased to note with great enthusiasm the High Court ruling on tobacco and plain paper packaging. This is a very good result for Victoria and Australia, and indeed it has international significance. I have indicated in this chamber before my support for the steps taken by Nicola Roxon, the former federal Minister for Health and Ageing and now federal Attorney-General, to outlaw the advertising and packaging that has comprised so much of the approach of big tobacco companies. I think this is a very good result. I am pleased that the federal Parliament saw fit to support this approach in a bipartisan way, and I am very pleased that the High Court has made the decision it has.

This will be one further step. It is a significant step in the campaign against tobacco and a further step in the tobacco control measures that we can take. There will be further steps taken in Victoria and other states in the forthcoming period, but the High Court's ruling has national and international significance. It is a very good outcome.

As a community, we are lowering our number of smokers. In Victoria the number of smokers is now below 15 per cent. The task is to make that number lower again. Every time a person is discouraged from taking up smoking by the restriction of advertising it is a win for the community. It is a win for those individuals, but it is also a win for the community. The costs that are generated by tobacco smoking are significant, and the impact on public health is extraordinary. These steps are reasonable and sensible, and I am very pleased with the High Court's ruling.

George Robert Crawford

Ms TIERNEY (Western Victoria) — George Robert Crawford was born on 13 January 1926 and died on 7 August 2012. He was elected to Parliament after 41 years membership of the Plumbers and Gasfitters Employees Union of Australia, and he spent 30 years as a full-time official of that union, holding the positions of both Victorian branch secretary and general secretary for over 20 years.

George was a giant of the labour movement. He joined the ALP in 1944 and quickly rose to become a member of the Victorian state executive. He held this role from 1960 to 1975 and also in 1979. He progressed through the ranks to become vice-president of the ALP from 1965 to 1969 and state president from 1969 to 1971, 1971 to 1973 and 1983 to 1985. He had been a delegate

to the ALP's national conference since 1965. George was elected to the Parliament of Victoria in the seat of Jika Jika on 2 March 1985. He held that seat until 2 October 1992.

George was a champion of the battler. He cared about the type of world our kids are growing up in. He was a peace movement activist and a champion of people's civil liberties. It is instructive to reflect upon his inaugural speech to the Parliament. It gives us an insight into the type of man he was. He touched upon the dislocation suffered by indigenous Australians and their struggle for land rights, and he talked about decent workers compensation for those who have been injured, issues of occupational health and safety and the role he had played in the peace movement.

He was proud of his role in the struggle against the Vietnam War and was a vocal critic of the government's 'all the way with LBJ' approach to foreign policy. George was also proud to have been associated with the establishment of friendly relations with the People's Republic of China, a fact that continues to underpin our Australian economy even today. George was a tireless campaigner against nuclear proliferation and the selling and processing of uranium.

George Robert Crawford was a man who genuinely made a mark on this world, and even for those who may have sometimes disagreed with him there was universal respect for the compassion and conviction he brought to the debate. Our condolences go to Peg, his wife, and the substantial Crawford family. Vale, George Crawford.

GippsTAFE: Leongatha campus

Mr O'DONOHUE (Eastern Victoria) — I wish to bring to the house's attention some good news from GippsTAFE. A media release on the GippsTAFE website entitled 'Funding decisions by the Victorian government make VCE more accessible to adult learners' states:

> As a result of recent changes to government policy, the Victorian certificate of education (VCE) is now more accessible to adult learners looking to return to study.
>
> Previously, any person over 20 years of age who had previously completed a TAFE certificate would have been forced to pay the full fee amount for VCE without access to valuable government subsidies.

The release goes on to say:

> This is exciting news, especially for those who left school early and are now looking to change their career, progress in their current career or return to study.

There is more good news on the TAFE front. Some members, including members on the other side of the house who represent Eastern Victoria Region, have predicted doom for the Leongatha campus and its Waratah Training Restaurant. However, I am pleased to inform the house that GippsTAFE has advised that the Leongatha campus will remain open. The acting chief executive officer, Ian Carroll, is quoted on the GippsTAFE website as saying:

> 'The number of courses GippsTAFE continues to offer remain extremely broad'….
>
> 'GippsTAFE will continue to provide courses in a diverse range of skills, including finance and business, education support, health and community services, general education for adults, sustainability and environment and in several service industries.'

Moreover, GippsTAFE has confirmed that the Waratah Training Restaurant will remain open. Its website says:

> GippsTAFE has confirmed that its Waratah Training Restaurant in Morwell will stay open and continue its important role as a provider of hospitality courses.

Hon. P. R. Hall — Very good news.

Mr O'DONOHUE — It is very good news. I congratulate GippsTAFE on this. It will be pleasing news to the community, despite the predictions of some members opposite.

Hazeldene's: processing plant

Mr DRUM (Northern Victoria) — Last Wednesday I was delighted to join the Deputy Premier, Peter Ryan, and the Minister for Agriculture and Food Security, Peter Walsh, to officially open a new processing plant at Hazeldene's chickens, after a $38 million capital investment by the Hazeldene family.

Hazeldene's directly employs well over 600 people and indirectly employs more than double this number, and its importance in the Bendigo region is growing by the day. Minister Ryan said that the Victorian government was happy to support Hazeldene's with its capital investment and was also happy to offer assistance through the Victorian Business Flood Recovery Fund for damage incurred at its prairie facility in the 2011 central Victorian floods, during which over 300 000 chickens were lost.

Bendigo: business forum

Mr DRUM — I was also delighted to join Minister Ryan and Minister Walsh later that day at a joint Department of Business and Innovation and Bendigo Business Council forum. Representatives of nearly 100

of the Bendigo region's leading businesses came together in the one room to discuss a series of issues and then had an opportunity to ask the two ministers to comment on those issues. It was a fantastic opportunity for those businesses involved.

I also know that the Bendigo Business Council was delighted to have the Deputy Premier, Peter Ryan, attend and speak at a dinner later that night. Many of the businesses were delighted to ask the Deputy Premier a whole range of questions in relation to how they can best promote their area, region and businesses.

Western Metropolitan Region: storm damage

Mr EIDEH (Western Metropolitan) — It has come to my attention that nearly eight months after the Christmas Day storm that wreaked havoc in my electorate there are still problems, with up to 30 families continuing to live in temporary accommodation and hundreds living in damaged homes.

I would like to congratulate the member for Keilor in the Assembly for continuing to offer support for the families who have not been able to put this event behind them. The storm, which was declared a catastrophe by insurers, saw 112 000 claims lodged. It is saddening that family homes within my electorate have still not been repaired. The family home is one of the most important things in maintaining a family routine, so when families are displaced for so long it is not surprising that reports are emerging of depression and family break-ups that have occurred as a result of the distress. It is truly appalling.

I would like to take this opportunity to remind the government and the Minister for Community Services that, despite her advice that there is nothing left to be done, hundreds of families are still suffering in the west due to either being displaced or living in a damaged home. I hope the government understands my constituents' pain and proactively helps these families. I also urge the insurance companies to continue to work through these claims as quickly as possible and to understand the chaos that these families are enduring on a daily basis.

TAFE sector: achievements

Hon. P. R. HALL (Minister for Higher Education and Skills) — My colleague Mr O'Donohue congratulated GippsTAFE on some of its recent announcements. A number of other TAFE organisations throughout the state are also doing some worthwhile and important work, and I want to highlight a couple of them.

First of all, I read an announcement in the press this morning that Wodonga TAFE has just signed a contract worth almost $10 million with the Australian Defence Force to deliver training in nursing and paramedics over the next three years. This is a very substantial contract which will mean an increase in jobs and business opportunities for people in that region. I believe Wodonga TAFE won the contract over 10 other organisations which were shortlisted. We are encouraging our TAFE institutes to go out there and win business.

I note that Advance TAFE has opened a new facility at the Bairnsdale campus in the last few days. It is a first-class facility which will assist it in the delivery of programs in that area. I also read in the *Shepparton News* this morning that GOTAFE will not be cutting courses and there will be no job losses for the remainder of this year. It is all go up there at GOTAFE. I congratulate the chief executive, Paul Culpan, and the chair, Michael Tehan, on their great leadership of that organisation. I know all our TAFE institutes are working hard on transition plans at the moment. They have challenges ahead, but there are lots of good news stories as well.

FORESTS AMENDMENT BILL 2012

Second reading

Debate resumed from 21 June; motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Mr LENDERS (Southern Metropolitan) — Normally when a member gets up to speak on a bill they say how their party is going to vote, but I rise to say that the Labor Party's decision on how it votes on this bill will depend on where this debate goes and the government's response to it. The bill seeks to do a number of things, and I will not go through them because they are clearly stated in the minister's second-reading speech and my colleague Ms Neville, the member for Bellarine in the Assembly, has clearly outlined the Labor Party's position on all these issues.

On the issue of firewood, you may recall, President, that on five occasions last year I raised adjournment matters with individual ministers about various parts of the Liberal Party's policy. I will not say this is the coalition's policy because it was not; it was the Liberal Party's policy. Ms Lovell, as the spokesperson at the time, put out a press release which mysteriously

disappeared from the Liberal Party website but was given to me by an irate constituent from east Gippsland. The five adjournment matters I raised essentially came down to how dysfunctional the policy document is, seeking to be all things to all people.

In the end there are issues for local government, for roads, for small business, for the Minister for Environment and Climate Change and the Premier, if my recollection is correct, in relation to some of the administrative inaccuracies of the bill. Of course at the time the various ministers who bothered to answer adjournment matters were fairly contemptuous. Some of them were courteous; I think Mr Walsh was courteous, but I cannot say any more than that.

It is charitable to say this was a botched policy. This legislation in effect irons out some of those glitches that were raised through that series of adjournment matters. Public policy is never an easy matter, and here we obviously have a couple of strong competing interests on how to regulate this. As I am sure my colleagues from the Greens party would advocate, there are strong issues about the environmental impact of taking firewood out at all. Then my colleagues in The Nationals would probably hold the view that firewood is a resource which regional communities should have greater access to. This is not an easy policy debate.

Hon. P. R. Hall interjected.

Mr LENDERS — I am not disagreeing with Mr Hall; I am saying it is a complex policy debate. A number of people in regional Victoria are concerned that a scarce resource is being pillaged — as they would describe it — by people from Melbourne getting trailer loads of firewood and commercially selling it in other areas. You also have a number of small businesses in regional Victoria which rely on firewood sales, and their businesses are being completely gutted by the government's decision to deregulate the practice.

We also have occupational health and safety issues around how people get the wood, road safety issues with trailers and the issue of whether it is the responsibility of the municipality or VicRoads. There are multiple issues. Then there are many farmers who have diversified their farming activities to include mini-plantations, for want of a better term, and have suddenly found that their entire business venture has been undermined by these government decisions. None of these issues are easy.

Coming to the critical point of my contribution to this debate, many of the aspects of the legislation would have a lot more credibility if there were some scrutiny of the implications for the groups to which I have referred as well as the numerous others I could name. I now formally move a reasoned amendment:

> 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 the proposals contained in the bill have been referred to the Environment and Natural Resources Committee for inquiry, consideration and report'.

When the member for Bellarine moved this reasoned amendment when the bill was being considered in the Assembly, the government was concerned and said that there needed to be a specific time line. I flag that from my perspective I will entertain an amendment to put in a time line for when the committee must present that report.

Mr David Davis, who represents the Minister for Environment and Climate Change in this house, is not here at the moment. I point out for Mr Davis, who, after his contribution to the adjournment debate last night, has shown that he is a great fan of parliamentary business going for a long time, that there are a lot of clauses in this 43-page bill, and I certainly have a lot of questions on this 43-page bill. I can ask those questions here in the chamber during the committee stage. I am glad Mr Davis is now in the chamber. I will certainly get Ms Lovell's press release and I will certainly go through the five adjournment matters that I raised and the responses to them. I will go through the clauses of the bill, I will go through Ms Lovell's press release and I will go through a series of media commentaries and seek from Mr Davis some clarification of what this bill actually means.

This is a role for the Parliament. I am very happy to do it in the committee of the whole of this house. We have all the time in the world that we need to do this. If we are still considering this bill at midnight, I will be relaxed about that, because these are questions that need to be asked.

The more pertinent point I make about this bill, though, is that the opposition's reasoned amendment proposes that the procedure of the bill be considered by a joint investigatory committee of the Parliament. That committee has three government and two non-government members. It has the capacity to go through this bill — that is, it has the capacity to deal with the issues associated with the bill, to conduct hearings and to call witnesses and to prepare a report — and ultimately that committee has a majority of government members. In the end the committee may find that a lot of the issues are addressed. Members may still disagree on one or two of them and opposition

members may vote against them, but the committee will at least bring those issues to light.

This policy is just a shemozzle, and it has been from the day that Ms Lovell put out the press release in East Gippsland. May I say that putting out the press release was futile. It did not win the seat for the Liberal Party; The Nationals are smiling over this seat. The press release was so powerful that it was taken off the website lest anyone hold it to scrutiny, but it is being held to scrutiny.

What we have here is a bill reflecting a policy by which the government is trying to be all things to all people and a bill which is administratively complex. The only review of the policy is an internal government review. As I said in my comments on Mr Somyurek's motion on government procurement policy yesterday, if people do what happened in the Institutional Revolutionary Party in Mexico and the Communist Party in the Soviet Union and in the end everything is internal and is done behind closed doors inside the government party room where a small number of people review themselves — —

Mr Finn — Sounds like the Gillard government!

Mr LENDERS — Ultimately, Mr Finn, you start making mistakes. I will not reflect on the forensic abilities of Ms Lovell and the Minister for Environment and Climate Change, Mr Ryan Smith — or Mr Peter Ryan, for that matter, as that is a bit of a stretch. I will leave that to others. What I will say on the institutional aspect is that where a complex piece of legislation which is being proposed to be put in place to deal with a bungled policy in a complex area is not subject to scrutiny, within months the government will be bringing to this place another set of amendments to this bill. The government will look goofy.

I say to government members here that if they have absolute confidence in the forensic ability of their process, which was to be the do-all and fix-all administrative process before they even got to the complex policy but which got them into this mess in the first place, they are very, in fact exceptionally, courageous in a *Yes, Minister* sense.

I will not go on anymore in terms of my contribution to the second-reading debate on this bill, but I urge the government to consider this referral to the parliamentary committee. Again, without offering gratuitous political advice to the government, let me be so bold as to suggest that if it were to let one of these bills through to one of its government-controlled committees on a time line of its choosing, then it may have a skerrick of credibility when I, another Labor member or a Greens member start going on about parliamentary scrutiny and the functioning of the Parliament.

I am not sure what government members are afraid of, unless they do not trust the three government members on this committee. The government could allow a bit of scrutiny above and beyond the internal party room and cabinet scrutiny it has applied to this legislation. That scrutiny did not work when Ms Lovell put out the press release in the first place. This is a complex policy area with very divergent views. It is hard enough to deal with without also having administrative glitches over the top, which I guarantee the government will experience.

I urge the house to support the reasoned amendment. If the reasoned amendment is not supported and the old 21-19 rule applies, I flag to the minister that I will have a lot of questions in the committee stage that would more appropriately be asked at and dealt with by the joint select committee to which I am recommending this bill goes.

Mr BARBER (Northern Metropolitan) — Here we go again. Only a few months later we are back discussing firewood as the government has another stab at regulating this area — in fact to fix the problems that it created. Firewood, as has been noted, is an important resource to people. It is also quite pleasurable to burn firewood and to sit by the fire and watch it burn. Henry David Thoreau noted that when you use firewood it warms you twice: once when you cut and pack it and the second time when you burn it.

Offering free firewood seemed like a good idea to the government at the time, but it has created a free-for-all with some real impacts, not just to the environment but also across the whole system of regulation. There used to be a fairly simple system of getting a permit from the Department of Sustainability and Environment (DSE) to collect firewood in designated areas, but the government now comes to us with 43 pages of legislation that is needed to attempt to re-regulate the issue of firewood collection from public land.

The government has moved from the free-for-all approach that created an open season on firewood collection, but in the process it has created more problems for itself. Some of those problems are made clear in a press release issued by DSE. This press release is in the form of a community service announcement, but if you look through it, you realise that this is DSE trying to cope with some of the problems created by this government's policy

approach. In this example, issued on 7 August in the north-eastern region, it says:

> Firewood collectors across the north-east region are being reminded that the next opportunity to collect firewood on public land will be during the spring season commencing September 1.
>
> The reminder follows a number of incidents across the state where trees have been illegally felled on public land.

Alan Dobson, land and fire regional manager for the north-eastern region of DSE, noted that it is illegal to cut down standing trees for firewood. He is quoted in the press release as saying:

> Only fallen timber can be collected …
>
> People collecting firewood on public land outside the designated seasons are committing an offence …

The press release continues:

> The maximum penalty for illegally felling, cutting or removing forest produce is a fine of up to $7042 and/or 12 months imprisonment …
>
> Mr Dobson said the firewood seasons combined with specified designated collection areas and limits helps ensure that the collection of firewood from public land is undertaken in a sustainable and equitable way.

Absolutely! This is why we need to regulate, and regulate well, the collection of produce from public land. The media release goes on to note that the department is conducting targeted patrols and recommends that people who purchase firewood first check that the firewood merchant they buy from displays and demonstrates a commercial forest produce licence. Licensing is an area where we could get some better regulation, and I will come back to that in a moment. In putting out this seemingly community-minded press release, the DSE is really pointing to the problems that have been generated by the government's new approach to firewood since it has been in office. Underlying that — and it goes to the reason the Greens will be supporting Mr Lenders's reasoned amendment and the Labor Party's inquiry into firewood regulation — are the ecological impacts of firewood collection in and of itself.

If we go to the Department of Sustainability and Environment website, we find a detailed literature review on this subject put together for the department by the University of Melbourne — *Ecological Impacts of Firewood Collection — A Literature Review to Inform Firewood Management on Public Land in Victoria*, with the listed scientific authors. It goes on for many pages discussing issues such as the different forest types, ecosystem processes relating to wood removal, soil and nutrient processes, carbon cycling, soil and water quality, habitat for mammals, birds, reptiles, amphibians and invertebrates, the impacts on flora and fungi, fire consideration, the habitat quality of logs, the harvesting operations themselves and how they work, and so on and so forth. I recommend to anybody that they read this document and learn more about the issues.

Our native ecosystems evolved through a process in which coarse woody debris — large logs on forest floors — form part of the nutrient cycle and habitat of animals. Because eucalypts form hollows naturally, they rot out from the centre. Large numbers of creatures have evolved to live in those hollows, whether they be hollows still up in the trees or hollows in branches that have landed on the ground. The scientific research is very clear that there is a direct relationship between that habitat — the availability of coarse woody debris on the forest floor — and the existence of populations of animals that depend upon it as well as their ability to survive predators and to breed and so forth.

Inevitably, if I read the Labor opposition's reasoned amendment correctly, the Environment and Natural Resources Committee would have the opportunity to take submissions from members of the public who want to talk about the ecological impacts of this bill and this particular regulatory regime that the government is now patching on to the earlier attempt it had at it. Naturally we can get some information about the economic value of that firewood. In commercial terms we know how much is licensed to be collected; we know the retail value of that. We know that much of it comes to Melbourne. I used to live directly opposite a firewood merchant. He sold firewood in winter and ice in summer: he had a good, year-round business.

We also know there are farmers, particularly in northern Victorian, who want to be in the commercial tree-growing business, providing a product in the firewood market. I have met quite a number of them, and I have also read their submissions and their economic documents. There is no doubt in my mind that in certain areas, some of which are marginal for farming, some of which experience high levels of salinity and some of which have had their irrigation water rights removed, firewood growing could provide a good supplementary farm income for people who find that part of their farm would be suitable for this business. But they need a stable and long-term regulatory and market environment and incentives, because in the tree-growing business you are by nature planting trees, investing in them and then harvesting them at the end of a decade or two, with the best firewood species often also being slow growing. It is extraordinarily difficult for these farmers to set up a

viable industry in this area when people can get the same wood or something similar free from the bush and when the government keeps changing its view on how it wants to manage this industry.

Mrs Petrovich — You shut down the logging industry.

Mr BARBER — It is clear Mrs Petrovich has not heard the calls of those commercial tree growers despite the fact that there are many areas across her electorate in the northern part of Victoria that would be suitable for commercial tree growing. Those tree growers have made their submissions known to the government, and as part of the mix going into this inquiry the government should listen to and encourage submissions from those groups. I am not suggesting the inquiry would be 'way out' in terms of its scope, but this is a bill that has been put forward to regulate firewood collection on public land. The bill amends some objectives in the act — that is, the Forests Act 1958 — which relate directly to the question I am raising, which is the provision of firewood through long-term growing on public land.

It is a cause that I will continue to support and promote at any opportunity. I have heard the call from those tree farmers and potential tree farmers, and it is time the government also heard the call, had another look at the impact of firewood collection on public land and saw that there is a win-win opportunity here if it wants to get the regulatory settings right. From the number and frequency of bills that it keeps bringing back to this Parliament, from the known events that are happening out there in the bush and from the Department of Sustainability and Environment's plaintive press releases attempting to encourage people to do the right thing, it is clear that the government has got it wrong, and for that reason we will be supporting Mr Lenders's amendment.

Mrs PETROVICH (Northern Victoria) — I rise to speak on the Forests Amendment Bill 2012, and from the outset I would like to say that this is the culmination of the delivery of an election commitment to the people of Victoria. It acknowledges the fact that many people in Victoria either do not have access to alternative fuel sources or simply choose to use wood as a heating method. We are committed to assisting those communities in the collection of domestic firewood and making things as simple as we can by abolishing some of the red tape around the permit system, which I think goes back to 1956. This bill seeks to address some of those issues.

Under the permit system there have been some inconsistencies in approach. In some areas there was a process of collection through designation on maps, in other areas there was a system of permit-holders having to go to a depot, having first purchased a permit, and then purchasing their wood supply from the depot. This bill will clear up some of those inconsistencies. In fact 22 different approaches across the state were identified. This will put in place a single system, which I think has in the first instance seen some issues around collection which have highlighted some of the complexities that existed under the permit system. Many of the issues which have arisen in the northern region have been raised by me, by councils, community members and by staff from the Department of Sustainability and Environment and parks, who I have spoken to around what is happening on the ground.

There are always those I call the 10 percenters; no matter what system is in place, they will not do the right thing. The bill before us today will assist in the implementation of penalties for and in fact prosecution of those people, the 10 percenters, who are not doing the right thing. As I said earlier, I doubt the practices that have emerged are new. Perhaps they have been going on, but because of the nature of the permit system which existed historically they previously went largely unnoticed.

The system introduced by the bill will provide better environmental outcomes by managing clearly-defined coupes and ensuring that those who do the wrong thing are prosecuted. Enforcement will now be possible through this bill. It will ensure that people are not out in the forest doing the wrong thing, that hollow trees are preserved for our wildlife and that areas are designated appropriately.

During the last 12 months or more, the wet, the rain that we have had, has caused some significant issues around access to our forests. Some of the most damaging activity in forests is caused by heavy vehicles going into them in the wet season. In the wet season people have felt exasperated because of the short supply of wood. This is because people could not access some of the coupes. People across northern Victoria have told me this. It has been difficult because access to the forest in many areas has not been easy. It has not been possible to access some of the areas that we would have liked to because they have been wet and flooded.

Today I would like to address the issue of roadside collections. It is very important to put on the record what we are doing in relation to collection in forests which does not include roadside collection. We have two types of roads in Victoria: local roads, which are

managed by our local governments, and major roads, which are managed by VicRoads. For a whole range of reasons I think it is fairly easy to see why there are some difficulties around timber collection on roads managed by VicRoads. This government has a philosophy of empowering local governments to ensure that they have greater control. They will have power to make decisions about how timber is removed on roadsides and whether they want to go that way.

One issue that has been raised with me is about signage in some areas, including designated areas. We are working very closely with DSE staff. Today I have a copy of a sign with me which says:

> Video surveillance cameras may be installed in this firewood collection area. Authorised officers conduct regular patrols of the forest. Please ensure you abide by collection rules, as significant penalties apply.

One of the keys of this signage is this statement on it:

> If you suspect illegal activity, contact DSE customer service centre on 136 186.

We want people to have some ownership of this program. It is about the community. If people are doing the wrong thing, they are going to make it much more difficult for those people who rely on that service.

One thing that Mr Lenders talked about was the basis of commerciality. The daily amount of timber that can be collected is approximately a 7-foot-by-5-foot trailer load, and the total amount is 16 cubic metres a year. Having used firewood as my main source of heating until fairly recent times, I know that amount of firewood will not heat a home for a whole year. There are two different markets. There is enough of an opportunity for commercial sellers of firewood to have plenty of the market share. There will still be people who choose not to go into forests to collect their own wood and who find it much easier to hook up a trailer and go to a wood yard or ask their wood merchant to deliver wood to them.

Education is relevant when it comes to signage. We have a very good website which assists people. There is no doubt that people would still have to top up their collected wood with, as I said, commercial supplies. This bill goes a long way to lifting the burden on Victorians who have no alternative to get wood or who simply have a preference on how they get wood.

It will be good if I put on record the overview of the legislative scheme. I know it has been done a number of times. The premise of the bill is to abolish the need for domestic firewood permits. It will establish two firewood collection seasons in each financial year. It will establish a process for designating firewood collection areas in state forests and those regional parks where firewood collection is currently allowed. It will provide the flexibility to ensure that firewood supply can be managed over the long term and that local needs and unforeseen circumstances will be able to be dealt with. It will create a series of offences aimed at encouraging appropriate collecting behaviour, deterring illegal commercial firewood collection activity and providing checks and balances to ensure that firewood collection is sustainable in the future and is undertaken in a socially and environmentally responsible manner. It will enable a person who is unable to collect firewood for themselves to nominate another person to do so on their behalf.

Elderly people or disabled people in the community can advocate for either another person or service clubs to collect wood for them.

Mr Lenders interjected.

Mrs PETROVICH — There are always alternatives, Mr Lenders. I think one of the issues in country communities and many other communities is that people like to help each other. I have seen this many times. Service clubs still play a very important role across the state.

Mr Lenders interjected.

Mrs PETROVICH — You are right, Mr Lenders. It is actually voluntary. I could continue to talk about a range of things, but I think many of them were covered in debate in the lower house. We have talked about the collection of a maximum of 16 cubic metres of firewood per financial year per household. A lesser amount of wood can be collected in particular regions specified by the Secretary of the Department of Sustainability and Environment. This is all about ensuring we use fallen timber. Timber cannot be cut. Standing trees cannot be damaged. We do not want to collect wood that is hollow or has moss or fungus growing on it. I think the collection of up to 2 cubic metres of firewood a day is very reasonable.

I look forward to the committee stage, because I think many of the issues that have been raised with me in the Northern Victoria Region and in other areas as well as in the house today can be addressed. I think it will be an enlightening committee stage. I commend the bill to the house.

Mr RAMSAY (Western Victoria) — I must say from the outset that I thought I would never see the day when I would find some common ground with my Greens colleague Mr Greg Barber, but I think that day

has actually arrived, and I will refer to that in the summary of my presentation. Firstly, I am happy and proud to speak to this bill, which delivers on an election promise. I would like to briefly outline the purpose of the bill and the impact it will have and then refer to some of the comments made by Mr Lenders and Mr Barber. I apologise because some of this has been stated already, so I will be quick.

For the record, the purpose of this bill is to insert a new legislative scheme in the Forests Act 1958 to provide for the collection of firewood for domestic purposes from areas of the state forest. In essence the bill will abolish the need for a domestic firewood permit and will establish two firewood collection seasons in each financial year, as my parliamentary colleague Mrs Donna Petrovich has already stated in her contribution. This will protect the time-honoured tradition of the Victorian community having accessibility to an energy source that provides not only an important fuel but an essential one that is widely used in rural areas and provides a cheap source of heat. It also reduces the fuel load in forests that have little environmental use for that wood and thereby reduces the ongoing danger of a possible high fire risk to those areas.

It also removes some of the restrictive red tape and regulation burdens that permeated the culture of the Department of Sustainability and Environment during the Labor-Greens alliance of government, and still does. Much more work needs to be done to remove the green ideology within the DSE bureaucracy. The bill will also establish a process for designating firewood collection areas in both state forests and regional parks, which should satisfy the Greens rants about wholesale slaughter of forests and abusive collections by mad firewood marketeers who are more concerned with profit than protecting habitats of native marsupials. They ignore the fact that the bill limits the amount that can be collected to 2 cubic metres per person per day, with a maximum of 16 cubic metres per household per year. Regardless, this will not stop the rhetoric and hypocritical bile that spills from the Greens saying that the environment will be ruined and that any human activity should be locked out of all forests and parks, with a death wish on anyone who dares intrude on this mystical wonderland.

The bill creates collection rules with a balance of sustainability of forest resource but provides for a more affordable energy option, particularly for a demographic that cannot afford electric or reticulated gas heat, particularly given the introduction of the carbon tax and the increases that will cause in the cost of heat to every Victorian. If those rules are broken, new offences are activated for the collection of firewood outside a defined firewood collection area and breaches of the firewood collection rules inside a firewood collection area during a firewood collection season. It sounds a bit of a mouthful, but it goes to what Mr Lenders said in relation to the oversight of and compliance with the rules in relation to firewood collection. I see that he is not even listening to my remarks, so I assume it is a bit of a one-sided debate. There is self-obsession on one side of the debate.

The legitimate investment by land-holders in agroforestry — and I think this is where Mr Barber and I have finally found some common ground — is an important investment, and it requires important government initiatives to foster that investment.

Mr Barber — Such as?

Mr RAMSAY — It should not be compromised, as offences in this bill will also relate to selling wood collected under the scheme, accepting payment or reward for collecting firewood on behalf of another person or breaching the volume limits of collection per year. At another time and in another place I will be more than happy to talk to Mr Barber about what incentives and support we might provide to encourage more commercial investment in agroforestry.

Mr Barber interjected.

Mr RAMSAY — In fact, now that he has mentioned that, it is pleasing to see that the Minister for Environment and Climate Change, Ryan Smith, will be visiting my electorate next week to talk with the Otway agroforestry group about the important work it is doing and where the government might be able to assist.

The policing of the firewood collection is enhanced by having two short collection periods — from 1 September to 30 November and an autumn season from 1 March to 30 June — which keeps collection away from the winter period when environmental damage due to vehicular movement is high, and also the summer period of high fire risk. It is important to note that these two short collection periods will hopefully satisfy the concerns Mr Lenders raised in relation to the oversight and compliance that will be required to make sure those working under the new rules actually abide by them.

At the end of the day the secretary still has the responsibility and ability to retain control of the firewood resource in state forests and can close a firewood collection season if there is a demonstrated risk to the resource due to external forces. As in the famous statement by astronaut Neil Armstrong, ‘One

large step for mankind', this bill is one small step towards removing the shackles of regulation imposed on firewood users. But a much bigger task is before us as we reform the archaic, costly burden of regulation of native vegetation laws that have hamstrung the productivity of our food producers and provided significant fire risk to our communities. Worst of all, those regulations make no sense if the real target was both to preserve the native vegetation in our forests and on private land and to have willing stakeholders do that. That would not actually affect the productivity but would provide the purpose.

The Victorian community is looking to us as government members to help drive the environmental reforms that are strangling rural businesses in this state. This bill is a sign that rational common sense underlies striking the right balance to provide outcomes for both humanity and the environment. My hope is that we have the strength of conviction to continue to challenge the nonsense that the Greens have inflicted on us over decades.

Mr P. DAVIS (Eastern Victoria) — It is a delight to join in this debate. The reason it is a delight for me particularly to join in this debate is that this bill reflects some advocacy — which Mr Lenders I am sure would acknowledge — I pursued throughout the course of the previous Parliament. In the end Mr Lenders resorted to trying to make pejorative commentary around my representations to the Parliament about access to firewood. I think Mr Lenders has studied many — —

Mr Lenders — I think it was your personal needs in national parks rather than the general policies.

Hon. D. M. Davis — That is ungenerous.

Mr Lenders interjected.

Mr P. DAVIS — I think Mr Lenders is conflating a couple of issues in that interjection. I will come back to the fact. The fact, as members will recall, is that over a long time — and I am sure the Leader of the Opposition well understands this, because I notice he has picked up the theme in recent times; indeed since he has been the Leader of the Opposition he has adopted pretty much my position — I have been advocating for better access to firewood for rural Victorians. I think that is a fair view to have, given that many Victorians are not in a position to enjoy the benefits of reticulated natural gas and that therefore their cooking and heating options are very limited. They may be best served by using firewood to maintain their comfort.

Over the last decade more has probably been said about firewood in this house than was said in the preceding hundred years, to be frank. The legislation before the house, which in effect creates a legislative scheme for the collection of domestic firewood that does not require a person to hold a domestic firewood permit, is a reflection of a policy position taken to the election by the coalition. That policy position was informed by a lot of contributions, particularly from rural members, over a period of time and came to the fore in the Assembly electorate of Gippsland East, where the local campaigns of both the Liberal and Nationals parties were strongly in support of a policy to free up access to firewood and to relieve the burden of bureaucracy relating to obtaining permits.

I cite an example. I recall that about four years ago, whilst in Mallacoota on one of the community visits we make — the so-called constituent surgery visits we make to the towns around our large electorates — I was flabbergasted that there was no access and there had not been access for some weeks to the firewood permits which would ordinarily have been available through the Department of Sustainability and Environment. There were no permits held in that office, so you could not have got them there, because the office was never open under the administration of the previous government. Under the permit system, permits were generally supposed to be available through one or other of the local supermarkets, but the supermarkets could not get access to the permits to make them available to the community. As a consequence the communities of Mallacoota, Genoa and all points to the east of Orbost had little or no access to obtaining a firewood permit, which meant that if community members were to go out collecting, they would be in breach of the law.

Mr Barber interjected.

Mr P. DAVIS — I am not sure that they ran out of fishing licences, but they ran out of firewood permits. That was but one example of the unnecessary burden of bureaucracy in the regulation of firewood collection. The scheme introduced by this legislation is in my view worthy of support. I heard some commentary, which I think was from the Leader of the Opposition, about ironing out the wrinkles in the policy announcement made prior to the election. As a former minister and indeed a former Treasurer, Mr Lenders would well know that often behind the simplicity of a media statement announcing a policy there are layers of complexity, in terms of the regulatory framework, which have to be addressed. Thus it is that this legislation puts into effect the policy commitment of the coalition.

I will segue a little to a further discussion on the collection of wood, referring now to wood that may be for use other than just as domestic firewood. It may be that there is a very significant issue afoot relating to the regulation of both firewood collection and the collection of wood more broadly — that is, forest harvesting. This issue falls into the same basket.

Many members would know, anybody who has been listening to Jon Faine on ABC radio 774 this morning would know and others in touch with the forestry industry would know that a significant problem is arising at the present time in the Central Highlands — namely, the illegal activities of those who can only be described as ecoterrorists, people who are wearing balaclavas and illegally accessing worksites where there is a high degree of risk of personal injury.

Mr Barber — Especially if you get bashed.

Mr P. DAVIS — Mr Barber, you invite yourself into this. Mr Barber will stand up for illegal terrorism in the environmental debate. That is what he will defend. His interjection shows entirely the disconnect in his views between an act of principle and an act of advocacy. I will defend anybody's right to argue their case, and I will defend anybody's right to representation of their views, but I will absolutely deny the right to industrial thuggery, which we have seen in industrial disputes, which we are now hearing being advocated by people on Mr Barber's team and which Mr Barber has just entered the debate to defend — that is, acts of eco-thuggery. These involve people putting on a balaclava, going onto a worksite and intimidating workers who are going about their lawful business.

The forestry industry is highly regulated and has very high risks in terms of industrial workplace safety. The forestry industry is one of the industries that has for a long time been working very hard to reduce the number of workplace safety incidents. One of my very good friends, with whom I went through school and agricultural college, died in a forestry accident within a year of graduation, and I know personally how fraught that industry has been over time.

That people could want to advance their policy by campaigning against the workers, who are simply going about their lawful business, is a disgrace. It is an absolute disgrace that Mr Barber would defend that action, and I think he should be ashamed of himself. I say to Mr Barber and other members of the house that it is absolutely appropriate for people who have a difference of view with the government on its policy to advocate on the issue, but it is totally inappropriate for them to resort to intimidation, harassment and interfering with the lawful right of people to go about their work and to go about it safely. The activities in the Central Highlands by environmental vandals, in the form of ecoterrorists who are abusing the goodwill of the community by trying to advance their cause by intimidating people who are in a high-risk work situation, are a disgrace.

I am pleased to support the bill before the house. I am conscious that we have many other matters to deal with today, but I would like to simply say: let us stick to the principles of public policy debate and ensure that people in this state have confidence in the regulatory regime and can go about their work — —

An honourable member interjected.

Mr P. DAVIS — Their trade — in an orderly fashion without the intimidation we are seeing at the present time in the Central Highlands.

I look forward to the swift passage of this bill. Then we can see firewood collection permits phased out for all time. People who live in rural areas have a much higher awareness of the need for access to low-cost heating. I make the point advisedly that many of the people who depend on firewood are in a very low socioeconomic category. Indeed we know a high proportion of pensioners in rural areas depend on firewood for their heating in winter. This policy is a very good policy to support rural Victorians, and I look forward to its introduction following today's passage of the bill.

House divided on amendment:

Ayes, 17

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

Noes, 20

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

Pairs

Darveniza, Ms	Davis, Mr D.

Amendment negatived.

House divided on motion:

Ayes, 20

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

Noes, 17

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

Pairs

Dalla-Riva, Mr	Darveniza, Ms

Motion agreed to.

Read second time.

Committed.

Committee

Hon. D. M. DAVIS (Minister for Health) — I seek leave for Mrs Petrovich to sit at the table.

Leave granted.

Clause 1

Mr LENDERS (Southern Metropolitan) — I have a number of questions about clause 1. I am seeking clarification from the minister on these questions, which will certainly assist with some of my questions on other clauses that I am seeking answers to. During the second-reading debate at least two, if not three, government members said that this bill was about reducing the regulatory burden and cutting red tape in regional areas. My first question to the minister is: has this bill been subjected to either a business impact assessment or a regulatory impact statement?

Hon. D. M. DAVIS (Minister for Health) — My information is that the decision made by cabinet was that a business impact assessment was not necessary on this occasion.

Mr LENDERS (Southern Metropolitan) — In opening the batting on this bill, in my comments on the second-reading speech I referred to Ms Lovell's press release of November 2010, about which I have raised five adjournment matters. I got some answers from the various ministers to whom those matters were addressed, including Mr David Davis. This highlights my point that when ministers respond to adjournment matters it actually helps to inform members of the house so that they do not have to ask those questions during the committee stage of bills.

My starting point is that both Mrs Petrovich, definitely, and Mr Philip Davis made the comment that this bill would reduce red tape. I, for one, do not accept assertions that have been made by the Baillieu-Ryan government that bills it has introduced will reduce red tape, and I do not think those assertions are enough for anybody in the community to believe that will be the case.

On almost every piece of legislation for which I have been the lead Labor speaker in this house — in fact on every piece of legislation for which I have been the lead Labor speaker — the response from the Baillieu-Ryan government has been, in one form or another, the same: this government has not had a regulatory impact statement prepared. At least Mr Hall has had the decency to say, 'You do those only on regulations', and Mr Rich-Phillips has had the decency to say, 'We did not do it because it is a revenue bill'. And of course you have the Hall doctrine that if a bill was an election commitment, then that is cool.

Hon. D. M. Davis interjected.

Mr LENDERS — Mr Davis has said that this bill is an election commitment. I do not like to embarrass Ms Lovell; in fact, I do like embarrassing Ms Lovell, but I will not seek to do so on this occasion. I could spend a fair amount of time going back through her press release and the five adjournment matters, but for the purposes of not boring the house with something I have already done, I will not. However, I will say to the committee that it is not sufficient for the government to simply assert it is cutting red tape and to then just expect the community to accept that it is.

I am not interested in prolonging this debate for the sake of it, but I am happy to table the vast number of clips from the *Weekly Times* and other newspapers which are concerned about some of the paperwork. I will simply assert that there are a lot of people in the community who think that a lot of red tape will come out of this, so I say to the minister: if there is no regulatory impact statement or business impact

assessment, on what basis do Mrs Petrovich and Mr Philip Davis assert there is no red tape beyond a government press release?

Hon. D. M. DAVIS (Minister for Health) — As the member understands, this was a coalition election commitment. This bill seeks to implement that election commitment and to do it in the most effective and appropriate way. This is obviously a bill about which the member has a different view, and that is his absolute entitlement. But we believe it is a bill that regulates this area effectively and does so in a way that will be fair and will provide for a sensible regime.

The DEPUTY PRESIDENT — Order! With the indulgence of the house, may I suggest that during the committee stage Mr Lenders speak from the Deputy Leader of the Opposition's place so that I can see when he is trying to get my attention.

Mr LENDERS (Southern Metropolitan) — Deputy President, this will excite Mr Guy unbelievably — he speculates on my leadership ambitions all the time — but in deference to you, I am happy to do that.

Hon. D. M. Davis — I promise that I will make note of it.

Mr LENDERS — I expected Mr Davis to comment, but I will not seek to hold him to that commitment. Exploring this issue further, Mr Davis says it was a coalition election commitment. If you assume that the test is that if it was a coalition election commitment, then it is a different standard to others, I put to the committee that I have seen no reference on the website of The Nationals in which a detailed policy is articulated. This is not a criticism; it is just a fact.

However, there is a Liberal Party press release in the name of Ms Lovell that was distributed in East Gippsland but not put on either the Liberals or The Nationals' websites. So I ask Mr David Davis: why is a coalition government election commitment contained in a press release that is not on either the Liberal or Nationals' websites? It is not a Nationals' press release; it is a Liberal member of Parliament's press release, distributed in one electorate, and it is the only evidence I have found of a coalition election commitment. I would be delighted to be enlightened as to how this is suddenly a coalition election commitment when it was contained in a single press release from Ms Lovell in Gippsland East.

Hon. D. M. DAVIS (Minister for Health) — I think it was widely understood throughout country Victoria that the coalition policy was to provide a different regime for firewood collection that made it much easier and which allowed people in country communities to have greater access to firewood in a regulated way but in a way that still honoured a policy commitment made by the coalition — that includes the Liberals and The Nationals. This was, as I say, broadly understood throughout country Victoria and was certainly something about which many coalition members spoke.

Mr LENDERS (Southern Metropolitan) — This is a committee stage debate on clause 1. I find the new test quite an extraordinary one. Mr David Davis asserts that it was a coalition election commitment. I am not disputing that Mr Drum, as a member of The Nationals, would support it; I am not trying to pretend anything in those areas — —

An honourable member interjected.

Mr LENDERS — No, I am not. I am just trying to forensically — —

Hon. D. M. Davis — As the other Mr Davis indicated earlier in the chamber, this was much discussed in this chamber during the last Parliament by a number of speakers on the then opposition side. They made it very clear — —

The DEPUTY PRESIDENT — Order! Mr Davis can make a quick point by way of interruption but not a speech.

Mr LENDERS — I want to explore this. The rationale for not doing a business impact assessment or a regulatory impact statement is it was coalition policy. I do not accept that premise. On that basis one could argue that bills lobbed into the Supreme Soviet are the Communist Party of the Soviet Union's policy or bills considered in the National Assembly of Mexico are the policy of the Institutional Revolutionary Party and should not be scrutinised.

Let us assume that that is the rationale: that 21 government members in this chamber are comfortable voting for what is coalition policy. Mrs Petrovich talked a lot in her second-reading contribution about northern Victoria, and good on her for being passionate about northern Victoria and good on the Greens for giving her the chance to be advocating for northern Victoria in this house. Mrs Petrovich talked about her area, but the only policy I saw before the election which was specific — and this bill does not actually reflect all of that but let us be gracious and say it does — was a press release from Wendy Lovell, now Deputy Leader of the Government in the Legislative Council, and Liberal Party spokesperson on country Victoria in Gippsland East.

The press release was not on the Liberal website or The Nationals website. It was not a coalition election policy.

If the rationale for why this house should rubber-stamp legislation without any regulatory impact statement or business impact assessment is that it is coalition policy, the thinnest skerrick we are asked to deal with today is a press release from a now Liberal minister in one electorate and an assertion from Mr David Davis that people spoke of it in this house.

Mr Philip Davis said that firewood was spoken about often. I would dare say a house committee in this place 100 years ago would have talked about nothing but firewood when the building was cold, but the fact that someone has spoken of something in this place does not make it a policy position of a political party. It is a fact that Mr Philip Davis and others spoke in adjournment debates about it being a problem, but there was not a solution put up in this place. The only policy we have seen in this place was put by Ms Lovell in Gippsland East to a local paper. It did not make the website of the Liberal Party or the wesbite of The Nationals, but on the basis of that we now have a coalition policy that we are meant to check.

Deputy President, I have more technical questions to ask but I will stop with this: we know the government has 21 votes and will use them ruthlessly, but it would be nice if we had something a bit more substantive as to why we are doing this other than an assertion that this is somehow or other a mandate issue and the fact that Philip Davis talked ceaselessly about hiking and camping through East Gippsland and not having any firewood at night. I do not think that equates to a root-and-branch approach — —

Mrs Peulich — A pun!

Mr LENDERS — It is a pun. I do not think it equates to a root-and-branch approach that deals with 16 cubic metres here, 4 metres there, 2 metres there and a whole range of other very technical areas in this legislation. One press release was sent out slagging off the Labor government and one government member talked about how stressful it was to be hiking in a national park and to have to find some firewood.

The DEPUTY PRESIDENT — Order! I will call on the minister but I will get some clarification from Mr Lenders. I think he ended on the point that these was his concluding remarks in relation to — —

Mr LENDERS — I want to make some more remarks in relation to clause 1.

The DEPUTY PRESIDENT — So does Mr Barber, so I will give Mr Barber the call next.

Hon. D. M. DAVIS (Minister for Health) — I will respond to Mr Lenders's comments. This was coalition policy. It was broadly understood throughout country Victoria, and a very clear number of coalition members spoke about this in country Victoria. I believe it was very much accepted that the coalition would take these steps, and this is obviously the detailed implementation of that policy. I can say clearly that very few in country Victoria had a different view than the coalition would provide greater and simpler access to firewood collection.

The DEPUTY PRESIDENT — Order! Mr Leane has indicated that he would like to make a comment on this particular aspect of clause 1, and I will give Mr Barber the subsequent call.

Mr LEANE (Eastern Metropolitan) — I will just say that if the government states that an unadvertised government policy is so important for it to implement, I very much look forward to it building the Doncaster rail line, which was a trumpeted policy, and I very much look forward to it making the teachers the highest paid in the country.

Mr BARBER (Northern Metropolitan) — I have a question for the minister. Leaving aside the pejorative question of red tape, the minister finished his last answer by suggesting that this new system would make it simpler presumably for both the government to administer and for a person seeking to access some firewood to do so.

I have some questions about the totality of the operation of the bill and how this new system will make it simpler. As I understand it, and it is even referred to in the second-reading speech, if you wanted to get some firewood, you got a permit through the Department of Sustainability and Environment (DSE) or an agent. As it says in the second-reading speech, those permits typically contained information on where and how much firewood could be collected and under what conditions, so your set of instructions came with the permit. The second-reading speech then goes on to say:

> In the absence of permits, these and other matters will now be dealt with in legislation, either in the relevant acts or in regulations. In this way, the Victorian community will have clear, legislatively defined, expectations of the scheme.

If I no longer have to turn up to a DSE or other authorised office and obtain a permit and I can simply go to the right places at the right times and collect

information about the right way to collect my firewood, how do I obtain that information?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the mechanism by which the community will be advised of these matters is through websites, bulletins and signage.

Mr BARBER (Northern Metropolitan) — Bulletins of what type, distributed in what way and to whom?

Hon. D. M. DAVIS (Minister for Health) — I am informed that they will be fact sheets in offices, on websites and in media releases.

Mr BARBER (Northern Metropolitan) — Just to expand on the idea of signage, signage where and saying what?

Hon. D. M. DAVIS (Minister for Health) — Signage indicating zones and the mechanisms.

Mr BARBER (Northern Metropolitan) — Signage in the bush, on site, saying that this is a place from where you can collect firewood?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the signage will on the entrance to relevant locations and will be A3 and A2 size.

Mr LENDERS (Southern Metropolitan) — Following on from Mr Barber's points and on another matter on clause 1, as Mr Davis is presumably saying that the Department of Sustainability and Environment, and not Parks Victoria, is putting up the signage on the entrance to sites, does that mean that the signs will be on every single track, local road, main road and bushwalking path? I would be very interested to know how this will be done so that a person does not inadvertently break the law and potentially get a penalty of 50 penalty units.

Hon. D. M. DAVIS (Minister for Health) — I draw Mr Lenders's attention to page 9 of the bill where clause 5 inserts new section 57V into the Forests Act 1958, which lays out the identification of firewood collection areas.

Mr LENDERS (Southern Metropolitan) — I am happy to leave that until we get to that clause. I will leave it with the statement that a firewood collection area is big and there are many access and egress routes in multiple forms. As a courtesy I give the minister notice that I will ask far more forensic questions about that when we get to that clause, so that he and his advisers have time to prepare.

Still on clause 1, there is the issue that was raised by Mr Philip Davis in his contribution to the second-reading debate — that is, that part of the policy intent of this bill is to deal with the areas where there is no reticulated natural gas. He said that was policy. Again I am intrigued to know where the policy appeared or whether it was a thought bubble of Mr Philip Davis. Let us assume that there is a coherent hidden policy on the purpose of this bill that the community has not seen. A purpose of the bill is to offer greater access to firewood in areas where there is no reticulated natural gas and therefore there is an understandable cost impact on families in those areas. My question to the minister is: if that is a purpose of the bill, could I, as an elector from Carnegie in his electorate of Southern Metropolitan Region, go to Bruthen in Gippsland and collect my 2 cubic metres of firewood?

Hon. D. M. DAVIS (Minister for Health) — The answer is yes, but the bill does contain mechanisms by which in certain circumstances access is restricted to classes of people, and they could be geographically based.

Mr LENDERS (Southern Metropolitan) — I thank the minister for his answer that constituents of his in Southern Metropolitan Region, whether they be in Brighton — —

Mrs Peulich — And yours!

Mr LENDERS — And mine as well — and yours, I might say, Mrs Peulich. Certainly residents of Brighton, Malvern, Camberwell, Toorak, Sandringham or Armadale could go out and collect firewood in those areas without any permit. Provided they stay within the limits, they could collect as much firewood as they like and take it out of regional Victoria and back to Melbourne. I am just clarifying what the minister said.

Hon. D. M. Davis — Not as much as they like.

Mr LENDERS — Within the 2 cubic metre, 4 cubic metre or 16 cubic metre restrictions provided by this legislation, they would have exactly the same rights as an aged pensioner in Bruthen.

Mrs Peulich interjected.

The DEPUTY PRESIDENT — Order! I am trying to get the minister's response, not Mrs Peulich's.

Hon. D. M. DAVIS (Minister for Health) — As I have indicated, the bill does contain mechanisms to limit collection in circumstances that are decided, and they could be geographically based.

Mr BARBER (Northern Metropolitan) — How will that work? The minister has said that there will be signs in the bush designating areas for firewood collection. Will those signs also designate the class — no redheads, for example — or geographic reach of people who are authorised to collect firewood from that particular collection area?

Hon. D. M. DAVIS (Minister for Health) — The answer is yes, and new section 57V(4) deals with that matter.

Mr BARBER (Northern Metropolitan) — I understand that that section will permit this activity. What I am asking is whether a residency test, if you like, will be set up and will then be part of the verbiage on the signs that will be nailed to trees out in the middle of state forests. Is that the intent?

Hon. D. M. DAVIS (Minister for Health) — That is a matter for the implementation as it proceeds, and those decisions will be made area by area.

Mr BARBER (Northern Metropolitan) — But by this bill the government is giving itself the power to do it, so I am asking whether that is the intent.

Hon. D. M. DAVIS (Minister for Health) — I am informed that if there is a restriction of that nature, that is required to go on the sign.

Mr BARBER (Northern Metropolitan) — So it might be, for example, that I am on holidays in East Gippsland where I am staying in a commercial camping area and I hear that there is a place up the road where you can get firewood for free and that it will be marked. When I get there I will see — if I am smart enough to check the fine print on the sign that will be nailed to a gum tree — that the sign says, 'You are not eligible to collect from this area unless you are a resident of East Gippsland shire'. Therefore, having read that fine print, I will have discerned that I am not eligible to collect firewood because I am on holidays and I am not a resident of East Gippsland, for example.

Hon. D. M. DAVIS (Minister for Health) — I am informed the mechanism would ensure that the wood would be available for those who live in the area and have a need to access the wood.

Mr BARBER (Northern Metropolitan) — I asked whether we are talking about a residency test. In relation to firewood permits issued under the old regime, which is about to be changed by this bill, what do those permits typically cost? Pardon my ignorance.

Hon. D. M. DAVIS (Minister for Health) — I am informed the amount is between $10 and $30 per cubic metre.

Mr LENDERS (Southern Metropolitan) — Following up on Mr Davis's answer to Mr Barber's question — and I am paraphrasing what Mr Davis said — in responding to Mr Barber's hypothetical of the geographic test, Mr Davis referred to those who needed the wood. I listened very carefully — he said those who needed the wood. My question is: who determines who needs wood? I quote the minister.

Hon. D. M. DAVIS (Minister for Health) — On a geographic basis it would be done by the secretary, if there is a shortage of supply.

Mr LENDERS (Southern Metropolitan) — I accept that part of the answer. Using Mr Barber's hypothetical, the secretary determines the need. As a courtesy, I flag to the minister that I will ask a question later in the day about this issue. Using the hypothetical example of what would happen if a resident of Sale was keen on firewood — I am not mentioning Mr Philip Davis — and was aggrieved, for example, by the secretary saying that only people living in East Gippsland shire were entitled to the wood, how does that person appeal? I will ask the minister this question later. The minister's use of the word may have been inadvertent. If he says it was inadvertent, I will accept that. However, the minister said it would be on a geographic basis and whether the person needs the firewood.

Unless the minister backs away from someone needing the firewood, I invite the committee to consider the fact that we are talking about a whole new level of regulatory burden. I can understand the secretary determining East Gippsland shire, Wellington shire et cetera, but with Mr Davis's comment about where a person lives and whether they need the firewood, the need becomes quite a subjective test. I am interested, from an administrative law point of view — the Victorian Civil and Administrative Tribunal's position — how the secretary determines need.

Hon. D. M. DAVIS (Minister for Health) — If I can be clearer in explaining that, it is on a geographic basis. The secretary would do that on the basis of supply of firewood for those who need it, particularly in parts of the state where the firewood resource is limited.

Mr LENDERS (Southern Metropolitan) — If the minister says he inadvertently used the word 'need', I am happy to drop off on this inquiry. However, the minister has again repeated the word. To make it simpler for the minister, what if there is an issue of

need and we have to make a determination about one of Mr Davis's or my constituents from Camberwell or Carnegie who has gone to a campsite at Bruthen and is looking for firewood? The test becomes: what is need? Is need financial affordability? Is need an objective test about who needs warmth? Mr Davis has twice now used the word need. If the secretary has to determine the meaning of need, that is a test. It concerns me that we are being asked to support legislation where we have a whole new quasi-judicial process being inserted into what was already a complex system. I invite the minister to clarify 'need'.

Hon. D. M. DAVIS (Minister for Health) — I think Mr Lenders is overstating the way I have phrased this. Those who need firewood means those in an area who are seeking to access it. Anyone can collect firewood in a particular area. If the secretary sees a need in a particular geographic area of the state where the firewood resource is in some way limited, it may be appropriate to allow access to a certain location.

Mr BARBER (Northern Metropolitan) — That is just not the case. When we get to section 57U the minister will see that it is described as 'a class or classes of person'. However, I think we can wait until we get to that point to go over that issue. Mr Davis said that the permits currently cost between $10 and $30 per cubic metre. Is there a concession available for people who display an appropriate card? Could they get free firewood?

Hon. D. M. DAVIS (Minister for Health) — I do not think any permits are being issued now, but previously the lower end of that $10 to $30 range would have been the concession cost.

Mr BARBER (Northern Metropolitan) — It seems to me that if your objective were to give free firewood to people, then you simply could have made the permits free. They could have been made free in areas that do not have natural gas reticulation or made free to certain classes of person. The previous situation was that you went to your local DSE office or authorised office and got a permit, and with that permit you got all the information you needed to ensure that you could comply with all the relevant laws when collecting firewood in certain places at certain times. Now you have to jump on a website — and the minister should bear in mind that not everybody is on the internet these days, particularly elderly people and people in remote areas where the internet connections are so bad it is not worth being on it — and inform yourself of the right-place, right-time methods of collection, and there are 43 pages of regulation across several acts you will have to comply with. You may get that from your fact sheet — helpfully so — and you will also need to go to the location if you cannot otherwise find out or determine whether you are a class of person who is eligible.

For the sake of abolishing the requirement for a permit, that seems to put a large informational burden on a person who just wants to fill up their trailer. You transfer the risk to them, because if they fail to collect the right information, then they are risking prosecution, whereas they could have reasonably relied on the permit in their hand and the information it contained as their defence if they had done the wrong thing.

You need a permit for many things, such as going fishing. If I blow into town, I expect to be able to get a temporary fishing licence if I do not have an annual fishing licence. You need a permit to have a cat, and you need a permit to cut open a council footpath to make a driveway — you need a lot of permits for things. Some permits are harder to get; some are easier to get. If it was all about cutting red tape, then government members could have brought in great slabs of different permits that they wanted to abolish, but this was not about abolishing red tape. This was simply about giving free firewood, and the government seems to have chosen the most complicated mechanism possible.

I want to ask about some intervening factors. In between the old system and the bringing in of this legislation it has been alleged — it has been written about in many regional newspapers and in the *Weekly Times* — that there have been raids by commercial merchants in bushland areas. It is clear from the observations of some people that other people who are commercial, or at least commercially oriented, have been collecting large amounts of firewood and, in the view of some, taking it back to the city. Clearly this bill is also a response to that in the way that it is structured. Can the minister tell me what evidence has been found for this, whether there have been prosecutions in relation to this and whether there has been any difficulty in bringing those prosecutions that the government now seeks to address in this bill? I am asking the minister for some facts and figures.

Hon. D. M. DAVIS (Minister for Health) — I am not informed of any raids that have been verified or seem to have occurred. As I understand it, the management of these things has proceeded as is normal. I am not aware of any prosecutions that have occurred in the recent period to which you refer.

Mr LENDERS (Southern Metropolitan) — The object of the bill, as outlined in clause 1, is to amend a

range of acts. There is no reference in there to economic dislocation. Again I will use the hypothetical example of a town such as Bruthen, where the owner of the local general store — assuming there is a general store in Bruthen — may get a commission for the selling of existing permits. I am using a few examples for Mr Davis, and I am picking Bruthen because I am a Gippslander from way back. If you went into the general store in Bruthen, you could purchase a permit. Obviously some of that gets remitted to DSE, but a portion is kept as a commission. In Gippsland East there are plantations that some people have grown with a view to selling firewood, and individual farmers have planted trees to grow firewood.

There is nothing about this issue in the objects clause of the bill. Is there any economic compensation for these regional jobs? Again, to assist Mr Davis, this was one of the adjournment matters I raised with his colleague Ms Asher, the Minister for Innovation, Services and Small Business, when we originally saw Ms Lovell's press release. What is the government's policy on compensation for these small regional businesses which will lose commissions from the selling of firewood permits and face losses from the capital investment they have made in planting trees and selling them in what was a market for firewood, at a time when permits cost money?

Hon. D. M. DAVIS (Minister for Health) — If I can get to the essence of that, I think what the member is asking is whether there will be some disadvantage to commercial firewood producers. I think that is the essence of what he is asking. My understanding is that these are different markets. Some people will wish to purchase firewood for convenience purposes. Others, for a whole range of reasons, including social reasons, seek to go and collect firewood, and some wish to collect their own firewood for reasons of longstanding traditional practice.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Seniors: home and community care

Ms MIKAKOS (Northern Metropolitan) — My question is for the Minister for Ageing. The minister has spoken on many occasions about the benefits of keeping senior Victorians living independently at home and how HACC (home and community care) services are important in this regard. Despite the spiralling ageing population, the government has made a cut to statewide funding as well as a 2 per cent indexation cut, which will impact on councils' ability to take on new clients. Will the minister reverse this decision?

Hon. D. M. DAVIS (Minister for Ageing) — I am pleased the member has asked the question, but the premise of her question is wrong. HACC funding has been increased, commonwealth funding has increased and state funding has increased. HACC funding has increased in Victoria.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — That is clearly not what councils are reporting. The minister needs to get out and have a discussion with the Municipal Association of Victoria and local councils, which are reporting significant cuts in funding. The City of Ballarat has estimated that it will lose up to $36 000 in HACC funding as a result of this cut, and it already has 55 people on its waiting list and could see a further 35 people added. The City of Kingston is facing a $142 000 cut in HACC funding, which will limit the council's ability to take on new clients. Can the minister guarantee that no senior Victorian will miss out on HACC services because of the government's cuts to home and community care services?

Hon. D. M. DAVIS (Minister for Ageing) — If I can just again inform the member that funding has not been cut to HACC; funding has been increased. Funding will increase this year compared to last year, and it is likely there will be further growth in the period beyond 1 January. Let me take one of the examples the member has put forward. HACC funding for Ballarat Health Services has in fact increased this year. It has gone from $2.6 million to $2.7 million. That is an increase. I want to be quite clear about this with the member: when I went to school, the second number, this year's number, was considered a bigger number than the previous year's number.

Ordered that answer be considered next day on motion of Ms PULFORD (Western Victoria).

Housing: Carlton redevelopment

Mr ONDARCHIE (Northern Metropolitan) — It is a pleasure today to ask a question of the Minister for Housing, who is also the Minister for Children and Early Childhood Development, the Honourable Wendy Lovell. I ask the minister if she can inform the house of any recent announcements in relation to the Living Carlton Consortium's Carlton housing estate redevelopment?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for his question and his ongoing

interest particularly in the Carlton housing estate, where he chairs the community liaison committee (CLC). It was my very great pleasure on Monday of this week to officially mark the start of construction of the $180 million wellbeing precinct at the Carlton housing estate. I was joined in marking this occasion by my ministerial colleague David Davis, the Minister for Ageing, and of course the wonderful Craig Ondarchie, a member for Northern Metropolitan Region, as well as by the team from Australian Unity and members of the Living Carlton Consortium.

The Carlton housing redevelopment is part of a plan to deliver more and better public and private housing in Victoria. This is a nine-stage redevelopment, including the wellbeing precinct, and it is being delivered through a development agreement between the Victorian government and the Living Carlton Consortium. The redevelopment will also see 192 old public housing flats replaced with 246 new public and social housing apartments, approximately 690 new private apartments, new streets, pedestrian and bicycle paths, new public parks, community gardens, playgrounds and landscaping.

The first stage of the aged-care and wellbeing centre is due to be completed by the end of 2013, and it includes 161 high and low-care beds and day respite services. Some of its facilities will be open to the public, including medical suites, a seniors gym, a hydrotherapy pool, a cafe and a community meeting room. The retirement living buildings, which are due for completion by the end of 2017, will include 181 independent living units and facilities for older persons. Public housing tenants who are eligible for commonwealth-funded beds will also be able to apply for a place in the aged-care centre.

Construction of the wellbeing precinct is expected to result in 200 construction jobs, which will benefit Victoria, and when it opens in 2014 the aged-care and wellbeing centre is expected to generate approximately 150 new jobs in aged-care, hospitality and cleaning services. The wellbeing precinct presents a real opportunity for some of our public housing tenants to secure employment, and the Carlton work and learning centre that we have established on the Carlton estate will play a critical role in supporting and preparing public housing tenants to apply for jobs in construction and in the aged-care and wellbeing centre.

I look forward to seeing the project unfold and to working with Australian Unity on employment and training opportunities for public housing tenants. This is just one way the Victorian government is working to deliver better public housing in this state and to support vulnerable Victorians. I commend the work of Mr Ondarchie as chair of the CLC. Many tenants from the estate were present at the sod-turning ceremony on Monday. They were all telling me how wonderful it was to have a CLC chair who is actually there on the estate, interacting with them. They could not name the previous chair of the CLC.

Apprentices: training

Ms PENNICUIK (Southern Metropolitan) — My question is for the Minister for Higher Education and Skills, and it concerns reports run by the ABC's *7.30* program over 7, 8 and 9 August regarding training rorts. It particularly focused on a company called Skill Training Victoria, which is based in Bendigo, with regard to rorts in apprenticeship training. For example, it was reported in relation to the training of one of the apprentices by this company that the company was just using staged shots and he actually was not undergoing training. I am wondering if the minister has investigated this and if he knows how many apprentices are caught up in these rorts.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Ms Pennicuik for her question. She will know, because I have said it many times in this house, that a priority of mine is to in-build quality in terms of the training that is being delivered around this state, and I have made a number of efforts to improve the outcomes of training and ensure that it is of the quality that people expect from the investment they make.

By way of background in answering this particular question, there are 1100 registered training organisations in this state. Of those, 593 are registered with the federal registration body, the Australian Skills Quality Authority (ASQA), and 507 of them are registered with the Victorian Registration and Qualifications Authority (VRQA). About half of those 1100 have contracts with government to deliver supported, subsidised training. When there is any breach or notification or suggestion that there is a diminution in standards, it can be pursued either through the regulatory authority and/or through the department if we have a contract with the organisation.

In this case, Skill Training Victoria, the company that was under investigation, has been pursued and addressed and investigated by the Victorian Registration and Qualifications Authority. As soon as notification of these reports was received, VRQA contacted the company. It has had several meetings with the company since the airing of those reports, and it is requiring the company to substantiate and respond

to some of the claims that have been made. That is a process that is happening now and will continue to happen, and we will pursue that. I note that when Senator Chris Evans, the federal Minister for Tertiary Education, Skills, Jobs and Workplace Relations, was down in Victoria last week he suggested that VRQA was not doing its job properly enough and was not diligent enough in this area.

Over the last 12 months VRQA has overseen the deregistration of 75 training organisations in Victoria. A good number of those deregistrations were related to them not reaching their appropriate standard. If you compare that with ASQA in respect of its efforts, only three organisations have been deregistered by ASQA for the same reasons, so I am confident that VRQA is capable of pursuing this matter and acting appropriately with it. I have been in contact with it. While I am not interfering with its investigations, I need to be satisfied that they are being done thoroughly and done properly because I do not want to see the quality of training in any way compromised here in Victoria. It is a matter I take seriously, and it is a matter that we will be pursuing right to the end.

Supplementary question

Ms PENNICUIK (Southern Metropolitan) — I noted that the minister said he felt confident about the activities of VRQA, but on the *7.30* report one of the spokespersons said they were shocked and had no idea this was going on, and also that it was very difficult for them to know if any of this sort of rorting was going on unless it was reported to them by students or parents.

Previously in the Parliament I have said in relation to the bills that were introduced by the government with regard to changing oversight and regulation of vocational education and training (VET) that I was concerned VRQA did not have the resources or the wherewithal to properly police this, so it seems that when they say they were shocked, they did not know it was going on.

The report also says that the *7.30* program has been inundated with reports of the same thing happening across the VET sector, so I want to know whether the minister is in contact with VRQA and whether it is looking at the rest of the VET sector to make sure that these rorts are not being carried on there, that students are not being trained and coming out without qualifications.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I said that there are 507 registered training organisations in Victoria that are registered by VRQA, so there are 507 organisations whose training activities VRQA needs to monitor. It does it on a regular basis with an audit of the activities of the organisations as per their returns to VRQA, but equally it has the opportunity of proactively being out there investigating, auditing in person on the premises. It will not be able to be out there every single week with 507 providers, nor do I think anybody would reasonably expect it to, but certainly on a risk basis VRQA will be responding to any deficiencies.

I think it is important in answering this question to say that we would encourage people to report any behaviour or activity that they think is substandard. Yes, there is a responsibility on the regulatory authority to be out there actively auditing bodies, but equally it would be helpful if people reported things, and I think that is a way in which we can mutually better address this issue.

Higher education: Auslan programs

Mrs PEULICH (South Eastern Metropolitan) — My question without notice is directed to the Minister for Higher Education and Skills, Peter Hall, and I ask: given the concerns expressed by hearing-impaired and deaf groups earlier this year, could the minister advise the house what further consideration the government has given to facilitating the delivery of Auslan training?

Hon. P. R. HALL (Minister for Higher Education and Skills) — This is an important matter — that is, the delivery of Auslan training to Victorians with hearing impairment or who are deaf. I know the matter has been raised by members in this chamber. I know Ms Hartland and Mr Leane in particular raised this matter with me on a number of occasions earlier this year.

I have indicated in my various responses to this that I see this as a serious matter, and I committed to finding a resolution to the problem because I do not want to leave people with hearing impairment without the proper resourcing that they need. Kangan TAFE's announcement that it no longer intended to deliver Auslan training at the diploma level caused some understandable concern amongst the deaf community here in Victoria.

Since the last sitting of Parliament I have required that a review be undertaken and work done with the various groups representing deaf communities in Victoria for an appropriate review of training for people to deliver Auslan in Victoria. That review was conducted by the Centre of Excellence for Deaf and Hard of Hearing Students in partnership with an organisation called

Grant Thornton Australia. That final report was delivered to the department on Thursday of last week, 9 August.

The report indicated that the lower take-up of Auslan courses in recent years and the limited number of training providers offering the course means that it is not suited to delivery through the Victorian training guarantee. The Victorian training guarantee is the market-driven system which was put in place by the previous government and supported by us, but again, taking note of the commentary at that particular time, we need to have proper oversight to make the sure the market is effective. Where you have no provider or where there is a collapse of providers in the sector, obviously there is clear evidence of market failure, and that has turned out to be the case this time.

While these sorts of matters would be normally pursued by the new market monitoring unit that has been established within the department, it might take some time for the market monitoring unit to do that. I wanted to avoid any gap in delivery, so on this occasion I commissioned this inquiry by the Centre for Excellence for Deaf and Hard of Hearing Students.

As a result of the findings and the significant social and economic impacts of this decision, the government will initiate a competitive tender for the delivery of a capped number of Auslan places for commencement during the first half of 2013. The actual scope and the scale of the Auslan training tender will be developed in conjunction with key stakeholders, and that tender is expected to be released in mid-October.

I am pleased that we have recognised here the importance, firstly, of Auslan training; and secondly, that the market-driven system, because there are only a very limited number of potential providers here, simply did not work on this occasion, and that is why we will go back and tender for the delivery of the number of training places in Auslan that the deaf and hearing-impaired people think is appropriate.

Ordered that answer be considered next day on motion of Ms HARTLAND (Western Metropolitan).

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I draw the attention of members of the house to some visitors in the gallery from Thailand. They are a group involved in government administration. They are meeting with a number of our parliamentary staff to understand some of our processes and procedures. We welcome you and trust you will enjoy their stay in Melbourne. If anyone asks you — as they might — your football team is Melbourne.

Honourable members interjecting.

The PRESIDENT — Order! My apologies. I realise the Chair should not be provocative.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Housing: Urban Communities contract

Ms MIKAKOS (Northern Metropolitan) — My question without notice is to the Minister for Housing. I refer the minister to her announcement that Urban Communities Ltd has been appointed to manage the 152-unit vacant social housing project at 160 Brunswick Street, Fitzroy. Can the minister confirm that a contract of engagement was signed between the Office of Housing and Urban Communities by the time of her announcement?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for her question, because it is the first time since 13 March she has bothered to ask me a question on housing. I think it is about time.

Our department has been in negotiations with Urban Communities for some time regarding its management of this facility. There has been no official announcement about Urban Communities signing the contract. Yes, by the time it was announced — I guess I am announcing it now — it most definitely has been signed.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — Is it not a fact that no contracts had been signed between the parties by last Friday despite the minister's claim to the contrary to both the media and the Victorian public at that time?

Hon. W. A. LOVELL (Minister for Housing) — My department has informed me that the contracts were signed by last Friday.

Aged care: federal funding

Mr O'BRIEN (Western Victoria) — My question without notice is to the Minister for Health and Minister for Ageing, the Honourable David Davis. Can the minister advise the house of any impacts the

commonwealth government's changes to aged-care funding will have on older Victorians?

Hon. D. M. DAVIS (Minister for Ageing) — I am pleased to answer this question. I think a number of members heard me make points in the chamber last night. Some of the points I will make now will be similar to those but slightly broader.

It is clear that the commonwealth's plan, which has been implemented and in operation since 1 July, has a number of deficiencies. Whilst there are a number of points in the package that are welcomed, including additional funding for dementia, and I have been quite public about that, it is also clear that the rejigging of the ACFI formula, or the aged-care funding instrument formula, is going to have a significant effect on many services — public, private and not for profit — across the state.

The industry association, LASA — Leading Age Services Australia — has indicated in its analysis, undertaken by the Centre for International Economics, that in the next two and a half years there will be a $750 million revenue shortfall as a direct result of the changes the federal government has introduced. Those changes will see lower payments for not-for-profit services, lower payments for for-profit services and lower payments for government services as people are assessed by the aged-care funding instrument that the federal government has modified.

I have sought to engage with the commonwealth government on this. There is a great deal of confusion about the impact of these changes. The commonwealth needs to do two things.

Mr Lenders — On a point of order, President, Mr O'Brien asked David Davis a question, as he is entitled to, on state administration. Mr Davis is the Minister for Ageing. I am seeking an answer in relation to state administration. The question related to commonwealth funding affecting non-government aged care. Is Mr Davis asserting that as Minister for Ageing he has responsibility for relations between the commonwealth and non-Victorian government-funded services? If he is, I welcome the opportunity to ask him about how those services are going.

Mr O'Brien — On the point of order, President, this issue of the relationship between commonwealth and state funding has been dealt with in other rulings when points of order have been raised. This is a situation where commonwealth funding has impacts upon the state's delivery obligations. In response specifically to the point of order, my question was not directed at any particular provider but rather the impacts on older Victorians, which is the minister's portfolio responsibility. That is where my question was directed.

The PRESIDENT — Order! I thank Mr Lenders for the point of order. Aged care is one of those particularly difficult areas because it involves a partnership, in many ways, between three levels of government, not just one. In that sense there is some need for ministers to convey information to the house about what is happening at the other two levels of government where it is pertinent to the state's role in the delivery of services.

In that context, what I was hearing from Mr Davis was some discussion about federal grants to community organisations, but I felt that it was in the context of Victoria's response or activity in this area. The point of order has been well made, but on this occasion I do not uphold it because I think this is an area which involves three levels of government. I am not sure the member can make a jump from there to saying that the minister is now assuming responsibility for federal actions per se. The minister's information is contextual to Victorian state administration.

Hon. D. M. DAVIS — The question was very much about the impacts on Victoria. As I said, the impacts will be on older Victorians who will receive less support from the commonwealth, whether they are in services that are run by the Victorian government or with providers that are the responsibility of the Victorian government or in the not-for-profit or the for-profit sectors. The point I made at the health minister's meeting last Friday was that there are a number of impacts across into the acute health system as well.

Mr Lenders — In the meeting or at the press conference?

Hon. D. M. DAVIS — No, in the meeting. We moved a motion and we have established that there will be a meeting of aged-care ministers — or ageing ministers, as they may be defined around the different states — with the federal minister to look specifically at the impacts of the commonwealth changes on state administration and state responsibilities, including acute health. As we know, if aged-care places are not available when they are required, very often people will fall back into acute health systems, so it is very much the concern of state ministers as to how this will impact. I welcome the federal minister's preparedness to engage on this matter, and we have sought to be constructive.

I want to make the point and be very clear here that there is a significant impact. LASA has gonged or rung the bell on what is going on with the changes to the ACFI formula. It is going to have a very significant impact on older Victorians. The viability of services will be directly impacted, particularly smaller services, particularly rural and regional services which may have lesser resources, in some cases, to stand up to direct reductions in funding, which is what is occurring through this system. LASA's analysis — which I welcome, and I think the organisation has been responsible — —

Ms Mikakos interjected.

Hon. D. M. DAVIS — I want to be quite clear. LASA has done a clear and solid analysis. It has put this on a firm footing. There are reductions in funding, and it is going to have a significant impact.

Building industry: future

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. The building industry is the second biggest employer in Victoria. Building Commission data shows that activity in the Victorian sector appears to be in free fall. An example is that the number of building permits which were approved in the six months to May 2012 is a full 30 per cent less than for the corresponding period in 2010. Organisations like the Housing Industry Association and the Property Council of Australia are urging and almost begging the government to recognise that a problem exists and to provide some support. Will the minister admit that the building industry is struggling?

Honourable members interjecting.

The PRESIDENT — Order! I will allow the minister to answer, but it is a rather peculiar question. He is asking the minister for an opinion rather than an answer in terms of state government action, and obviously questions are not supposed to seek an opinion as such. On that basis I will allow the minister to answer with him being cognisant of the remarks I have just made with respect to the way the question has been worded.

Hon. M. J. GUY (Minister for Planning) — I am not sure where to start. The Victorian housing market went through a levelling off, if you like, from around early to mid-2010. That is when it began — early to mid-2010. I might add that we are still doing more than 30 per cent of the national permits for 24.9 per cent of the national population. If you want to retrospectively apportion blame to the Baillieu government for a levelling off — and I would not say a slowdown, because we are still doing more than 30 per cent of the national permits in terms of outer growth areas construction starts — then I find that quite perplexing.

Secondly, what is the Baillieu government doing to stimulate growth in this sector that Mr Tee has asked me about? Let us put a couple of things on the table. On Tuesday we brought into this chamber a ratification motion for 6000 hectares of the urban growth boundary (UGB), which represents hundreds of millions of dollars of investment in the industry about which Mr Tee has come into this chamber and asked what is happening in relation to the slowdown. I might add to this chamber that the motion was opposed by Labor in the upper house but, bizarrely, on 21 June it was not opposed — it was passed — by the Labor Party in the Legislative Assembly. They oppose the UGB in this chamber and they do not oppose it in the lower house. You have members such as the Deputy Leader of the Opposition writing to me asking for logical inclusions, and you have this guy asking to oppose it.

Mr Tee — On a point of order, President, I did ask a question about the building industry, and we are getting an answer which relates to a debate in relation to a green wedge rezoning. I just ask you to ask the minister to come back to the issue.

The PRESIDENT — Order! Mr Leane — sorry, not Mr Leane.

Mr Drum — Close.

The PRESIDENT — Order! Yes, you were close.

Honourable members interjecting.

The PRESIDENT — Order! The good thing is that Mr Leane is now adding water to the red cordial. Mr Tee's question gave me some difficulty in that it was worded as seeking an opinion. I had trouble with that. I might also add, which I did not take up earlier, that it crossed my mind and the mind of the Clerk whether he was asking the right minister the question and whether the question was relevant, in terms of material, to the minister's actual administration and responsibilities.

In that context it is very difficult for me to ask the minister to talk about areas that are outside his purview. In fact, the information he is providing obviously has some relevance to the ability of the building industry to actually have commencements of projects and so forth because they need planning approvals, development approvals. The minister is going to that sort of information, which is clearly within his administration.

I think he has taken the view that that is what he needs to discuss in his answer, because some of the matters that the question encompassed are, certainly in my view, probably outside his administration. I cannot uphold the point of order and I invite the minister to continue his answer.

Hon. M. J. GUY — I will just refer to the following: the Queensbridge tower, which I approved, $200 million plus, approved by the Baillieu government, opposed by Labor; the Falls tower, a $190 million-plus investment, approved by the Baillieu government, opposed by Labor; the Fishermans Bend urban renewal project, $1.5 billion worth of construction investment, approved by the Baillieu government, opposed by Labor.

The legislation dealing with VicSmart planning permits is before this Parliament, so I cannot comment on that, but members know the reality. There is the urban growth boundary expansion, representing a further stimulus to the biggest construction project in Australia at this point in time — that is, the Melbourne growth areas — supported by the Baillieu government, opposed by Labor. Growth areas infrastructure charges were brought forward to this Parliament to speed up investment in growth areas — brought forward by the Baillieu government, opposed by Labor. Growth corridor plans were brought forward by the Baillieu government to speed up investment — brought forward by this government, opposed by Labor. Outer urban rezonings in Ballarat, Geelong, the Latrobe Valley, Surf Coast shire and other areas were brought forward by the Baillieu government, opposed by Labor. It beggars belief that the opposition would ask such a stupid question.

Supplementary question

Mr TEE (Eastern Metropolitan) — There appears to be a disconnect between the minister's assertions and the views of the business community, which does not believe that the minister recognises there is a problem, let alone that he is doing something about it. I am happy to arrange a meeting with the minister and the business community so that we can have an opportunity to put all ideas on the table and address the crisis that is costing thousands of Victorians their jobs. Will the minister attend?

The PRESIDENT — Order! The supplementary question also troubles me. Perhaps I am in a state of confusion today. It concerns me in that I am not sure it is a response to the minister and is apposite to the original question asked. To be promoting a meeting and seeking the minister's attendance at that meeting is a matter that is quite different to the information sought in the substantive question. The Clerk suggests it might even border on hypothetical; I am not sure about that. I will let the minister respond, but I note that it is important to make questions without notice a bit tighter in terms of their direction. Supplementary questions in particular must be apposite to the question originally asked.

Hon. M. J. GUY (Minister for Planning) — I never would have thought that after only two years of being a minister I would start to feel sorry for the Labor Party.

Mr Lenders interjected.

Hon. M. J. GUY — It is not arrogance, Mr Lenders; at this point in time it is genuinely feeling sorry for the Labor Party because of the quality of its members' questions. We have had seven weeks off, and those opposite are coming back to us with such questions.

I meet with the industry on a regular basis. To show how generous we have been to our now very beleaguered opposition, I suggested that the metropolitan planning strategy policy group meet with the opposition, an invitation that the opposition took up. I am glad those opposite have accepted one of our invitations to a meeting.

It is very clear that the Labor Party has absolutely no idea what it is doing in relation to the construction industry. It is opposing everything and then coming into this chamber and claiming there are issues I need to deal with. I meet with industry regularly. Once industry members learn Mr Tee's name, I am sure they will come to his meeting.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I take the opportunity to welcome some visitors to the gallery today. We have a visiting delegation from the Parliament of Ireland led by Senator Denis O'Donovan, the Deputy Chairman of the Senate of the Parliament of Ireland. Members of the delegation will be meeting with some members of the friends of Ireland parliamentary group at lunch today, and they are presently accompanied by one of the co-chairs of that group, Mr Frank McGuire, the member for Broadmeadows in the other place. The other co-chair is Mr O'Brien. They will be hosting lunch today. I will also have the opportunity to meet with the delegation at lunch tomorrow. I welcome the delegation — we hope you enjoy your stay.

Honourable members interjecting.

The PRESIDENT — Order! As a delegation from Ireland you must barrack for Melbourne, because Melbourne has a very strong connection to Ireland through Jim Stynes, a famous Irishman who distinguished himself greatly, not just on the football field here, as you may well be aware, but indeed as a very distinguished Victorian. Earlier this year we held a state funeral for him, which is obviously a significant honour bestowed by the state. It was in recognition of the contribution that one of your countrymen had made to our state and particularly to the youth of our state with some of his programs. His connection with the Melbourne Football Club was legendary.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Aviation industry: jobs

Mr O'DONOHUE (Eastern Victoria) — My question is to the Minister responsible for the Aviation Industry, Mr Rich-Phillips. Can the minister update the house on recent job creation announcements in the aviation industry?

Hon. G. K. RICH-PHILLIPS (Minister responsible for the Aviation Industry) — I thank Mr O'Donohue for his question and his interest in developments in employment and investment in the aviation industry in Victoria. We have had a number of very positive announcements and developments over the last month which highlight the confidence that the aviation and aerospace sector has in the Victorian economy and in the industry sector.

At the beginning of this month I was very pleased to join Andrew David, the chief executive of Tiger Airways, at Melbourne Airport for the announcement of a substantial increase in Tiger Airways' employment in Victoria. As part of a rapid expansion of the Tiger network through the course of the rest of 2012, Tiger Airways is adding more than 100 jobs in Australia, of which more than 70 will be located here in Victoria. We will see new jobs created for flight crew in terms of captains and first officers, new jobs created for cabin managers, new jobs created for cabin crew and new jobs created in engineering and in management.

This highlights, firstly, Tiger's confidence in the Victorian economy. Tiger is one of two major airlines based here in Victoria. It is fantastic to see the expansion that will be taking place in Victoria over the coming 12 months. It also highlights confidence in the aviation industry in Australia. The Victorian government is very keen to welcome the 70 new jobs that are being created at Tiger Airways over the coming 12 months.

At the same time I was pleased to join with CAE Australia earlier this month for the launch of its new Hawker Beechcraft King Air B350 simulator at the Ansett training centre near Melbourne airport. CAE has become an ever larger investor in Victorian aviation over the past 12 months. Already the operator of substantial simulator training business in Victoria, CAE has recently acquired Oxford Aviation, which is the largest flying training operator in Australia and is based in Victoria. Again, it is a very strong endorsement of confidence in the Victorian economy that we have CAE undertaking this major investment in Oxford Aviation and also installing this new King Air flight simulator in Victoria.

This creates a great export opportunity for the aviation industry in Victoria. It is the only facility of its kind in the Asia-Pacific region. It has the potential to service more than 20 clients in the Asia-Pacific region, including the Royal Australian Air Force and the Royal Flying Doctor Service, as well as a number of private operators of that aircraft in the region. Currently they need to go to the United States for their training requirements. With the installation of this facility here in Melbourne they will be able to undertake that training onshore.

This is a major boost for the aviation training market in Victoria. Along with the Tiger Airways announcement, it represents a strong vote of confidence in the Victorian economy.

My Future My Choice: funding

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health who is also the Minister for Ageing. The minister would be aware of correspondence sent to him within the last week, and copied to the opposition, regarding Mr Ryan Naughtin, a young man with an acquired brain injury (ABI) who had been admitted to the Austin Hospital with pneumonia. Can the minister assure the house that Mr Naughtin's discharge plan has not been compromised by the reduction in funding to the My Future My Choice program, which has been inflicted on us by the Baillieu government?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question. I am not aware of the details of that specific case, but I am happy to find some details for the member on the specifics of the case. I note that ABI is a very significant challenge in the community, and the government is determined to

provide good support for people. Discharge planning is an important aspect of how we manage our major health services. I can state that the Austin has had a significant increase in its budget. I do not know the specifics of the program the member has raised within the Austin, but I am happy again to take that on notice and to find out some further details about that program.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I note that the minister is going to seek further advice. When he seeks that further advice I ask him to guarantee to the chamber and to the community that if he finds his department or the Department of Human Services (DHS) intervened to direct Mr Naughtin's discharge into an aged-care facility rather than to Yooralla, which had indicated that it had an appropriate place available for Mr Naughtin, he will take some action to ensure that a remedy is found for Mr Naughtin, and that the appropriate action and remedy is found within his department for directing such an outcome.

Hon. D. M. DAVIS (Minister for Health) — As I indicated, I am not familiar with the exact details of the case the member has laid out, and obviously health services operate in their own way and with their own systems. We want to see good discharge planning in operation across the state. It seems from what the member is saying that this may also involve DHS, and I am happy to investigate the points he has made and to follow them up. If there is further information he wishes to make available, I am happy to receive that.

Planning: Docklands

Mr ELSBURY (Western Metropolitan) — My question is to the Minister for Planning, the Honourable Matthew Guy. Can the minister inform the house what action the Baillieu government has taken to enhance community planning power and invest in new community infrastructure at Melbourne Docklands?

Hon. M. J. GUY (Minister for Planning) — I thank Mr Elsbury for asking a question that is very important to all Victorians — that is, the development of the Melbourne Docklands. Docklands is around 48 per cent complete. It is an urban renewal precinct that was foreseen many years ago and begun under the Kennett government, complementing what had begun in Southbank under a former Minister for Planning, Evan Walker.

Such urban renewal projects are setting up Victoria, Melbourne in particular, with a bold and visionary inner city urban area that has density, services and new communities into the future that will transform our city from simply encompassing the Hoddle grid as a place for business and include areas outside of that grid, as I said, such as Docklands, Fishermans Bend in the future and of course Southbank. These are areas of urban renewal that genuinely make Melbourne the greatest city in the world, which is why we are the world's most livable city.

I had a lot of pleasure in joining the Lord Mayor of Melbourne, Robert Doyle, in handing back from the state government to the City of Melbourne much earlier than anticipated the planning powers of the responsible authority in relation to the Melbourne Docklands. That complements the Baillieu government's return of planning powers to local governments in areas such as Waterfront Place in Port Melbourne, which both Mrs Coote and Ms Crozier had advocated for both before and after the election; Tooronga Village in the Hawthorn area, with Mr Davis advocating very strongly in that area; and parts of Chapel Street. Of course all wind farm applications now go to local government first. That is a very significant step. It is about recognising local government and handing those planning powers back to councils in the first instance.

Mr Elsbury asked a very important question related to the expansion of local infrastructure and services in and around the Docklands area. Docklands is no longer just a development site, it is a suburb. It is an extension of the CBD and an area of urban renewal that is home to thousands of people, as Mr Ondarchie says correctly, in the electorate of Northern Metropolitan Region.

I again had pleasure, with the Lord Mayor, Robert Doyle, in launching a $300 million community infrastructure plan for Docklands joint-funded by the City of Melbourne, developers and the state government. It will bring forward a range of community infrastructure projects for the Melbourne Docklands region that really will make it a livable area, a livable part of our greater CBD into the future.

The community infrastructure vision is one which will see a boating hub, a place of worship, an oval and sporting facilities, a recreational swimming pool, a library and community centre, exhibition and performance spaces and running and walking tracks. These are some of the headline projects that will complement the City of Melbourne's investment in the *Alma Doepel*, which will form a key part of the Docklands community infrastructure vision into the future.

None of this has come about through hope; it has come about through work. The City of Melbourne, through the Lord Mayor, Robert Doyle, and the Baillieu government, have put in a lot of time over the last 12 months to make sure we get this vision right. The Baillieu government has put its money where its mouth is for library and other facilities to ensure that Docklands is a livable precinct in the future.

For our Irish guests who were here earlier, one of the key features to note is the investment in the Jim Stynes Bridge. The Jim Stynes Bridge will link the CBD to Docklands along the north bank of the Yarra. It will open up the north bank of the Yarra. It will see Docklands be what it should be — an extension of our CBD. It will be a residential and commercial mixed-use extension that will truly be a part of Melbourne's future in the way that was envisaged 20 years ago.

Hon. D. M. Davis — On a point of order, President, or a point of clarification, I understand Ms Mikakos asked me about the City of Ballarat earlier in question time. I misheard that as Ballarat health. I apologise for that. If you would like, I can indicate clearly that the figures for the City of Ballarat are $3.86 million for the last financial year and $3.987 million. I apologise for that mishearing.

Ms Mikakos — On the point of order, President, did the minister also mishear me asking about the City of Kingston, which is reporting a $142 000 cut?

Hon. D. M. Davis — The City of Kingston figures are $11.617 million, increasing to $11.926 million.

The PRESIDENT — Order! The minister has clarified that, and I thank him for making sure that the record was corrected on this occasion.

I indicate that one of the difficulties for ministers is when there are interjections or a high level of babble at the same time that a member is trying to put a question. I actually missed a matter, and Mr Lenders had the courtesy to provide me with some information during the course of Mr Tee's question. That information suggested there was a relevant point in relation to Mr Guy's responsibility for the Building Commission that I had not picked up in the question. That happened for exactly the same reason — there was a fair bit of background noise at that time, and it simply makes it difficult. When members are asking questions, as a courtesy to the minister, as a courtesy to Hansard and as a courtesy to the Chair, other members need to be quiet.

Mr LEANE (Eastern Metropolitan) — I move:

> That the house take note of the minister's clarification on the next day of meeting.

The PRESIDENT — Order! I will accept that the clarification is an extension of Mr Davis's earlier answer because he has sought to correct the record and ensure that the record is accurate. In that context, I will accept that motion. In effect I am accepting that the figures quoted in the clarification are part of the substantive answer given previously. Therefore the question is:

> That the minister's answer to Ms Mikakos's question be taken into consideration on the next day of meeting.

Motion agreed to.

Sitting suspended 12.53 p.m until 2.02 p.m.

FORESTS AMENDMENT BILL 2012

Committee

Resumed discussion of clause 1.

Mr LENDERS (Southern Metropolitan) — When debate was interrupted due to the commencement of question time we were discussing clause 1. In particular I was exploring with the minister the issue of whether there was any compensation to assist with the economic impact on those small businesses that make commissions out of the sale of permits. I was using as an example a place like Bruthen or another small town somewhere in East Gippsland. I was also exploring plantations, which Mr Davis partially addressed.

I could share with the minister the responses to these questions that I received from Ms Asher, the Minister for Innovation, Services and Small Business, Mrs Powell, the Minister for Local Government, Mr Walsh, the Minister for Agriculture and Food Security and Mr Smith, the Minister for Environment and Climate Change. I did not get a response from the Minister for Public Transport. I would be very cautious in my answers if I were Mr Davis, in case I were to be inconsistent with some of those answers.

I will leave timber communities up in the air; however, I invite discussion on small businesses. It is a fact that small businesses throughout Victoria previously made a commission on the sale of firewood permits. I have spoken to a number of small businesses about this. Those commissions were often 1 per cent and sometimes 2 per cent. It may not sound like a lot of money on permits that cost $10 to $30, as Mr Barber spoke about before; however, for a small business, that cost can add up to between $8000 to $10 000 a year. If you are a small business in regional Victoria —

Mr O'Donohue would be well aware of this as some of these places are in his electorate — you have suddenly lost a considerable income stream.

I know Mr Davis gets very excited about amounts of 1 per cent when a government policy decision affects hospitals. He loudly demands compensation in that instance; he sends a leaflet out to every house in his electorate saying that compensation for federal government policy decisions is required. I will put another policy issue to him: there has been an economic effect as a result of this government's policy decision — it is not that different to the federal government putting a carbon tax in place — yet there is no compensation for those small businesses that are losing $8000 to $10 000 a year because of having lost their commission.

One of the objects of the bill is better governance of the state. I invite the minister to comment on whether the government has any view on compensation for those small businesses that have lost $8000 to $10 000 in commissions. Should small businesses expect the same response from Mr Davis's government as he expects from the federal government in compensation for the carbon tax?

Hon. D. M. DAVIS (Minister for Health) — I will make a couple of points in response to the member's commentary. The first is that there would have been a modest stream of income, but there were also administrative costs associated with that. I understand that in many cases the administrative costs would have comprised the major part of what would have been received. This policy provides access to wood without those administrative costs and without the costs to people seeking wood, and in that sense there is a clear benefit. The business costs, as I understand it, would have been very modest.

In terms of the carbon tax, I think that is a very long stretch. I know the member is determined to defend his federal colleagues and that he strongly supports the imposition of a carbon tax on hospitals, the police and a whole range of other state services, including education facilities; however, I will leave that all aside. Suffice it to say I do not think the carbon tax is a very good analogy for what the member is suggesting here.

Mr LENDERS (Southern Metropolitan) — I am not going to enter into a debate on whether or not I support a carbon tax. My position on that is clear, but this is not the time to debate it.

Hon. D. M. Davis interjected.

Mr LENDERS — Mr Davis, last Tuesday you led a debate on a government policy position which puts an impost on a person, or in this case a legal person — a health system, not a natural person — and in fact you voted for a motion last Tuesday — —

Hon. D. M. Davis interjected.

Mr LENDERS — I voted against it; you voted for the motion asserting the principle that if a government policy decision has an impact on a health service in this case, it is the obligation of that government to compensate that person for its policy decision. Mr Davis may talk about trifling amounts for these businesses — —

Hon. D. M. Davis interjected.

Mr LENDERS — Mr Davis, you referred to 'small amounts in administration'. I have had detailed discussions with two small businesses and, as is so often the case with this government, people do not want their names attributed to their comments because they feel they will be victimised. Mrs Petrovich looks askance, but let me assure her that there are a number of people in regional communities who would be whistleblowers in a normal environment but who are fearful of retribution. You do not need to take my word for it, but I will assert it because it is fact. I have now spoken to two business owners who have told me quite clearly that they are losing in the order of $8000 to $10 000 because the commissions of 1 to 2 per cent they earnt on the sale of firewood purchases are gone.

I have also had put to me that it is not just the commissions that are gone but also the customers. The person who goes into the small corner store to buy firewood might also, if it is a licensed premises, buy half a dozen stubbies, or they might buy a loaf of bread or a carton of milk, or they might get some tackle for fishing or whatever. To a minister of the Crown in the Victorian Parliament in Spring Street $8000 to $10 000 may not sound like a lot of money, particularly to a minister who comes in here and is talking about ambulance services and the 10, 20, 30, 40, 50 cents or $1 a year increase in premiums, but to a number of small businesses it means a lot. We are talking about $8000 to $10 000 for a small business.

My point on the objects clause is this: is there a compensation package for these businesses that have lost money? I am asking a question. I am not advocating for it but I am asking a question of a minister who has just this week made an extraordinary amount of noise and expressed moral outrage over others being compensated for a policy decision of a

government. My request to the minister for a comment is: is it government policy that these businesses be compensated for a policy decision of government, or is it not?

Hon. D. M. DAVIS (Minister for Health) — It will not surprise the member that I reject his description of the motion on the carbon tax, which clearly had relevance to the commonwealth imposing an additional burden on Victoria and on a number of health services. I know he is prepared to toady up to the Prime Minister, Julia Gillard, and undertake whatever is required — —

The DEPUTY PRESIDENT — Order! The minister was concerned about straying from the bill, and I think he now is.

Hon. D. M. DAVIS — Mr Lenders introduced these matters.

The DEPUTY PRESIDENT — Indeed, but he introduced them by way of analogy, and I do not think he was in a pejorative debate. I will allow the minister some leeway, but I do not think he needs to go down that path.

Hon. D. M. DAVIS — It is very clear that the member supports the imposition of the carbon tax — —

Mr Barber interjected.

Hon. D. M. DAVIS — He supports the impact on health services — yes, I noticed the silence then. The carbon tax is going to have a significant impact on health services. However, I do not think it is a good analogy for the situation that Mr Lenders points to here. I have nothing further to add beyond what I have already said: that there would have been administrative costs associated with those arrangements that existed before. It would not have been purely profit for the business in the way that Mr Lenders has outlined. The government certainly believes that providing firewood to people without cost is a worthwhile step, and that was a policy decision that was endorsed by the Victorian people. I know it might not fit Mr Lenders's view of the world, and he is absolutely entitled to his divergent view, but the government is bringing forth this bill to fulfil its election commitment.

Mr LENDERS (Southern Metropolitan) — I am conscious that I am eating into Mr Barber's time on clause 1 but this will possibly be my penultimate issue on this clause, depending on the answer. I go back to my earlier point about a regulatory impact statement. Mr Davis dismisses a small business which has lost $8000 to $12 000 worth of business depending on who you talk to. He says, 'But there would have been these administrative costs as well'.

Again we have this strange dichotomy from this government. It will not do a business impact assessment because it claims it is government policy or coalition policy. For argument's sake, let us concede that it is and put that aside. But the government will not do a business impact assessment.

I can imagine the cacophony we would have heard from those opposite if the Labor Party when in government had brought in legislation that was going to take $8000 to $10 000 from the income stream of a small business without having done a business impact assessment or prepared a regulatory impact statement. It would have been about the big hand of government, about stifling small business and about making big businesses small businesses. We would have got all the normal guff.

Here in the middle of Melbourne we have an assertion from a minister of the Crown — and by definition that involves economic resources, support, salary, comfort and all the rest of it — that for a small business that is going to lose $8000 or $10 000 it is just a case of, 'Oh, well, there are these administrative costs'. On administrative costs for small businesses, if I am a small business operator and I want to sell a loaf of bread and get my mark-up on it, there is an administrative cost and I make a choice. Similarly, if I am a small business operator and I want to sell firewood permits, I make a choice and decide whether I wish to sell that product.

Here we have the big government in Melbourne, whose members talk about a small business in some small country town that does not rely on the sale of permits — it has more than permits, obviously — but nevertheless sells permits that give it a turnover of $8000 to $10 000, which is a large amount of money for many a small business. I hope that Mr David Davis, who comes from the party that claims to represent small business, actually understands that cash flow of $8000 to $10 000 a year is not insignificant for a small business. For him to just brush that aside by saying, 'Oh, there'll be some administrative complexity for the business', that is saying to the business, 'Don't trade because there is administrative complexity'.

Mr Howard, a former Prime Minister, brought in the GST, which introduced administrative complexity for businesses. Every state and federal government has brought in administrative complexity for businesses, but business operators make the choice about whether they will do that business. Is Mr David Davis now

suddenly saying, 'Well, I think it's administrative complexity, so they shouldn't be in that business'?

I will step away from my analogy; I think that that debate has concluded from my point of view. However, I will not step away from the little asides made by a minister in Melbourne who is making a judgement about whether a business operator in East Gippsland should or should not be trying to get $8000 or $10 000 a year in commissions from the sale of firewood collection permits on the basis that it is administratively complex. I would have a greater regard for small business operators making that decision themselves than for a minister in Melbourne dismissing their arguments on the basis that he considers it a bit administratively complex for them. It is not. They made money out of it. It has been an important part of a regional community. A balance has to be found between free firewood and what is proposed by this bill. I am not disputing that, but to just dismiss it is to recall the 'toenails of Victoria' analogy made by a previous Premier amplified loud.

Hon. D. M. DAVIS (Minister for Health) — I do not accept the figures provided by the member opposite. Mr Lenders has not been prepared to source those, and I do not accept that people would not be prepared to talk about them. I simply do not accept his figures, and he has not substantiated them. I should point out that the handling fees by the small businesses in this case were $1 a permit. I am informed that the $8000 to $10 000 income that Mr Lenders has described is not feasible in the way that he has described it.

Nonetheless, I do consider that there is a deeper issue here — that is, that the coalition went to an election with this as a very clear policy, which was endorsed very strongly by country Victorians. Mr Lenders may not have accepted that the people of country Victoria have a view on this and have expressed that view. To be fair, obviously the democratic process is a matter of balancing many different points, but in this case there was that very clear policy. It was widely understood and widely supported in country Victoria. I know that Mr Lenders may not wish to accept that point — and that is his prerogative, of course — but I consider it a pertinent point that a decision has been made by the people to put in place a system under which there is no charge for those permits.

Mr LENDERS (Southern Metropolitan) — This is a debate, and I will try to narrow it. Mr Davis can make his assertions about the will of country Victorians and talk about whether they knew or did not know, and we can have a political debate. I have never disputed or not accepted what the electorate did. We on this side may be grieved by it and we may be disappointed by it, but that is what the people did. We accept that.

I want to go back to the basis of this. We are having a debate here, so let us just put it into the perspective of a Parliament. The government has come to the legislature saying, 'Let us change the law of the land'. The government has not checked this proposed law. If we had a regulatory impact statement, we might have some more basis for agreeing to this bill. I have my primary sources who have told me the percentages made out of permits, the bread sales lost, the tackle gear sales lost and all the other sales lost. That is what business operators are telling me. Mr Davis will not convince me that that is not what I have heard from business operators, because it is what I heard from them. That is my factual assertion.

The fact is that those business operators feel intimidated in Mr Baillieu's Victoria — or, more to the point, Mr Ryan's Victoria, because The Nationals in this place are more vindictive than the Liberals. That is the view of country Victorians; they have said it to me. The basic rule of whistleblowing is that if someone gives you information, you are not going to disclose it if they will be victimised, unless they have protection. I will assert that and Mr Davis will disagree with it, which will not take us anywhere.

Where this is relevant to the Parliament is that the government has chosen not to have a regulatory impact statement prepared because essentially it claims to know everything. It is the government's grand policy. We could go back to before the lunch break and the start of this debate to see how well established the policy was and how courageous government members were about having it on the government's website, but let us put that aside. Mr Davis asserts that the government has a mandate to introduce this legislation. We in this house have sought to have the bill referred to a committee controlled by the government to establish some facts through conducting some hearings. Government members have voted against that without even explaining why they did so; none of the three government speakers explained why that was. Now Mr Davis has asserted that the figures on the economic impact of the bill are wrong.

I put it to the committee that if two people are providing figures and they disagree with each other, on any understanding at common law or using common sense the status quo will prevail. I am saying that the government's figures have no basis because it has not had a regulatory impact statement prepared or a business impact assessment done, and Mr Davis asserts

that my figures are wrong. The obligation on the government is to actually establish a case.

Mr Koch interjected.

Mr LENDERS — It is not good enough for Mr Koch to say grumpily from the side bench, 'Oh, that's not right'. Small businesses are losing money because they will not get the 1 per cent or 2 per cent from permits. Mr Davis asserts that that could not be right. Let us get some spreadsheets and do some maths. Let us report progress and come back with some modelling.

Small business operators have asserted to me that they will lose the 1 per cent or 2 per cent from the permits and that they will also lose on bread, fishing tackle, soft drinks, Crownies or whatever else they might have sold. They have asserted that they are losing that business because of the decision to introduce this policy. For a minister of the Crown to just arbitrarily dismiss those assertions and say, 'We have a mandate' — well, Juan Perón used that same argument. I do not intend to contest with the minister who is right and who is wrong. I will step back from that because that is not assisting us in getting through discussion of clause 1.

I will make the comment that the minister cannot come into this chamber and assert that he knows facts when he has not had a regulatory impact statement prepared or a business impact assessment done. He cannot just assert that this legislation will not disadvantage a subset or class, which I think was the term Mr Barber and Mr Davis were using, of Victorians by taking away some of their livelihood. The minister can defend the policy on the basis of utilitarianism — the greatest good for the greatest number — and he can do all that, but he is avoiding it.

Hon. D. M. DAVIS (Minister for Health) — There may be one matter on which the member opposite is correct, and that is that we may just have to agree to differ on certain matters. As I have said, I do not accept the figures put forward by Mr Lenders. I do not believe the impact will be as great as he has put forward. The key thing here is that the government does have a mandate, and this was discussed heavily before the election. I am informed also that the previous government was proposing to discontinue many of those agencies across the state in any event. That is something I was unaware of until this point, but I am informed that that was indeed the case.

Mr Lenders interjected.

Hon. D. M. DAVIS — To be honest, I am not convinced about the purity of the member's position on business impact statements and other analyses given the north–south pipeline and given the desal plant.

Mr Lenders interjected.

Hon. D. M. DAVIS — I would not, in his case, be casting stones from within a glasshouse.

Mr BARBER (Northern Metropolitan) — If the minister can tell us that there was a $1 handling fee for authorised persons to issue permits under the old system, can he tell me how many such permits were issued under that system and what the total revenue to DSE has been in recent years from firewood sales?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the revenue was around $58 000 to $60 000 per year — the agent revenue.

Mr BARBER (Northern Metropolitan) — In terms of revenue to DSE for firewood itself, is the minister able to tell me that figure? The purpose of this policy is to give people something for free that they used to pay for. I would like to know how many dollars are associated with that too.

Hon. D. M. DAVIS (Minister for Health) — I do not have a precise figure. I understand there were significant administrative costs associated with the scheme, but it was of the order of hundreds of thousands received each year. It varied.

Mr LENDERS (Southern Metropolitan) — There is no regulatory impact statement and there is no business impact assessment. This involves of the order of hundreds of thousands of dollars. I believe there is a significant administrative burden. I think I am fairly quoting the minister on both his responses. Government has come to uncosted policy and assumptions and estimates of the order of hundreds of thousands of dollars. We believe that a regulatory burden has been taken away. It is a challenge as we go through the rest of the clauses to start exploring the regulatory burden that has been added or taken away.

I find it extraordinary that the government has come to the legislature at a time when the Treasurer of Victoria, Mr Wells, and the Premier, Mr Baillieu, have gone out and announced these spanking new policies of regulatory burden reduction. They have gone to the Victorian Employers Chamber of Commerce and Industry and made all these commitments about the process of this government which is actually going to keep the regulatory burden down. When you drill down to it, the estimations of costs and the assertions that

regulatory burden has been reduced have come from two government backbenchers and the minister at the table. If this matter had been referred to a committee, it hopefully could have been explored by members of that committee asking expert witnesses, who would hopefully have been doing something more than estimating and guessing, as we are getting at the table today.

Sadly, at this stage, I will move that we report progress to enable the minister to better inform himself so that he can come back to the committee stage to answer some of the legitimate questions that Mr Barber, Mr Leane and I have asked. This government approaches the legislature and asks it to change the law of Victoria when the minister prosecuting that change is making wild guesses at figures and then politically pointing the finger and accusing others of not knowing what they are talking about. The opposition is not seeking to change the law, the government is. The onus is on it to provide information. I move:

That progress be reported and leave be given to sit again.

Hon. D. M. DAVIS (Minister for Health) — The government will oppose the member's motion. I see through exactly what the member is seeking to do. He is seeking to grandstand here. However, the key point is that this will remove regulatory burden, it will remove costs and it will provide a benefit to members of the country communities of Victoria. It will lower costs for them. I regard the Leader of the Opposition's capacity and right to claim some high moral ground in these areas as poor and weak because of his own history in government. I strongly make the point that this was a government election commitment. It was a policy, an election commitment, and I am making it very clear that the government seeks to implement that election commitment through this process.

Mr BARBER (Northern Metropolitan) — The Greens will support this motion to report progress. We are not grandstanding in any way; we are simply applying the usual rule we apply to any bill: in God we trust, all others bring data. So far the case that is being made is rather a weak one, though I am sure that the government having the numbers will mean we will be back here in a minute exploring some of the same questions.

Committee divided on motion:

Ayes, 18

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

Noes, 20

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

Pairs

Darveniza, Ms	Kronberg, Mrs

Motion negatived.

Mr BARBER (Northern Metropolitan) — I offer the minister the opportunity to give us some more clarity on this question of the revenue raised from the sale of firewood. We were told earlier that permits typically go for $10 or $30 a tonne. The minister has now said that the revenue collected from these permits is in the hundreds of thousands of dollars. That seems like a rather small number given the amount of firewood that is collected in this way. Just to be clear: is it correct that revenue from permits in recent years, before the bringing on of this new system, was in the area of some hundreds of thousands?

Hon. D. M. DAVIS (Minister for Health) — Yes, I am informed.

Mr BARBER (Northern Metropolitan) — I think the minister said that revenue at a dollar a permit paid to small businesses was $8000 or $10 000. That implies eight or ten — —

Hon. D. M. Davis — No, no. That was over here. We did not say that.

Mrs Petrovich — It was incorrect.

Mr BARBER — Okay. In terms of the commissions earnt, you said the businesses or other outlets that issue permits get a handling fee of a dollar a permit, and you said that revenue from that in total across the state had been in the realm of, I think it was — —

Hon. D. M. Davis — It was $50 000 to $60 000.

Mr BARBER — That implies 50 000 to 60 000 permits being issued at $1 each, and if they are being charged $10 a tonne minimum — —

Hon. D. M. Davis — It is not per tonne; it is per permit, and it could be little or small.

Mr BARBER — Okay. Thank you.

Mr LENDERS (Southern Metropolitan) — Further to clause 1 — I will raise this in clause 1 rather than through all the subsequent clauses of the bill — a lot of activity is required from the Secretary of the Department of Sustainability and Environment. He has to make a series of determinations through here about classes of people, about regions and subregions and about signs and what is on signs, and presumably important things such as what the font is and all sorts of things. There is a lot of determination, and there are a lot of clauses in this bill with penalty units attached to them. My question to the minister is: does DSE have the resources to administer this new regime?

Hon. D. M. DAVIS (Minister for Health) — I am informed that DSE believes it is able to manage these matters adequately.

Mr LENDERS (Southern Metropolitan) — Again I note we have got no information here in the Parliament other than assertions from government members that they know everything. As I understand it — and I am sure I will be corrected — DSE has a requirement of 400 staff to be gotten rid of under the sustainable government initiative. I am sure the Parliamentary Secretary for Sustainability and Environment, Mrs Petrovich, will inform me if the figure is wrong, but for argument's sake — until undoubtedly I will get rebuked for not knowing facts — let us say the figure is 400. If DSE as a department is having cuts imposed on it by the sustainable government initiative and the minister assures me that DSE can manage its requirements, I am seeking some more advice. We are being asked to put in place legislation which has some fairly onerous penalty units for individuals for breach of the legislation, so I am seeking something more from the minister than an assurance that DSE will be able to manage. Firstly, how many staff will be removed under the sustainable government initiative?

Hon. D. M. DAVIS (Minister for Health) — I am informed that this will be managed within the existing arrangements. I think the sustainable government initiative is well beyond the purview of this bill, beyond the purposes of the bill as we are looking at it here. In that sense I do not propose to discuss the sustainable government initiative other than to say that DSE has indicated that it sees no difficulty with the broad range of government policy settings in terms of being able to administer the act satisfactorily.

Mr LENDERS (Southern Metropolitan) — I am pleased that the parliamentary secretary is sitting next to the minister, given that the illustration I am going discuss happened in her electorate. I just do not accept Mr David Davis's proposition that he does not wish to discuss the sustainable government initiative. Here we have an executive government proposing to the legislature that we change the statute law of Victoria. We have increased a series of penalties. We have introduced, I would submit, an incredible level of complexity — and we will go through that as we go through the various clauses. The parliamentary secretary has not disputed my figure of 400 staff being shed, which makes me think I probably underdid it and the figure is probably higher. I will stick to the figure of 400, which is my memory of what the figure was. Leaving that aside, we have just recently seen in the *Border Mail* and on the ABC in north-eastern Victoria reports of the number of doggers being reduced.

If Mr Davis is not familiar with doggers, they are the DSE people who hunt dogs. We could go through a long discussion on hunting wild dogs but let us just agree that he should take my word for it: that is their job. We have heard statements from various ministers and the Premier that no front-line services are going, but we know that in north-eastern Victoria four doggers have now been reduced to two. They are DSE staff who provide front-line services. I think one of them left due to a promotion and one due to maternity leave, but I would stand corrected on that. However, we have gone from four to two doggers.

DSE is not replacing front-line services in regional Victoria at the moment because of the sustainable government initiative and the job cuts. The minister comes in here and says DSE has assured him — and I am sure the officials in the box probably have — that it can meet its obligations under this bill. I will explore this in further clauses because this is clause 1, which is general, but I guess I will put to the minister that he is putting a new obligation on DSE at a time when very onerous obligations are, correctly, being put on the department to deal with the bushfire response and a range of other policy initiatives of the government and a range of other things the government is doing, such as, presumably, herding cattle out of the high country and other important things on its agenda.

The government has got a lot of obligations on DSE at the moment, and here it is putting some more on. It is cutting 400 staff out of DSE and the minister is coming into the house assuring us that DSE can do all of this. I do not think it is an unreasonable question to link the performance of new legislative requirements the government is putting on a department with the

question of the impact of the sustainable government initiative, where on one example that I have put to the minister, of the doggers in north-eastern Victoria, we have seen a 50 per cent reduction in staff doing the same work. I invite the minister to explain — or I will give him notice that we will do it during debate on the later clauses, when we are talking about the signage that will go up in various parts of the state where people can collect firewood — how the DSE, which has cut its doggers by half in north-eastern Victoria, is going to find the people to put up all these signs, at this stage sight unseen?

Hon. D. M. DAVIS (Minister for Health) — I am informed that doggers are actually employed by DPI (Department of Primary Industries). They are not DSE staff, so the premise of the question is flawed. The second point I would make is that I am not informed, genuinely, of the detail of sustainable government initiatives at DSE, but I am informed that the government's current policy settings are such that the DSE believes it can adequately manage this bill and implement the new provisions as required.

Mr LENDERS (Southern Metropolitan) — I thank the minister for enlightening me about the doggers being in DPI not DSE, but I do not think it takes away from the argument that DSE, under the sustainable government initiative, is going to lose 400 staff, and I think for the minister to simply assert, because he is the minister, that he thinks it will be all right in relation to a policy that has not had an RIS (regulatory impact statement), has not had a business impact statement and which he is not prepared to have any forensic scrutiny of at a parliamentary committee, does not wash with me. It does not wash with me that he is putting new requirements on a department that pertain to the liberties of the citizen — there are some pretty savage penalty units in here. The starting point is, 'Trust us'.

That concludes my contribution on clause 1, but I advise the minister there will be more forensic questioning on the later clauses so that I as a legislator can get my head around what this law actually means to citizens in this state, this law that we are being asked to vote for and which this minister seems to be having trouble explaining.

Hon. D. M. DAVIS (Minister for Health) — I am not going to be verballed by the member. I am simply stating that I have been informed by DSE officials that DSE believes it can manage this. That is not anything out of the ordinary. The advice is to that effect. The member might not like that but that is the effect, so I rest on that.

Clause agreed to; clause 2 agreed to.

Clause 3

Mr BARBER (Northern Metropolitan) — The definition in this section of 'firewood collection season' relates to a later clause where we learn that it is in fact from 1 September and ending on 30 November and the period commencing on 1 March and ending on 30 June. The original press release, put out by the minister's party, dated 3 November 2010 and headed 'Coalition to abolish firewood permits', states:

> The coalition's plan will make firewood available year round. Under the Labor proposal no firewood can be collected in winter when it is most needed. Many people do not have large storage areas for firewood and need access to supply in the winter months.

If the period in which firewood can be collected is limited — that is, from September to November; and March, April, May and June — it is not correct, is it, to say that the coalition's plan will make firewood available year round?

Hon. D. M. DAVIS (Minister for Health) — As I am informed, the implementation of the policy is expressed through the bill. The bill lays out the best outcome that can be achieved in the current circumstances.

Mr BARBER (Northern Metropolitan) — What limits are there on the government delivering its original promise of firewood being available all year round? Why is it now not seen as a good idea to make it available all year round and to make it available only within those two limited seasons that the bill provides for?

Hon. D. M. DAVIS (Minister for Health) — I have been informed that this was explained by the minister on 30 August in his media release announcing the abolition of permits for firewood collection. I will quote from it, because I believe it clearly lays out the issue:

> Residents can continue to collect firewood for domestic use during autumn and spring, between 1 March and 30 June and 1 September and 30 November.
>
> 'This approach will make the rules consistent wherever you are in Victoria and reduce safety and environmental risks', Mr Smith said.
>
> Mr Smith said the government had considered more collection times outside of spring and autumn.
>
> 'After carefully weighing the options and taking into account public feedback, we have decided to maintain existing collection times', Mr Smith said.

> 'The threat of bushfires over summer and the risk of damaging forest access tracks during wet weather during winter were key factors in the decision to maintain current collection times.'

Mr LENDERS (Southern Metropolitan) — The committee has moved from clause 1. We are not going to put it under any form of scrutiny because it is part of the government's election policy, with all the caveats and manoeuvrings regarding whether it was on the website of the Liberal Party or The Nationals and who had seen it and that there was a general view. We have moved from the position that it was part of the government's election policy so we do not have to scrutinise it.

On the basis of what David Davis has read — and I take it the minister is reading the press release of Ryan Smith, the Minister for Environment and Climate Change — we can assume the minister has spoken to and consulted with some people, whoever those people are. The feedback from the consultation is not being shared with the Parliament and the public — other than a press release. It has not been documented or given to us. Based on the information Mr Smith received, we now have legislation that is inconsistent with Ms Lovell's press release and the argument as to why this issue is not referred to a parliamentary committee — that is, because it was an election policy.

We have been told that the minister has consulted with some people. Because of that the election policy has been wound back. The rationale he has used appears sound; I am not criticising the rationale. But I am querying the parliamentary process here. It has moved from the argument that it cannot be sent to a committee because it is an election policy to the argument that it is an abridged election policy, because the election policy was not going to work. I put it to the committee that the government's entire position as to why this issue cannot go to a joint investigatory committee has suddenly changed between discussions on clause 1 and 3.

Mr BARBER (Northern Metropolitan) — Perhaps the government sees the production of a regulatory impact statement as itself a form of red tape that it now would like to eliminate. That could be right. If we are talking about $200 000 or $300 000 of revenue, I do not think I would want to dish up a regulatory impact statement that would probably cost a couple of hundred thousand dollars to deliver. It is clear from the minister's previous answer that the government now understands there are safety and environmental risks in allowing people to be collecting firewood in summer and midwinter. That stands in contrast to the government's original press release of 3 November 2010 which states:

> Labor's strategy restricts personal firewood collection to two confined seasons a year — from April to June, and September to November. It precludes wood collection during winter …

Later on the government says, like it is a bad thing:

> Collection is also banned in summer, a time when those who do have — —

I think it is meant to say 'do not have' —

> adequate storage capacity prefer to stockpile supplies.

We can see now that it is obvious. Having people operating chainsaws in the bush in the middle of summer as they pick up and collect their firewood is an extraordinarily bad idea, especially when they are not under direct supervision from DSE staff and where sparks in bark piles can smoulder away for quite a while. I am glad to see the government has changed its pre-election promise. This is a good backflip. The government has seen sense and decided now, many months down the track, not to implement the things it claimed during the election. It was never appropriate to have people collecting firewood in midwinter or in summer. That is what this bill now reflects.

Hon. D. M. DAVIS (Minister for Health) — I thank Mr Barber for his commentary. I do not accept much of the commentary made by Mr Lenders. The government has made this decision, which it has thought through. I am not particularly enamoured by being lectured by Mr Lenders on these matters. I think it is self-evident why the position taken has been taken.

Mr LENDERS (Southern Metropolitan) — Going through the definitions clause, clause 3, I see that a new definition 'fallen or felled trees includes parts of fallen or felled trees' is to be inserted. I am not being facetious; we are changing the law and there are severe sanctions if people breach this law. Can Mr Davis describe what a 'fallen or felled tree' is?

Hon. D. M. DAVIS (Minister for Health) — By using the term 'fallen or felled trees' to describe what can be taken as firewood under the new scheme the bill makes it clear that the firewood collection scheme does not apply to standing trees. It is illegal to cut down standing trees for firewood under the new scheme — that is, I think, in new section 57ZD. I think that is probably the answer the member wants.

Mr LENDERS (Southern Metropolitan) — I thank the minister for reading something I have already read. But my question is, and I will put it to the minister: is a 1-metre-high banksia bush a tree?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the definitions here come from the

Forests Act 1958, and that act makes it illegal to knock down trees of any type.

Mr LENDERS (Southern Metropolitan) — We can play this game for hours, I guess. My question is: is it a tree? I have asked the question: is a 1-metre banksia bush a tree?; and Mr Davis said, 'Well you cannot chop down a tree, whatever it is'. Is a 1-metre Scotch thistle a tree? Is a 1-metre bunch of papyrus grass a tree?

Mr Koch interjected.

Mr LENDERS — Mr Koch may say it is pathetic. We are being asked to change the law of the land that can lead to 50 penalty units and a term of imprisonment for one year being imposed on a person who is in breach of this provision, and you laugh. Members of the government talk about cutting red tape, having no regulatory impact statement and no business impact assessment, and the minister does not even know whether a constituent of Mr Koch's may go into some bushland in his electorate and chop out a Scotch thistle, a banksia bush, a bunch of papyrus or anything else you name. This minister is asking us to change a law that can ultimately lead to the imposition of 50 penalty units and a year's imprisonment on a citizen, and he cannot even describe what a tree is other than reading and saying 'a tree is a tree' and then telling me the word has the same meaning as it does in the Forests Act. He has not answered my question. Is a 1-metre Scotch thistle, a 1-metre clump of papyrus grass or a 1-metre banksia bush a tree? If the government is asking to change the law, it is not unreasonable for it to come in here prepared and able to describe what a tree is other than saying 'it is a tree'.

Hon. D. M. DAVIS (Minister for Health) — The definitions, as I have said, are already in the Forests Act — section 3, I am informed, is the section — and they remain. That is established practice; that is already the situation.

Mr LENDERS (Southern Metropolitan) — It is section 3 of the Forests Act. I would think there is an onus on the minister to be able to provide a better description. He has three departmental assistants and the parliamentary secretary sitting next to him, but he will not tolerate the indignity of actually reporting progress so we can get an answer. It is not an unreasonable onus on a minister to be able to describe what a tree is other than to say that it is what a tree is. That is what he is saying.

I will get to the later clauses later on, but at the moment the secretary of the department has to put up a notice to say, 'You can collect firewood'. Firewood, that is different here; we are talking about felled trees in this particular clause, but the minister cannot even describe what a tree is other than say, 'It is a tree and another act of Parliament says it is a tree'. He cannot answer whether a 1-metre clump of papyrus grass, a 1-metre Scotch thistle or a 1-metre banksia bush is a tree. I wonder whether the minister, or the parliamentary secretary, would even hazard a guess at whether any of these three is actually a tree.

It is a bit rich for the government to expect the law of the land to be changed to let a citizen incur 50 penalty units and one year in prison for felling a tree — in the right quantities and amounts and all the rest of it, and I realise it is the maximum the court could apply — but we are the legislature and at this stage the minister cannot tell me what is a tree other than by playing a pedantic game and saying a tree is what another act says is a tree. A bit of a graphic description would help to assuage some of my concerns that this is not a half-hearted piece of legislation that has been scrutinised by the likes of Ms Lovell and others who did the original press release. Now we suddenly have the government locking itself into a position of saying, 'We will not tolerate any scrutiny or anyone looking at it; we will just say "A tree is a tree is a tree" and if you chop down a tree, 50 penalty units and a year in jail'. That is what we are effectively being asked to do.

Hon. D. M. DAVIS (Minister for Health) — It will not surprise the member that I do not accept his characterisation in any manner. The point here is that section 3 of the Forests Act, which is already in operation, remains in operation. For his benefit its definition is 'tree or trees includes trees shrubs bushes seedlings saplings and reshoots whether alive or dead'. That is the definition that is current; that is the definition that remains.

Mr LENDERS (Southern Metropolitan) — Thank you. That certainly tells me that the banksia bush is a tree. I would ask the minister to give me an opinion, given that he is asking me to vote for changing the legislation, on whether the Scotch thistle and the papyrus grass are trees. Will he venture an opinion? I have helped him on one of the three. I concede a banksia bush is a tree on his definition. Would he grace the house with a commentary on the other two?

Hon. D. M. DAVIS (Minister for Health) — It will not surprise the member that I will not go around hazarding guesses. These definitions that are already in operation and already have legal history behind them remain.

Mr LENDERS (Southern Metropolitan) — On this part of clause 3 my last comment, then, is: if I wish to get an answer as to whether a 1-metre Scotch thistle or a 1-metre clump of papyrus grass is a tree under the terms of this piece of legislation — and I would venture to say they are probably not — I would need to ring, presumably, a hotline in the Department of Sustainability and Environment, a department that has just had 400 staff cut out of it until, hopefully, someone would be at least prepared to give me the courtesy of an answer as to whether or not those plants are trees under this legislation.

I do not think these are trivial questions. We are being asked to change the law of the land, and if a person breaches this law they could get 50 penalty units and a year in prison. The minister will not go away and get an answer but comes into this place and says, 'We're going to do it today because, my goodness, we had to talk about the carbon tax yesterday. We are going to do it today regardless. We are going to go through until all hours and finish it'. And he cannot answer the question.

The next part of clause 3, subclause (b), refers to domestic use. I ask the minister whether he could describe what domestic use is. Rather than spend time playing, with him going backwards and forwards to the adviser, I specifically ask him: does domestic use include firewood used in the front of a milk bar to keep the place warm? Does domestic use include firewood used in a farmhouse or in a farm shed? I am obviously talking about the commercial and the residential parts of these premises. Does domestic use include a school? And does domestic use include issues like those Mr Barber raised earlier: what someone would use in an open fire in a caravan park? Again they are not unreasonable questions, because there are fairly severe sanctions if you breach this law.

Hon. D. M. DAVIS (Minister for Health) — The information provided to me suggests that 'domestic' means where people live; that is the primary point.

Mr LENDERS (Southern Metropolitan) — So going back to the example used earlier of my and Mr Davis's electorate, let us say I am a citizen of Camberwell and I operate a pub which has an open fire. As a publican, if I go and get my load of firewood, my 2 or 4 or 16 metres' worth — depending on which clause applies and what the circumstances are — is the wood I use in my pub for my guests domestic or not, given that people live there?

Hon. D. M. DAVIS (Minister for Health) — As I am informed, the point of 'domestic' is to refer to where people live, not to refer to commercial purposes.

Mr LENDERS (Southern Metropolitan) — This is just concerning me more and more. So it is where a person lives. We can talk again about the hypothetical pub in Camberwell with the publican who has gone out and collected firewood from Bruthen and brought it back for the open fire. As I said, Mr Davis says it is where the person lives. If I am a commercial traveller who lives for two weeks in the pub, does the provision apply to me? We will turn shortly to the nomination provisions, which would relate to the question of who goes to collect the wood from Bruthen. There are pretty severe sanctions in relation to that activity or in relation to the publican. As a citizen, how do I know whether I am in breach of this proposed law?

The simple question is: taking the pub in Camberwell and taking a commercial traveller who lives there for a month and the publican who lives there permanently, will the law apply equally to both of them? I am referring to this clause and the clauses we will consider about their ability to collect wood.

Hon. D. M. DAVIS (Minister for Health) — I think perhaps the member misunderstands a little. There has been no change to this aspect. The previous system referred to domestic use as well. This applies in the same way.

Mr LENDERS (Southern Metropolitan) — It is fine for the minister to assert that this does not change anything, but the penalties for breaches of this legislation are changing. The rights of the people in Camberwell in the pub, whether the commercial traveller or the publican, are being affected by this legislation. The penalty sanctions are changing. The minister may say the definition has not changed, but those opposite are asking the Parliament to change the penalties. In relation to a citizen wishing to avail themselves of knowledge about the circumstances that have hit them, please explain, Minister, how they would find out. Do they ring DSE? Will there be something in the travellers code or the innkeepers code or whatever it may be up on a door about this? How will a citizen acquaint themselves with the fact that more severe penalties are now facing them when the minister cannot explain to me what 'domestic' is?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the penalties remain the same and that the definitions remain the same.

Mr LENDERS (Southern Metropolitan) — In that case I will raise those matters again with the minister when we discuss the clauses where, by my reading, the penalties have changed, and I will ask him to comment on them then rather than having a 'he said-she said'

debate at the stage of this clause. I do ask the minister, however: how would a citizen find out what their rights would be? The minister can answer that now — and we can have that discussion now — or we could do that when we get to the clause relating to what goes on signs. How would a citizen find out? Is there a DSE website? How would a citizen find out whether they were inside or outside the law?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the signposts and the websites will inform the public.

Clause agreed to; clause 4 agreed to.

Clause 5

Mr BARBER (Northern Metropolitan) — This is the long section of the bill, so I presume you will not mind, Deputy President, if we skip around a bit within this clause. Proposed section 57R says:

> A person who is unable to cut and take away fallen or felled trees may nominate another person to cut and take away fallen or felled trees on his or her behalf.

What does someone have to do to qualify as 'unable'?

The DEPUTY PRESIDENT — Order! Just before I call on the minister, when members refer to particular elements of the clause, it would assist me in the chair, and it may assist the minister, if they are able to quote the page reference. That might assist in getting us through this.

Hon. D. M. DAVIS (Minister for Health) — In terms of 'unable', the common definition of the word is used. It is not defined in the bill. It would be a matter ultimately, I guess, for courts in the normal way it would be with any piece of legislation.

Mr BARBER (Northern Metropolitan) — Yes, that is what worries me. There would have been other ways. All the bill needed to say was that a person may nominate another person to cut and take away fallen or felled trees on his or her behalf; instead what it says is that a person who is unable to cut and take away fallen or felled trees may nominate another person. The 'may' comes from their inability. It is not just that they could not be bothered. It is not just a case of, 'I have always gone and collected firewood for Mrs Mac next door'. There is actually a test. The beginning of new section 57R refers to, 'A person who is unable to cut and take away fallen or felled trees …'. They might be physically unable to cut or lift them, they might not have a car, the area could be too remote from their house or they could be too busy, but we have chosen to go this particular way, with inability being a qualification for then nominating another person. I am wondering if the government has a thought about this.

Hon. D. M. DAVIS (Minister for Health) — I am informed that this follows the practice in previous permits and flows through from that.

Mr BARBER (Northern Metropolitan) — It continues to get tricky in this section. On page 7 of the bill, subsection (4) of new section 57R, inserted by clause 5, says:

> (4) A person must not nominate another person to cut and take away fallen or felled trees other than for domestic use as firewood in the nominating person's household.

That basically means that we have the double whammy of both domestic use and use in the household. It means that that person is not in a position to share any firewood collected for them with their friends, for example. If I go to the firewood coupe to collect it for myself, the only requirement is that it be for domestic use. However, if I send a friend to collect it for me, there is a second requirement that it be not only for domestic use but also for use in my own house. I understand why this provision is being brought in; it is so that I cannot nominate someone who then provides it to a whole range of people. However, it does create another trip-wire, if you like, in what is already a rather complicated bill.

Mr LENDERS (Southern Metropolitan) — The two issues that Mr Barber raised — that is, the heading of new section 57R on page 6 of the bill and then the correlation in subsection 57R(4) on page 7 — relate to the same point: a person must nominate another to cut. My question is: is that on a prescribed form? Is that in writing? What form does the nomination take?

Hon. D. M. DAVIS (Minister for Health) — I am informed that this will be on a prescribed form available on the website or from the offices.

Mr LENDERS (Southern Metropolitan) — My question to the minister then is: is this prescribed form subject to the Instruments Act 1958? Is it a disallowable instrument of the Parliament? Does the legislature get a chance to have a look?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the document is already in existence on the website. It has been consulted on widely, and it is subject to the Subordinate Legislation Act 1994 and other similar acts.

Mr LENDERS (Southern Metropolitan) — I repeat my point about consulting widely. The approach of this government is to consult with anyone other than the

Parliament or a parliamentary committee — an interesting form of consultation. I could spend some time asking whether the consultation was minuted and whether there is evidence that it happened, but that would probably be a tad provocative. However, given how loose with the truth this government has been on so many occasions, the thought does cross my mind. The minister assures me there has been consultation with stakeholders — but not the elected Parliament. He assures me there has been consultation with people — sight unseen, no records kept — but not the elected Parliament. That is an interesting form of open and transparent government.

The minister says this form is subject to the Subordinate Legislation Act 1994. My specific question then is: is it an instrument that is disallowable under that act, or is it an instrument that is not?

Hon. D. M. DAVIS (Minister for Health) — Yes.

Mr Lenders — So it is disallowable?

Hon. D. M. DAVIS — Yes.

Mr BARBER (Northern Metropolitan) — I presume that the amount of fallen or felled trees specified under subsection (3) of new section 57R on page 6 of this extraordinarily verbose 43-page piece of legislation that people are meant to comply with must be notified on this prescribed form, because subsection (2)(b) says that the prescribed form must:

> specify the maximum amount (not exceeding 16 cubic metres) of fallen or felled trees that may be cut and taken away by the nominee …

To back that up we need subsection (3), which says that you cannot also then specify another nominee to collect another 16 cubic metres under the Crown Land (Reserves) Act 1978 — so, for example, I cannot give you a nomination for 16 cubic metres from state forests and then another 16 cubic metres from Crown land reserves, assuming I even know the difference. New section 57R(3)(b) then provides for the total of the nominations coming from a household — that is, if there are six of us living in the one house, we cannot give you six different nomination forms to come back to that address. If I get any of that wrong, I get 50 penalty units or one year's imprisonment. Is that a correct understanding of the purpose of subsection (3)?

Hon. D. M. DAVIS (Minister for Health) — I understand that the collection limits are the same irrespective of whether a nominee collects wood or firewood in a state forest or one of the regional parks to which the scheme applies, thereby avoiding the creation of a loophole that would allow a person to double dip from the two schemes under the separate acts.

Mr BARBER (Northern Metropolitan) — Thank you. I had to read it five times, but that is what I thought it meant. So now, in other words, if Mrs Macgillycuddy gives me, her next-door neighbour who does odd jobs for her, a nomination form for up to, let us say, 16 cubic metres of wood and then gives me a subsequent nomination form for 16 cubic metres of wood, forgetting that she gave me the first one, or if she gives me a different form because I am now going down to the forest park rather than the state forest, and accidentally the two things tot up to greater than 16 cubic metres, Mrs Macgillycuddy risks one year's jail. Is that correct?

Hon. D. M. DAVIS (Minister for Health) — As we have discussed, this provision is designed to stop double dipping or abuse of the scheme. I think that most people are in fact honest, but there remain, perhaps, a number who are determined to look for or exploit loopholes. There is of course the discretion of the courts as well, and I think that those matters will be closely looked at.

Mr BARBER (Northern Metropolitan) — I think most people are honest too. I also think most people get things wrong on forms. I presume that subsection (3) will in fact be stated on the prescribed form, given it is a requirement of someone in filling in a prescribed form. I would expect that information — the information contained in subsection (3) that you cannot exceed 16 cubic metres worth of nominations — would be on that form or on all the forms across the year.

Hon. D. M. Davis — Yes.

Mr BARBER — Thank you. Also, that would be true across all of the different land tender types. The minister assures me that that will be stated on the forms. That is good news.

Subsection (5) states:

> A person nominated to cut and take away fallen or felled trees —

on behalf of someone else, that is —

> must not request or accept payment or reward for the cutting and taking away of fallen or felled trees.

So if Mrs Macgillycuddy says, 'Thanks for that, pet. I really appreciate what you have done for me. Here is a bunch of lamingtons', I have in fact accepted payment or reward. Or if someone pays my petrol bill for the

bother and so forth, I would risk falling afoul of that section, would I not?

Hon. D. M. DAVIS (Minister for Health) — As I think the member understands, this provision is designed to deter commercial operators. That is the purpose of it. I think that common sense would apply here.

Mr LENDERS (Southern Metropolitan) — I seek clarification from the minister. At the moment I live in a household of three people in Mr Davis's electorate of Southern Metropolitan Region.

Hon. D. M. Davis — It is your electorate too!

Mr LENDERS — Yes, it is my electorate too, but Mr Davis is the minister. I am very proud of the electorate. I live in a household of three people at the moment. During the last financial year, depending on what my children were doing and what their partners were doing, at one stage we had up to seven adults in our household. Regarding new section 57R(4) at the top of page 7 of the bill, which talks about the nomination of another person to cut and take away fallen or felled trees other than for domestic use as firewood, is it at all relevant to that subsection how many people are in the household, if we are checking whether DSE applies the law or not?

Hon. D. M. DAVIS (Minister for Health) — No.

Mr LENDERS (Southern Metropolitan) — I go then to new subsection (3) on page 6, where it states:

> A person must not specify a maximum amount of fallen or felled trees in a nomination if that amount would exceed 16 cubic metres for a financial year when added to all maximum amounts specified in —

and then there is the series of subheadings that Mr Barber referred to. We have a fairly tight and precise definition here of a financial year, which presumably is a vestige of the previous legislation, in regard to when the government is according permits in a financial year. How does a Department of Sustainability and Environment officer know whether I, as a resident of Carnegie, is within the 16 cubic metres or not? What sort of paperwork is required for the officer to know?

Hon. D. M. DAVIS (Minister for Health) — As one aspect, they would have the forms, but the key thing here is that this is designed so that DSE becomes aware of large stockpiles of wood that have been put there, and there is capacity then to examine the source of that wood.

Mr LENDERS (Southern Metropolitan) — I thank Mr Davis for his answer. So he is saying that this is really a test in the end for DSE. It would apply common sense and make a judgement then as to whether someone has got the 16 cubic metres or not in a common-sense test. That makes a lot of sense, and it is what I had hoped the minister's answer would be. What I would be interested to hear from the minister is what DSE's policy will be in regard to prosecuting these matters. Again, we are being asked to sign off on a heavy penalty that I assert is new, so what is the prosecution policy of DSE as to when it makes a discretionary decision to prosecute or not prosecute?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the existing policy is that you only prosecute where there is a reasonable prospect of success and where it is in the public interest.

Mr LENDERS (Southern Metropolitan) — If any prosecutions are going to happen at all on this, it really depends on the number of personnel DSE has to actually inspect, form judgements and go to the courts. Going back to the efficient government initiative that Mr Davis does not want to talk about, are these front-line services that are being preserved, or has there been attrition in this particular area?

Hon. D. M. DAVIS (Minister for Health) — As I have indicated already, the sustainable government initiative is beyond the purview of this bill, but DSE has indicated that it believes it has the capacity to implement this legislation and to manage it.

Mr LENDERS (Southern Metropolitan) — Mr Davis asserts that he has come to the Parliament seeking to amend the statute book with penalties. In this case there is a reverse onus here in regard to any benefits coming out of this. As opposed to the previous one where citizens were actually being potentially clobbered, here it is the reverse.

If we want the resource to be protected from unscrupulous commercial operators, we are expected to believe that the department, which has taken 400 job cuts as part of the sustainable government initiative, is suddenly going to find sufficient people to protect the public interest via this incredibly red-tape-ridden document. We could debate that for hours, and I do not think either the minister or I would change our view.

New section 57R(5), on page 7 of the bill — and this goes a little bit towards what Mr Barber said before — says that a person nominated to cut and take away fallen or felled trees must not request or accept payment or reward. Mrs Petrovich and I sparred a little bit on

this during the second-reading debate. If I can go back to the original example used by Mr Philip Davis in his contribution to the second-reading debate, he said this is designed to help low-income people where there is no reticulated natural gas. That is a policy decision to which I imagine we would all sign up with some enthusiasm.

But if I am a person on a low income and for whatever reason am unable to go and collect this wood myself and perhaps do not have the family network or some good neighbour to come and do it for me, so the only way I can take advantage of this government policy is to pay somebody to come out with a truck and trailer while I load the firewood, am I in breach of the law?

Hon. D. M. DAVIS (Minister for Health) — The key point has already been made, and that is that this is designed to prevent commercial operators accessing this firewood. The other significant point is that this will be interpreted sensibly. Country communities bunk in and look after each other; there is a strong neighbourhood approach. People are overwhelmingly able to draw on assistance from people around them. That is the key point here. In that sense, what might already be happening will continue.

Mr BARBER (Northern Metropolitan) — Still on the interpretation of new section 57R on page 6 of the bill, that section and new section 57X on page 11 say you cannot take more than 2 cubic metres of firewood a day from one or more areas. Does that mean a person who has been nominated to collect firewood on behalf of another person also cannot collect greater than 2 cubic metres of firewood a day? Is it therefore not possible to get 10 nomination forms from 10 different people, each allowing for the collection of 2 cubic metres of firewood, and collect 20 cubic metres of firewood?

Hon. D. M. DAVIS (Minister for Health) — No, you cannot do that.

Mr BARBER (Northern Metropolitan) — As a nominee or as an individual, you can only collect 2 cubic metres a day from each area.

Mr LENDERS (Southern Metropolitan) — Going back to Mr Davis's assertion that country people are different, there are two things about this bill. It affects both country people and city people. Someone from Mr Davis's electorate might wish to travel out for this purpose, though it probably stretches the imagination a little as to how a person with poor means would be able to get to some of these areas because some are quite some distance away. However, this legislation applies to the whole state. City people can go out there and do this as well as country people.

Perhaps the more substantive issue is this. Without wishing to sound arrogant, I actually grew up in a small farming community called Willow Grove. It is just 20 kilometres north of the Latrobe Valley. We were on a farm about 3 kilometres out of town. There were 12 houses in the town. A lot of country people are proud; they do not necessarily want to go to the local service organisation and ask for help. This legislation makes this an offence. There are no ifs or buts and no discretion. I take Mr Davis's point that in the end the Department of Sustainability and Environment will hopefully prosecute this with a degree of common sense. But the legislation states, without any scrutiny other than inside the government, that a person nominated to cut and take away fallen or felled trees must not request or accept payment or reward for the cutting and taking away of fallen or filled trees.

If, for example, my elderly mother was still living on the farm in the small country community of Willow Grove, where I was born and grew up — thankfully my family members are able-bodied and well — she might not want someone to do this for nothing; she might want to pay someone to do it. This legislation basically obligates the good Samaritan, for want of a better term, to be a good Samaritan.

I take on board the qualification that says DSE will operate with common sense. However, it beggars belief that, for a bill with a second-reading speech that talks about reducing red tape, on the assertion of the government, we continue to deal with mega-complicated clause after clause. I also make the observation, without wishing to hark back to my days in government, that when we drafted legislation in consumer affairs there was an intent purpose in the legislation. This legislation almost harks back to the 1970s or 1980s where the whole legislative drafting process was inordinately complex and involved language such as 'Thou shalt not'. There is no intent here.

It is fine for the minister to say that DSE will operate with common sense, but the black-letter law in this instance is quite draconian. I am not going to pursue this particular clause because I have said what I want to say and I do not think it is going to move anywhere. But the point that I make is that there is an assumption that in country communities everyone is going to trot off to the Rotary club to be helped out. It is true that 95 times out of 100 that will happen. But in the small rural community in which I was born there are a number of people who would be too proud to do that.

The government is putting in place a one-size-fits-all Melbourne solution. I do not know who drafted this legislation. I do not want to come to grief with the parliamentary counsel. In fairness to them they probably did the right thing; the changes are probably due to the intervention of the government in the same form as Ms Lovell's press release. That is just my speculation. I know Mr Davis cannot answer that, and correctly so, because it is cabinet in confidence. But this is an interestingly drafted, shall we say, piece of legislation harking back to another age. I will cease commenting on that, but I think it makes an assumption that is not particularly accurate in all country communities.

We have talked about some of the issues with the forms. Mr Barber has raised a question about one of these items: what does it mean? We have had a bit of a discussion about measurements, but I will go to new subsection 57Q(1), page 4, which says:

> A person must not cut or take away 2 cubic metres or less of fallen trees or felled trees in state forest.
>
> Penalty: 20 penalty units.

I am not being pedantic but I am raising the point: how do you measure that? If I have a 2-metre-square box — presuming that 1 square metre is a metre by a metre by a metre in the old measurements, and we can go right back to the centre of Paris to make sure it is an accurate measurement — how much wood do I put in there? If I am driving with my trailer and have stacked the wood up so it is not particularly compact and the inspector comes, do I have the option of breaking it into smaller bits to fit into the cubic metre? Do I have an option to woodchip it so that I can fit a lot more into the cubic metre? That will excite Mr Barber no end. At what stage am I in breach of the law? If I have a metre-square box with 10 long sticks sticking out of it and I wish to get my tomahawk or chainsaw to cut it down to fit it into the box, am I or am I not in breach of the law?

Hon. D. M. DAVIS (Minister for Health) — I am trying to get back to where this starts and finishes; we have gone through a number of areas. I think I have answered the matters around section 57R(5) and the nominated person. I do not imagine the member is arguing for a commercial operation here, and that is what this is fundamentally designed to prevent. I do not think anyone wants to see a commercial operator hooking up everywhere and making a business on the side by doing this for many people. That is not what we are seeking to do, and I think the member understands that.

In terms of the measurements, it is a precise measurement. I am told that a rule of thumb suggests that it might equal a 7-by-5-foot trailer load of wood. If you have a 6-by-4-foot trailer, as many people do, that would be quite a bit less than 2 cubic metres. I am not an expert on the details of this, but I think the DSE would implement these matters in a sensible, practical way. If there is somebody taking very large volumes, it quickly becomes apparent, and officers would be able to intervene.

Mr LENDERS (Southern Metropolitan) — We go backwards and forwards on what is the intent of the government. Although the principal act perhaps sets out some principles as to why, the amending act does not. Mr Davis may well say he expects common sense, but I put to Mr Davis that our citizens have a great about towards government and believe that governments have introduced a lot of these penalties as revenue raisers. This is not unique to this government; it is directed at all governments. It is not a political point; a big share of the budget comes from revenue raising. We have debates over road traffic fines — what are they for? But a lot of our citizenry are suspicious that government uses these kinds of measures as revenue raisers. No matter whether it is a metre-square box, an 8-by-4 or a 6-by-3 trailer or whatever it is, the same principle applies to all of them. Bits of wood stick out, and if you cut them into smaller pieces, they do not stick out. That is common sense.

If the objective is that the government wishes to categorically stop large commercial operators, that probably answers my question. Leaving aside that this is a fairly clumsy piece of legislation that is creating a red tape nightmare, can the minister give me an unequivocal assurance this is not designed as a revenue-raising measure? I am sure the department officials would all shake their heads, aghast, and say, 'Oh no, it's not a revenue-raising measure', but I imagine that if the Secretary of the Department of Sustainability and Environment gets a nice call from the Secretary of the Department of Treasury and Finance saying, 'We need a bit more fees and fines money', or he gets a call saying, 'If you raise the revenue from fees and fines, you can self-fund a few more inspectors and staff', then I suspect that the Secretary of the Department of Sustainability and Environment might have a different response on how strictly the provisions of the bill will be enforced than if that were not the case. Can the minister give an assurance that this provision will not be used as a key performance indicator to raise more money to self-fund the DSE?

Hon. D. M. DAVIS (Minister for Health) — That is certainly not the government's intention.

Mr LENDERS (Southern Metropolitan) — I refer to the bottom of page 5, proposed subsection 57Q(5). Can the minister define what a 'traditional owner group' is? I am assuming it is an indigenous community. Further, does a person need to carry any form of identification to show a DSE inspector that they are from a traditional owner group?

Hon. D. M. DAVIS (Minister for Health) — The government is not proposing that people should have to carry ID, but the terms used in this bill are defined in the Traditional Owner Settlement Act 2010.

Mr LENDERS (Southern Metropolitan) — I am still on the same clause but on page 7, new section 57T, which gives the secretary the authority to vary the firewood collection season. I understand the policy intent of that and the minister has partly answered it, but my specific question is: if the secretary starts the season one week later, for example, does he have the authority under this legislation to conclude the season one week later? Would that limit the length of the season, or does this proposed section provide unlimited discretion for the secretary to extend the season?

Hon. D. M. DAVIS (Minister for Health) — The answer is no. Proposed section 57T enables the secretary to vary the firewood season either across the state or in a particular region but only where the secretary believes it is necessary to do so because there are risks or likely risks to public safety — for example, due to actual or likely fire danger. The end of the spring season in a particular year may need to be brought forward if there has been a prolonged dry period, the predicted weather is hot and dry and there is a risk that cutting wood in a state forest could start a fire.

Mr LENDERS (Southern Metropolitan) — That is also what I read when I read the bill. I guess my question to the minister is more about the policy intent. Earlier Mr Barber read out an extract from Ms Lovell's press release which said that the collection season would be all year. We have heard from the consultations that it should not be all year because it is not safe enough for that, as Mr Davis has basically read to us. My question is specific: in a given financial year can we have more weeks than the bill puts in place by these extensions, or is there any cap on the extensions?

Hon. D. M. DAVIS (Minister for Health) — No, you cannot have more weeks.

Mr LENDERS (Southern Metropolitan) — In other words, if the figure here is 13 weeks, to just take a figure, it is 13 weeks but they can be moved around? Shorten, but not extend?

Hon. D. M. DAVIS (Minister for Health) — Yes.

Mr LENDERS (Southern Metropolitan) — The policy intent seems sound. New section 57T provides that the secretary can vary the date and the minister is saying that the season cannot be extended. I take it that that is the policy intent, but is there anything in the legislation that stops a future government extending it without any referral to the Parliament?

Hon. D. M. DAVIS (Minister for Health) — New section 57T(2), beginning at the bottom of page 7, provides that the only purposes for which it can be varied are the fire risk or that it is likely to pose a risk to public safety.

Mr LENDERS (Southern Metropolitan) — I accept that. I am not contesting that the bill specifies the criteria under which the secretary can vary the season. My question is: on what basis is the secretary constrained from extending the season beyond the limits of time? I accept that the season could be contracted because of fire danger, but I am asking: can the secretary use this new section to have a longer collection period — that is, more days in a full year — than would otherwise be the case, or what limits the secretary under the legislation?

Hon. D. M. DAVIS (Minister for Health) — I am informed that it would require legislative change.

Mr LENDERS (Southern Metropolitan) — The minister says that it will require legislative change, but let us go back to the basics of clause 1. We started a discussion in which it was said that the bill has been introduced on the basis that the government had an unlimited mandate because it set an unlimited mandate. Then we got to clause 3, and it came to it being limited from the all-year fire collection to a narrower period because of consultations — and for a very sound policy reason; I am not disputing that. What I am getting to is that I am told by the minister that it will require legislative change to get back to Ms Lovell's original policy position, I guess, but the minister cannot tell me where that is provided for in the legislation.

I am trying to get some clarification on this. If the minister asserts that the secretary cannot go beyond the combined length of time in the two seasons in a financial year, I will accept that as an answer if he categorically tells me that is the case.

Hon. D. M. DAVIS (Minister for Health) — That is the information provided to me.

Mr LENDERS (Southern Metropolitan) — We are still on clause 5 and there are a few more of the new sections. I am not sure if Mr Barber is still on this particular part of the clause.

The next major area is headed 'Secretary may determine firewood collection areas', and I wish to spend some time on that. Unless Mr Barber or some other member wishes to go back to the other new section, I will move on to that. New section 57U on page 8 provides:

> (1) The Secretary may determine an area of State forest to be a firewood collection area.
>
> (2) A determination under subsection (1) must identify the area of State forest to which it applies by reference to a plan lodged in the Central Plan Office.

Presumably the central plan office is a designated place, so I will not ask the minister what that is. My question is: what is the Department of Sustainability and Environment doing to make sure your punter in Bruthen — that is, a normal citizen who presumably is not lurking around the central plan office in their daily life — will know that the bit of land is in or not in?

Hon. D. M. DAVIS (Minister for Health) — I think the answers I gave earlier on these matters apply here — that is, through the website, through signage and through bulletins and information provided at offices.

Mr BARBER (Northern Metropolitan) — New section 57U(4) provides:

> If the Secretary is satisfied that it is necessary for management of the supply of fallen or felled trees for domestic use as firewood in a region of the State, a determination of a firewood collection area located in that region may specify a class or classes of person who may, or whose nominees may, cut and take away fallen or felled trees in that firewood collection area.

If the secretary developed the state of mind that something is necessary to be done in relation to management of supply, then they may specify a class or classes of persons who are allowed to take the wood away. What class or classes of persons are we talking about here?

Hon. D. M. DAVIS (Minister for Health) — A class of persons is a typical legislative instrument used to define any range of people. A typical class would be people residing in a particular municipality or geographic region. Any determination of a class of persons would require the Secretary of the Department of Sustainability and Environment to consider it necessary to do so to manage firewood supply, as Mr Barber alluded to, in a particular region.

Mr BARBER (Northern Metropolitan) — I did not allude to it; I said that the secretary would first need to form the view that it is necessary for the management of supply and then they can specify a class of persons. What sorts of classes of persons can they specify?

Hon. D. M. DAVIS (Minister for Health) — This would of course be a matter for the secretary, within the purposes that we have just discussed, forming that view as outlined by Mr Barber. It might be pensioners in a particular area, it might be people in a municipality or it might be a postcode-limited approach.

Mr BARBER (Northern Metropolitan) — If there is not enough wood to go around, the secretary can determine who gets it, either, as the minister said, by geography or by the class of pensioners or some other class such as that?

Hon. D. M. DAVIS (Minister for Health) — Yes.

Mr LENDERS (Southern Metropolitan) — Going to page 9, new section 57U(5) provides:

> The Secretary may —
>
> (a) amend a determination made under subsection (1) —

that is fairly clear —

> (b) revoke a determination made under subsection (1), including by providing for a date of revocation in the determination.

All this goes again to the start of this debate — that is, how is the citizen informed? The secretary, sitting here in a building on Nicholson Street or wherever, makes the determination. We understand that. It goes onto the DSE website. For the sake of the argument I will concede that with 400 people stripped out of the department under the efficient government initiative the departmental officers will find the time and resources needed to do this extra work. For the sake of the argument also I will not prosecute that case again.

Given that many people in regional Victoria — or in Mr Davis's electorate in Melbourne — will be going out to get wood, how will they be informed? Will the determination be just on the website or will there be an emailing system? If I were to google for information on firewood collection, would I find it? I am just exploring with the minister how a normal citizen would know so that they are not in breach of this legislation. I take the minister's point that the main design is to get commercial operators, but I am concerned that a

cash-strapped government will start using this as a revenue raiser. My question is: how can a citizen assure themselves?

Hon. D. M. DAVIS (Minister for Health) — The government has no intention of acting as a revenue raiser on this matter. The point here is that, as Mr Lenders has indicated, there will be information on the websites. There will also be information through signage, DSE officers and the *Government Gazette*.

Mr BARBER (Northern Metropolitan) — With regard to new section 57Y on page 12 and the subsequent sections, am I to understand that this is the section that says someone cannot take more than 16 cubic metres of wood in a given year?

Hon. D. M. DAVIS (Minister for Health) — Yes, in a financial year.

Mr BARBER (Northern Metropolitan) — Yes, in a financial year. Given that there are about 150 days of open season on firewood and you can take 2 cubic metres a day, how is this section to be enforced?

Hon. D. M. DAVIS (Minister for Health) — The point made in the earlier discussion applies here as well. It will be the DSE that will make the decisions, but it would mainly be in response to perhaps the discovery of stockpiles and those sorts of matters.

Mr BARBER (Northern Metropolitan) — That is a new sort of approach and it is an artefact or an unintended consequence, if you like, of the government's approach here. At the moment, if you want to get some firewood from the bush, you get a permit and you go and get firewood. If you are caught in the bush, on your way from the bush or in your own driveway with the firewood and without a permit, you get fined. Under the open season approach, the only thing you can get pinged for is having more than 2 cubic metres in your trailer at a given moment. Now you can in fact — —

Hon. D. M. Davis — Or being a commercial operator.

Mr BARBER — Sure, but it is your bill and it seeks to limit domestic-type people to 16 cubic metres a year. The main mechanism is that it is 2 cubic metres a day. In fact if you went out on every one of the 150 days, you could collect nearly 300 cubic metres of timber and never fall foul of the first provision. It is only if you are silly enough to stockpile more than 16 cubic metres all in one spot that there is physical evidence. This is an unfortunate, unintended consequence of the way the bill is now structured. It is also going to make it very hard to enforce other provisions of the legislation, or their intent anyway, because at the moment, as I said, if you are in the bush and you have firewood in your trailer, you have to have a permit for that wood. But now with anybody who is in the firewood area, is travelling to and from the firewood area, has left the state forests or is still in the state forests, it is much harder to prove that they collected it from the designated firewood area, which is the way the whole bill is structured. It is all about the firewood collection area in the firewood collection season. I think this basically makes it completely unenforceable in terms of the 16 cubic metres a year. There is no tollgate that is measuring you each time you visit the forest. Ultimately you can take as much wood as you want, provided you are never silly enough to end up with 16 cubic metres all in the one place at the one time.

Mr Lenders interjected.

The DEPUTY PRESIDENT — Order! Does Mr Barber want me to call Mr Lenders?

Mr Barber — Yes.

Mr LENDERS (Southern Metropolitan) — I should do by contribution what I was doing in my interjection. I think Mr Barber has hit it on the head. We basically have here a policy position that has a lot of attraction for a lot of people, which is: let country people have free firewood and let us cut out the red tape. Obviously the balance to that is the environmental aspect, but there is a proposal here that has broad appeal to many people. But rather than it being a simple proposition, we have a convoluted set of laws. The minister keeps on saying, 'They're there, but they won't be enforced. They're there, but the department will show discretion. They're there, but the department will allocate staff to it', and all of that.

We have canvassed the issue of the 400 staff to be cut out before it is legislatively constructed, but this still comes down to a proposition that if it is designed to stop commercial operators going in there, it is only doing that in name; in practice it is not. Mr Barber said the only way a person will get pinged is if they stockpile 16 cubic metres at their place. I would go back to my earlier point about the number of people in a household. If you are in a household with four people, is it 16 cubic metres you can have stockpiled in the house or is it 64?

Hon. D. M. DAVIS (Minister for Health) — I will answer both of these sets of points. It is 16, not 64. That

is the simple point. The broader point is that the government is confident we can police this, as it were, adequately. There will be occasions where it is clear that excessive stockpiling has occurred and the DSE officers will be able to enforce the law. Equally, out in the forests, to pick up Mr Barber's point, where a person was going day after day into the forest for 150 days with repeated visits, it might well become clear that somebody was taking more than the required volume.

Mr BARBER (Northern Metropolitan) — At the moment they only have to do it on eight days and they have had their 16 cubic metres. Eight days spread over five months, I think it is. It is entirely feasible that people will be able to collect more than 16 cubic metres and no-one will ever know — in fact no-one would have a way of knowing. This section of the legislation is unenforceable. If the government just wanted to give people free flow, it should have made the permit free and left the original system in place.

The DEPUTY PRESIDENT — Order! Is there anything further on clause 5?

Mr BARBER (Northern Metropolitan) — Absolutely. It relates to proposed section 57ZA, on page 14, which reads:

> (1) The Secretary may determine the amount of fallen or felled trees that, in any financial year, may be cut and taken away in any one or more firewood collection areas in a region for domestic use as firewood in a household.

Proposed subsection (2) allows them to make the determination where they form a view that it is necessary; under proposed subsection (3) they have to specify the region and the amount; under proposed subsection (4) they cannot make the determination in the middle of the financial year; and under proposed subsection (5) they have to publish it in the *Government Gazette*.

From my reading of this I cannot work out whether that is a total amount of wood — that is, every single citizen is able to collect it — or it is a per capita or per household limit that can be designated here, as implied by proposed subsection (3)(b).

Hon. D. M. DAVIS (Minister for Health) — It is per household.

Mr BARBER (Northern Metropolitan) — If the secretary wants, he can say it is no longer 16 cubic metres per household per year; he can say it is 6 cubic metres or 2 cubic metres and so forth. Is that correct?

Hon. D. M. DAVIS (Minister for Health) — Yes.

Mr LENDERS (Southern Metropolitan) — Going back to the earlier points made in relation to proposed section 57U(1), I refer to proposed section 57V(3) on page 10, which provides that the secretary must deal with notices. The general comment I was making was about the notices displayed at fire collection areas. There is a determination there, and there are references in other places in clause 5 to notices that the secretary is required to display. Before question time I gave the minister the courtesy of telling him that I would be asking some more questions about the notices; I gave him a chance to brief himself.

On the questions regarding notices, in the case of a designated firewood collection area — and this is similar to my questions earlier today — what has to be signposted? One would presume that if a designated local road goes into such an area, it would be required to be signposted. I go back to the point made by our colleague Mr Philip Davis, who during adjournment debates often talks about hiking through various parts of regional Victoria and about looking for firewood when he is hiking. Presumably someone like Mr Philip Davis might well walk into such an area on a walking track. What I seek from the minister is an answer to the question: what is the obligation on the secretary to signpost? What does he need to signpost?

Hon. D. M. DAVIS (Minister for Health) — In practice the public will be informed about firewood collection areas through more commonly accessible means, including by accessing the DSE website, telephoning DSE or contacting a DPI (Department of Primary Industries) customer service centre. Signs will be erected at the main entrances to firewood collection areas. The government is confident that DSE will be able to sensibly and practically signpost in a way that people can understand.

Mr LENDERS (Southern Metropolitan) — I understand the answer the minister read. Obviously he has someone who is seeking to brief him well and he has read their answer, but the question really is — —

Hon. D. M. Davis — I actually added a bit.

Mr LENDERS — Thank you, Mr Davis; you added a bit. I will again use the example of Mr Philip Davis hiking around East Gippsland or the example of the many people who camp, prospect, bushwalk, use four-wheel drive vehicles, ride horses or any of the multiple reasons that people roam around parts of regional Victoria for recreational purposes, and the time they decide to start a fire. Let us assume that things like total fire bans and those sorts of things are evident to those people. I put to the minister that for many of the people engaged in the activities I have referred to it

would not be at the forefront of their minds when they head out into the bush in the morning that they should know about firewood collection areas or have a DSE website readily available to them — unless you blame the federal government for the national broadband network if your phone will not work. I just do not think many people do that.

The minister's assertion is that common sense will prevail and DSE will manage that, but I am yet to be convinced to vote for this bill when these sorts of issues could have been tested by a joint investigatory committee and we could have had answers to these questions above and beyond a minister trying to answer — albeit valiantly — with a parliamentary secretary and three advisers assisting him. The government is too arrogant to actually let the bill go to a select committee. I could be moving multiple times that progress be reported, but I can count. I know that 21-19 will prevail, so I am not seeking to waste time. I am seeking to get the answers we could have got from a joint investigative committee.

The minister has said that the government is confident that it can manage the provisions of this bill, but I say to him that I am not confident it can at a time when the government is slashing 400 people from DSE and he is giving the department more tasks to do. Somehow or other the department is going to take on new tasks, including signposting. I will not pursue this anymore unless the minister wants to have a longer debate on this particular area, but I put on record that to get opposition members over the line on this, we would have needed a lot more information. Parts of this legislation have great appeal for us, and parts are hampered by a lack of information. The government does not need the Labor Party's numbers to get this legislation through this Parliament because, courtesy of Mr Barber's party — and Mrs Petrovich is here — it has got the numbers. What I would say — —

Mr Barber interjected.

Mr LENDERS — We could have another debate on that at some length, but I am stating a fact. Thanks to the Greens preferences, Mrs Petrovich is here; it is a fact. She is next to Mr Davis, and her vote is a critical part of the 21. What the minister is saying is, 'We are not going to let you get information'. When we seek to adjourn on the limited information we have got, we go forward, and then the minister says no and uses his numbers every time — 21-19 — to stop that. The minister does not give a reason; he just keeps on saying, 'Trust us; we are the government'. That does not wash with us, but I do not see any point in pursuing this particular clause any further unless the minister wishes to prolong the debate.

Hon. D. M. DAVIS (Minister for Health) — In general I agree with the member that we will have to agree to differ on some points. This section relates to households, and the signposting will be sufficient. The government is confident that there can be sufficient information for the community.

Clause agreed to; clauses 6 to 24 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

I thank members for their contributions. As I said in the committee discussion, this is a matter of government policy and we see this as an important election policy being implemented, and for that reason we will proceed.

The PRESIDENT — Order! The question is:

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

House divided on question:

Ayes, 19

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

Noes, 17

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

Pairs

O'Donohue, Mr	Darveniza, Ms
Ondarchie, Mr	Pakula, Mr

Question agreed to.

Read third time.

ROAD SAFETY AND SENTENCING ACTS AMENDMENT BILL 2012

Second reading

Debate resumed from 14 August; motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. M. P. PAKULA (Western Metropolitan) — I am pleased to be able to rise and speak on the Road Safety and Sentencing Acts Amendment Bill 2012 and to indicate that the opposition will not be opposing the bill. It is not my intention to go into any great detail in regards to the provisions of the bill. The opposition first saw the bill at 9 o'clock on Tuesday morning, the same day that the bill was debated and passed in the Legislative Assembly. The first I knew of the bill was when I received a call from the Attorney-General at about 3.30 p.m. last Monday. He described to me a very urgent bit of legislation that had to pass not only the Legislative Assembly by Tuesday but both houses by today. Of course in those circumstances I was extraordinarily curious about what was so pressing and so urgent that proper parliamentary scrutiny could not be provided.

This bill has not been through a Scrutiny of Acts and Regulations Committee process, it has not been through the normal process whereby debate on it is adjourned for a sitting week; in fact it has been rushed through both houses in the space of 72 hours. In fact, on Monday night I asked the Attorney-General's office to at least do the opposition the courtesy of providing us with a copy of the bill so that we could consider it over Monday night before having to debate it on Tuesday. That request was declined and we did not see the bill until we were briefed by officers of the Department of Justice in the minister's office at 9 o'clock on Tuesday morning. That is despite the fact that one of the issues dealt with by the bill has been apparent for months and months and another one has been apparent, it appears, for some weeks.

I suggest it is yet another example of the government treating the Parliament, let alone the opposition, with absolute contempt and as a rubber stamp. It is one thing to have a majority in both houses of Parliament; it is quite another to operate in such a way that reveals the intention to treat the Parliament as nothing more than a creature of the executive, and that is the way the government is increasingly treating this Parliament.

There are two matters that the government claims to be rectifying with this very urgent bill. One relates to alcohol interlock devices and the other corrects a problem, as the government sees it, with its community correction orders regime.

To deal first with the question of alcohol interlocks, since 2006 the courts have been ordering the fitting of alcohol interlock devices in some cases where disqualified licence-holders apply to the courts to have their licence returned. The courts have been doing that, both in circumstances where the original removal of the licence was ordered by the court and where the original removal of the licence occurred by way of infringement notice.

When I heard from the minister that there was an urgent bill, I obviously assumed that there had been some controversy — a court case, an appeal or some ruling — in which it had been found that that practice was no longer valid and therefore there was the need for urgent legislation to rectify that matter. In fact we discovered in the briefing that the police and the Director of Public Prosecutions, and I think to some extent the department, have reviewed the legislation and have determined by themselves that the courts are able to order the interlock device only in cases where the original removal of the drivers licence occurred by way of court order.

This is not a response to a Court of Appeal ruling; it is not introduced because of a defeat in court. It is a result of a review of an act. Just to understand exactly what the urgency here is, the law enforcement authorities have undertaken a routine review of legislation. There has been no appeal, no stated problems, no interlock ruling overturned. There has been just a review of the act and that is considered to be sufficient urgency to ram a bill through both houses of Parliament without the normal parliamentary scrutiny, without an adjournment after the bill is introduced, without a Scrutiny of Acts and Regulations Committee process and without the Council being given the normal opportunity to scrutinise the legislation.

The government says that there are potentially hundreds of interlock orders which are invalid and which need to be retrospectively validated. It says also — get this — that between now and the next sitting week when this would normally be dealt with, there are potentially hundreds and hundreds of matters on hold until this is resolved.

Ms Pennicuik — That's a bit scary.

Hon. M. P. PAKULA — Ms Pennicuik says it is a bit scary. I remind members that interlocks cannot be ordered for every licence disqualification; they are ordered for only the serious offences. We have been

told that there are hundreds and hundreds of them that would be put on hold if we gave this bill the normal parliamentary scrutiny of deferring consideration of it or adjourning debate on it until the next sitting week.

As I said, no application has been made to invalidate an order in response to this supposed error. No order has been overturned as a result of it — and this error in the bill is so serious that in the six years it has been in operation, no lawyer, no police officer and no court has ever picked it up! It has never been picked up by anyone. This is such a glaring and obvious error that you have not had some smart defence lawyer appear before a magistrate and say, 'You can't order this, because the act is clear. It can be ordered only in the case of infringements where the licence has been removed by way of court order'. It is such a glaring error that in the past six years not one smart lawyer out there picked it up.

On Tuesday morning, when we were first briefed about this bill, we asked the Department of Justice officers, 'If this is obvious, why has no lawyer, no police procedure and no magistrate ever picked it up?'. Do you know what they said? They said, 'That is what we wondered'. That was their response, 'That is what we wondered'. What is the answer? The answer is that no-one knows why. But not only is it so glaring that it needs to be amended, it is so glaring that it needs to be amended this week without proper parliamentary scrutiny!

When we said, 'Okay. Tell us exactly what the urgency is', the government said, 'Oh, well, there are all these cases that are delayed and once the error becomes known, defence counsel will start using it. They will start seeking adjournments; they will start arguing that these interlocks cannot be ordered as a consequence of it'. It was pointed out to the government that the only reason the error has become public knowledge is because on Monday night the government put out a media release about it. Until then the only people who would have known about it were the Director of Public Prosecutions, Victoria Police and people in the minister's office and the Department of Justice.

This bill could have gone through the normal parliamentary process without too much upset or concern, but the government created the crisis and the urgency by putting out a media release and then expects normal parliamentary processes to be truncated as a result of that. The urgency is completely unclear to me. The error is so obvious that no-one picked it up for six years! To the extent that there is urgency, it has been created by the government's own behaviour.

Having said that, it is important that interlock orders be validated to the extent that there is any doubt about them. We do not oppose that element of the bill, but we see absolutely no reason why this bill could not have been dealt with via the normal parliamentary processes. It could have been scrutinised by the Scrutiny of Acts and Regulations Committee and been given the proper adjournment which is normally provided between the first reading and second reading of the bill in the Parliament.

When I think about the absolute lack of urgency in that part of the bill, it leads me to conclude that this element of the bill has been included to give the government cover, because the real urgency that is being resolved by the introduction of this bill is the government's community correction orders (CCO) mess. But this government is so addicted to spin that it cannot just accept that it needs to bring an urgent bill into the Parliament to fix an error of its own making. The government needs to pull something out from 2006 and say, 'That is the mischief we are really remedying', rather than accept responsibility for its own rushed legislation.

Let us not forget that 2006 error that the government is remedying is so serious that no-one — including lawyers, judges and police prosecutors — had picked it up until the government reviewed the legislation. The real problem for the government is its CCO mess. The government does not want to concede that that is the real reason for introducing the bill, so it has concocted a phoney urgency about interlocks and has tried to gloss over the fact that section 44 of the Sentencing Act 1991, as amended by the government through its community correction order reform, is about as clear as mud.

Mr O'Brien interjected.

Hon. M. P. PAKULA — You obviously need to clean your ears out, Mr O'Brien. I have already indicated that I support validating the interlock conditions. What I have said is that this could have been dealt with via the normal parliamentary processes.

Mr O'Brien — What if someone died in the meantime? Would you support that?

Hon. M. P. PAKULA — The fact of the matter is that these interlock orders have been made for six years without a whimper of protest from anyone. The only reason there would be a problem is because on Monday night the government issued a media release pointing out the problem to the world.

Mr O'Brien interjected.

Hon. M. P. PAKULA — As I have said, Mr O'Brien, you have concocted the urgency to give yourself cover for the fact that you have drafted section 44 of the Sentencing Act in such a way that magistrates from across Victoria have read it in the same way. It is little wonder that judges and magistrates — —

Mr O'Brien — On a point of order, Acting President, Mr Pakula is imputing motive. He said to me personally, 'You have drafted the legislation and concocted it'. It is serious legislation. That is imputing motive. I ask that he withdraw his comment or rephrase it.

The ACTING PRESIDENT (**Ms Crozier**) — Order! There is no point of order. I ask Mr Pakula to speak through the Chair.

Hon. M. P. PAKULA — Now that Mr O'Brien's sensitivity is clear to me, I will, from now on, not look in his direction when I am making remarks about the government generally. I would not want him to ever believe that when I criticise the Baillieu government I mean to criticise him personally. I will direct my gaze at you, Acting President, provided I can be confident that you will not think I am personalising my comments and making comments about you.

Mr O'Brien — That would be reflecting on the Chair!

Hon. M. P. PAKULA — I am not going to deal with Mr O'Brien's interjections now, because I am concerned that I will upset him. I am just going to make my comments through the Acting President.

When one looks at the way section 44 of the Sentencing Act is currently constructed, one sees that it is little wonder magistrates across Victoria have been combining suspended sentences with community correction orders, which the government now states was not its intention when it introduced the CCO bill, even though the government has left suspended sentences in place for a whole range of offences, although not the serious ones. Government members say, 'But it was never our intention to have magistrates combine suspended sentences with CCOs'. They say that magistrates have been misinterpreting section 44. If one reads section 44, as I did when the briefing was provided, one sees that it is absolutely understandable why a magistrate might have read it that way, because it is wholly opaque. It is correct to say that the amendment the government is trying to have passed through the Parliament in this rushed manner this week does make it clearer.

If it is the government's intention to have an absolute bar on CCOs being combined with suspended sentences, then there is no doubt that the amendment being proposed today makes it much clearer. However, I will make a couple of points about that. Firstly, it is my clear understanding that one of the stakeholders, the Magistrates Court of Victoria, was not consulted when this change was proposed by the government. You would have thought that a change which was going to impact quite severely on the operations of the Magistrates Court would have had some consultation attached, not just for the sake of manners, if you like, but you would think the government would have wanted to find out what the Magistrates Court imagined would be the impact on the court of a change of this nature. But no-one from the government bothered to ask them. No-one from the government bothered to have a conversation with the Chief Magistrate or the CEO of the Magistrates Court or conduct any consultation of that nature before this bill was introduced. That is an absolutely appalling failure of process.

Quite beyond the question of consultation is the question of what this change will mean from a practical point of view for the Magistrates Court. We should be clear about this. The mischief that the government is trying to resolve is not magistrates imposing suspended sentences by themselves. This is about magistrates, in complex cases where there are charges for more than one offence, combining a suspended sentence with a community correction order and coming up with a holistic penalty.

I am sure that if the government had consulted with the Magistrates Court — which, let us be clear, deals with something like 90 per cent of the matters being affected by this change — it would know that the Magistrates Court would be incredibly concerned about what it sees as a steady erosion of sentencing flexibility. This is not about tough on crime versus soft on crime; this is about giving the magistracy enough flexibility to combine various types of sentences to come up with an overall penalty which is appropriate for the range of offences that come before it.

I am sure that the Magistrates Court would say to the government that when you are combining, in some circumstances, a suspended sentence with one or more community correction orders, you have that mix of carrot and stick and punishment all rolled into one. Where there is a complicated plea of guilty relating to a number of offences, the provision of only one penalty, a CCO, or another, a suspended sentence, is a fairly substantial erosion of flexibility.

The government has retained suspended sentences for a range of offences and at the moment is simply saying that they will go by the end of its term. So we are still talking about another couple of years. We might see more people go to jail, but we might also see more people getting just a suspended sentence, because the suspended sentence will no longer be able to be combined with a CCO. We might see some people just getting a CCO, we might see some people just going to prison and we might see some people to whom the magistrate would have otherwise given a suspended sentence and a CCO just being given a suspended sentence rather than both because the magistrate has to decide between one and the other.

The other thing that may occur is that proceedings may become separated. At the moment police prosecutors and defence counsel agree to hear and deal with pleas and other matters together because the sentences can be combined. No doubt what will happen instead, in certain cases, is that because everyone agrees that a suspended sentence is appropriate for one offence and a community correction order is appropriate for the other offence, one will be dealt with on one day and the other will be dealt with on the next day. How is that sensible? But do you know what? On your head be it.

It is a very odd piece of legislation, where the government is not only fettering the court but fettering itself in this regard a couple of years out from finally delivering on its promise to abolish suspended sentences for all offences. We acknowledge that the government went to the election with a clear position that suspended sentences would no longer be a sentencing option for the courts.

It seems that the legislative change we are dealing with today is an example of the government trying to implement part of this ahead of actually legislating suspended sentences out of existence. Rather than saying that the suspended sentence is no longer available for a whole category of offences, the government is simply making the awarding of a suspended sentence more difficult because of the inability to combine it with a community correction order. No doubt that will mean there will be cases which would have been awarded a CCO at the same time as a suspended sentence ending up with a CCO alone. By virtue of that the government is, I suppose by default, moving further along the path of delivering its commitment. But, quite frankly, if that is what the government is doing, it should not do it by this sleight of hand — it should just expedite the delivery of its commitment and legislate suspended sentences away. What we will end up with as a result of this change is a dog's breakfast. We will end up with CCOs on one day, suspended sentences the next, suspended sentences which the court would have preferred to apply along with a CCO, some more people going to prison, some more people getting just one or the other and cases being split to be heard over two separate days or two separate weeks. If this is really just about the government expediting the delivery of its policy commitment, it should just expedite it, for goodness sake.

I will go through some of the other elements that we discovered during the briefing. It seems this apparently improper combining of CCOs and suspended sentences has been occurring since January. It is now August, and there have been some 500 of them. Since January there have been some 500 instances of a CCO being combined with a suspended sentence. When we asked, 'If it has been going on since January and there have been 500 of them, why are we hearing about it today and legislating on it this week rather than this being given proper consideration and dealt with in the normal way? You have known about it for eight months'.

Apparently they had not known about it for eight months. Some elements of Victoria Police knew about it earlier in the year. There have been 500 of these so-called improper combinations occurring. No-one bothered to tell Corrections Victoria, no-one bothered to tell the Attorney-General's department or office until a couple of weeks ago, and no-one bothered to tell the Department of Justice. Then all of a sudden they find that there have been 500 of them and we have to legislate on it the day after we first hear about it and on the same day that we first get a copy of the bill. It has been going on for eight months with no response from anybody, but the urgency is so pressing that parliamentary scrutiny cannot be properly applied and the Magistrates Court cannot even be consulted.

I have to say that the urgency the government speaks of is present despite the fact, as it has been put to us by the Department of Justice, that in one case the Director of Public Prosecutions (DPP) has appealed against one of these combinations and, in an interim sense, the Court of Appeal has upheld the appeal. Let us just understand that. A magistrate or judge interprets a piece of legislation — the government says incorrectly, the DPP says incorrectly. The DPP goes off to the Court of Appeal. The Court of Appeal says, 'We agree with you; it has been interpreted incorrectly and it ought to be clarified. But we are making it clear that the magistrate was wrong'.

One would wonder why there is a need for legislation at all in those circumstances. The Court of Appeal has interpreted the clause and has said that the lower court got it wrong. This happens all the time. A clause is interpreted one way, the Court of Appeal gives it a look, the Court of Appeal says, 'You were wrong' — problem solved.

I accept that in those circumstances it might be appropriate, just to be absolutely sure, to redraft the clause so that in the future no further mistakes are made. Again I note that at the time we warned that the community correction orders legislation was rushed, that it was sloppy and that its clauses were not clear. That was clearly the case, and the government now accepts that. The Court of Appeal has already overturned one interpretation of that legislation. Yes, we accept that it might be appropriate to redraft the relevant clause to make it clearer, which this redrafting does, but why does it have to be dealt with as an urgent bill when the Court of Appeal has already done half the job? The clarification could occur in the normal course of events. It does not need to be done via an urgent bill. It is very likely that what the government sees as the problem has been resolved in the way matters of this nature are normally resolved — by the Court of Appeal issuing a judgement about what it considers to be an incorrect interpretation by a lower court.

As I said, we have no issue with clause 8 to the extent that it makes the intention of the government clearer and makes the job of the Court of Appeal clearer and easier. It is certainly necessary, given the very opaque construction of section 44 of the Sentencing Act 1991 as it currently stands. I do not think the current section 44 can remain the way it is written. Quite frankly, I would not be surprised at any magistrate or judge seeking to apply it deciding on his or her own how to apply it. It can be read in two separate ways, and clause 8, which is being brought forward by the government today, makes the government's intention much clearer, despite all the problems attendant upon the government's intention and policy direction.

However, it is ironic — and I say this as a final comment — that the consequence of the house passing this bill today is that we will be effectively assisting the government to retrospectively validate 500 suspended sentences. We are all here at the behest of the government so that we can retrospectively validate 500 sentences — sentences of the form this government derides so often, which it rails against — nearly a year after the government told us it had got rid of them. Such is the price of sloppy, shoddy drafting.

In summary, we have no issue with the changes providing for the validation of the directions to impose alcohol interlocks that have been given in the past. I remind members to note that, as I have said, this bill is so urgent that for six years no-one has contested the imposition of those alcohol interlocks. For six years that matter has never been contested.

With respect to the community correction orders, again, substituting the new section 44 to make the intention of the government finally clear is welcome, because the courts and the participants in the court system are entitled to be acting under legislation that makes their rights and responsibilities clear — something section 44 of the Sentencing Act 1991 currently does not do. However, I make the point again that this matter has been going on for eight months, involving 500 occasions; it is so urgent and so vital that no-one bothered to bring it to the attention of the government before three weeks ago.

Whilst we accept the logic behind the amendments contained in this bill, then, we do not accept the cavalier way in which the government has treated the Magistrates Court or the Parliament of Victoria. The urgency of this bill has been concocted by the government to give it a pretext to ram the bill through without the scrutiny that normally comes with legislation — with justice legislation in particular — and it is very unfortunate that this government is embarking more and more often on the practice of using its numbers in both chambers to ram legislation through without appropriate scrutiny. It is poor practice, it is a bad precedent and we would all be less likely to have to keep amending poorly drafted bills if the government allowed them to have proper scrutiny in the first place.

Ms PENNICUIK (Southern Metropolitan) — The fundamental problem we have before us here is that the two acts and two problems this bill proposes to remedy should be in separate bills. They are so different from each other that they should not be in one bill.

The first part of this bill amends the Road Safety Act 1986 to make it clear that when a court is relicensing a person it can impose the interlock condition on the holder of a driver licence or learner permit whether or not that person was disqualified as a result of a drink-driving offence found by a court or via an infringement notice issued by Victoria Police. In the briefing the Attorney-General arranged for us with the Department of Justice — in the advisers box I see officers who were involved in that briefing and I thank them for it — the officers were as usual very thorough in explaining the situation that is before us.

I would not want to suggest that what the justice department officers were saying to me is necessarily the message I have taken away. What I have taken away from that briefing is that it may be that there needed to be clarification during the audit when it was found that there could be a problem between the conviction coming via infringement or via the court. I have also taken away that nobody has actually raised this issue, as Mr Pakula said, since 2006; nobody has raised it as a problem. No such condition that has ever been imposed by a court has ever been challenged on the basis that we are changing the law here via this bill. There has been no challenge to any of those conditions, and it is debatable whether or not there is a problem.

However, the bill makes it clear that if ever anyone were to think there was a problem, those conditions can be imposed on licences no matter how the person was convicted of a driving offence. If that is the outcome, I am pleased to support the outcome. I regret it, as I have said before in this place, when a bill backdates legislation far into the past, as this one does. The amendment we are inserting into the Road Safety Act 1986 will come into effect at the same time as the amendments that were made to the legislation in 2006, which is before I was even in this place.

I would have to agree with Mr Pakula that even though this problem has come to light, it is not urgent. We could probably have waited the usual week; we could have waited for a report by the Scrutiny of Acts and Regulations Committee into that issue and the bill could have been passed in the next sitting week as part of the normal process. That would have given us time to assure ourselves, which we really have not had time to do, that the new provisions as written in the bill are in order. We are in this position because the previous provisions are claimed to be not in order, and that is why we have to change them. We have had no real opportunity to go through them, and neither has the Scrutiny of Acts and Regulations Committee.

From time to time bills come into this place which we would all agree are urgent. There was the bill about the affidavits, for example, and the bill about the wrongful swearing in by the Governor of certain officers that had to be backdated a very long time. In those circumstances the government should arrange for an emergency sitting of the Scrutiny of Acts and Regulations Committee. The members of that committee are in place; they are all here in Parliament House, so they should be able to convene to scrutinise an urgent bill and put in an urgent and timely report to the Parliament so that we can read it and see what they have to say.

The amendments to the Road Safety Act 1986 contained in this bill are in effect going be backdated almost six years — to October 2006 — and it is always regrettable to have to do that. However, given the ability of courts to impose those conditions on people whose licences are reinstated after drink-driving offences, where the offence is serious in terms of its hazard, if there is a problem that needs to be fixed, then I am happy to support that. I do not think there would have been much of a difference between this week and next week.

Part 3, which is the second substantial part of the bill, amends the Sentencing Act 1991, and there is a lot to say about it. When the government brought in the changes relating to community correction orders I think I spoke for quite a long time on the bill pointing out its flaws, which had been pointed out by other parties as well. One of the flaws was in relation to community correction orders replacing the other regime of community-based orders et cetera, which had to be put in place with a particular condition attached. That is different from what happened in the past. In many ways it limited what could be done by the courts.

It is always our position that the courts should have as many sentencing options as possible. We certainly did not support section 44 of the Sentencing Act 1991 as amended, that community correction orders could not be combined with a suspended sentence. I agree with Mr Pakula's explanation that given the offences that may be before, generally, a magistrate, the unique facts and circumstances of a particular offence and offender need to be taken into account. I always take the view that a magistrate will act in good faith on the basis of the evidence and circumstances in front of them and apply the appropriate sentence.

It seems that since section 44 came into effect in January, magistrates have not interpreted the law to the effect that they are not able to impose a community correction order and a suspended sentence. We are told there are some 500 cases where it has been done; magistrates have not interpreted that section to mean they cannot do it, so they have interpreted it the other way. They have interpreted it to mean that they could impose a community correction order alongside a suspended sentence, and they have done so in 500 cases. On the one hand I am not entirely persuaded that we could not have waited for one week. On the other hand I take on board the fact that the Court of Appeal has recently made a finding in favour of the Director of Public Prosecutions that a magistrate had erred in imposing a community correction order with a suspended sentence.

That has created this problem, and it has been left to the Parliament to fix it. I reiterate that I believe there should be a provision in the law for community correction orders and suspended sentences to be combined. I support the courts having that option. I strongly support the use of suspended sentences by the courts where they deem them to be the most appropriate sentence in the face of the evidence and the circumstance of the offence before them, and the government taking away that option is not a good move. I understand what the Sentencing Advisory Council said; I have read its report, but I have also seen the submissions from the Law Institute of Victoria, the bar council and others in support of the retention of suspended sentences, because we need to make sure that offenders receive the most appropriate sentence — and in many cases, given the facts and circumstances of the offence that is before the court, the most appropriate sentence is a suspended sentence.

To take that option away is to remove a tool of justice. It means that some people will receive an inappropriate sentence — either a custodial sentence or a community correction order which they should not be getting — because they are not able to be given a suspended sentence. That is my clear position on it. I think the government is wrong in its quest to get rid of suspended sentences, and I think people will suffer injustices because of it.

I did take on board that there is a view, even amongst people who support suspended sentences, that in some cases they have perhaps been overused, but that does not mean they should be abolished. That is more a matter of discussion and education about how to appropriately use them in the interests of justice, which is what we are all talking about.

In the interests of those who have received these sentences — the 500 or so cases in which, as the Department of Justice has advised me, the Magistrates Court has imposed community correction orders and suspended sentences — I do not want to see them go back to court and be resentenced when perhaps a great many of them are already more than halfway to the end of their sentences. I do not want to see justice disrupted for those people by the finding of the Court of Appeal that that magistrate had erred. Because that magistrate had made a mistake in imposing that combined sentence, one would have to infer that every other magistrate who had done so had made a mistake according to the legislation. I would not want to expose those people to having to reappear in court and be resentenced. We do need to clarify the meaning of section 44 by way of this bill, even though — I state very clearly — I do not support the government's contention that there should not be a combined community correction order and suspended sentence.

It is regrettable that this is being rushed through. I think the government knew about these issues before the sitting. It probably could have advised us earlier. The two issues should have been dealt with in separate bills because they are completely different topics and they raise completely different issues. In particular the changes to the Sentencing Act 1991 need to be reviewed by the Scrutiny of Acts and Regulations Committee, because it does deal with sentencing and people's human rights under the relevant act. We have no advice there. Again I suggest that whenever this happens in the future the Scrutiny of Acts and Regulations Committee be convened to look at so-called urgent bills so that a report can be presented to the Parliament along with the bill and we can have the full information in front of us, which of course we do not have.

I understand that there are problems that need to be fixed up. One is longstanding and not that urgent. It could have waited until next week. The other one, I understand and have been persuaded to believe, is urgent or urgent-ish, but it definitely does have to be fixed in the interests of those 500 people to whom I have referred, which is why I have decided that I will not oppose what the government has put forward.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a contribution on behalf of the government in relation to the Road Safety and Sentencing Acts Amendment Bill 2012. I confirm, from the explanatory memorandum, that the purpose of the Road Safety and Sentencing Acts Amendment Bill 2012 is to:

> … remedy a longstanding defect in the Road Safety Act 1986 introduced by amendments in 2006 and also to confirm the recent amendments to the Sentencing Act 1991 that introduced the new community correction order (CCO). In doing so, the bill will remove any doubt about the validity of certain court orders already made —

and it will validate those orders.

Having listened to the contributions of the opposition and the Greens, and also considering the contributions in the other place, it is important to carefully understand that when the Parliament on occasion acts expeditiously, that does not mean the Parliament is acting in a way that does not demonstrate due process or is acting in a way other than in the best interests of the people of Victoria. It is important that the Parliament speaks with one voice, if that is possible, in bills of this nature which involve sentences being given by courts, or sentences being served, where orders are

under consideration, or where individuals who are presently before the courts could have concerns over the validity or otherwise of actions that have been or might be taken by the courts. It is also important that the Parliament acts clearly and expeditiously from the time that the public becomes aware of the potential grounds for invalidity.

This in a sense is the heart of the response to Mr Pakula's criticisms of the government. Mr Pakula has alleged that the government is in part concocting its response in relation to the road safety amendments to somehow mask other amendments. I will deal with that in a minute. But he is also querying the reasons for urgency, given that the government went out with the media statement on Monday of this week at the same time it informed the opposition and me, as a member of the government, that this bill would be introduced.

As was stated in relation to the affidavit legislation, I believe in certain circumstances it is important that a government acts very promptly from the moment that the information becomes public. That is something that Mr Pakula has missed in his contribution and his attempts to perhaps make a few points impugning motive. Notwithstanding that, ultimately opposition members have supported the expeditious passage of this bill, notwithstanding some of their comments and those of the Greens. This is in the best interests of all Victorians.

I turn now to briefly and separately deal with the two aspects of the bill. The first aspect of the bill relates to the Road Safety Act 1986 and will enable the courts, when re-licensing a person, to impose an interlock condition on a drivers licence or a learner permit if the person was previously disqualified from driving by a drink-driving infringement. This power has been exercised in relation to infringements. It has also been exercised in relation to disqualifications from a court order where it was clear that the court had the power to do so under the relevant provisions of the Road Safety Act. However, regrettably at the time the 2006 amendments were made a conferring power was not given to the courts in relation to infringements. Perhaps one of the reasons, and I am only speculating, was because the infringements themselves do not go through a court process. Initially they are issued by police officers.

That error has occurred in the legislation. It is legislation that was introduced under the Bracks government and not the Brumby government. I do not wish to make cheap points criticising sloppy drafting except to say back to Mr Pakula, to the extent that he sought to criticise this government in relation to its legislation, the same criticisms apply to his government. If that is the criticism he is going to make in relation to the Road Safety Act, then I would say in that regard even more so, because when one analyses the two aspects of the validation that occurs with this bill — namely, the Road Safety Act and the community correction order validations — there is actually a distinctly different process in place in relation to each act.

In relation to the road safety amendments, what will occur is a validation to permit the court to impose an interlock driving condition on a re-qualification of a licence in circumstances where it is absolutely clear that the court did not have the power to do so where the disqualification was under an infringement. For these reasons, the Road Safety Act will be amended by this bill so that it will be read as if it was always so. That is important so that the very important interlocking driving orders are confirmed as being valid. Consequential actions arising from those orders, such as breach of an interlocking order and other variations, are also valid.

Interlocking devices represent a very important technological advancement that allows repeat drink drivers or other persons who have had a drink-driving or other alcohol-related conviction to re-obtain a licence, which is in a sense the state giving them an opportunity to regain a right or a privilege they have lost. The state does so on the condition that the offenders will drive with this device, which can measure their alcohol level before they drive, fixed to their car.

That condition is not something that ought to be taken lightly or subjected to technical challenge in the courts. If it is, it has the potential, if not acted on promptly, to allow a drink driver to potentially be out on the road and, if this bill is not passed as quickly or expeditiously as possible, that drink driver could cause an accident or a death. So there is real urgency there; it is not manufactured. To put paid to the second part of Mr Pakula's allegation, those amendments were developed before last week, although for the reasons I outlined earlier they cannot be made public until the legislation is ready to bring before the house.

The Court of Appeal handed down its decision in relation to community correction orders last week. There is a matter of urgency in relation to another distinct type of validation in circumstances where the parliamentary intention in the legislation was always clear. I need to be careful about what I say about the Court of Appeal's decision; I do not want to say too much as there are parties before the court. I certainly do

not want to make any criticism of the courts in that case or in any other case.

The court has not published its reasons; nevertheless it has upheld the submission of the Director of Public Prosecutions that the lower court's interpretation of section 44 was incorrect. In doing so it confirms that the government's legislation is operating in the way in which it was intended. In relation to a community correction order, one cannot be imposed at the same time as a suspended sentence. The reason for that, to respond to some of the Greens' concerns, is that we went to the election with a very clear policy to restore truth in sentencing. This was a very important part of our law and order policy, which was accepted by the Victorian population in electing this government. Part of restoring truth in sentencing is to progressively abolish the fiction of the suspended sentence so as to enable flexibility and truth in sentencing.

In closing, it is necessary, given the criticisms from members on the other side, to put in context the importance of community correction orders and to re-confirm the government's intention at the time of drafting the legislation. We say it was clear at the time, but this amendment to section 44 puts beyond doubt that a community correction order cannot occur concurrently with a suspended sentence. For reasons explained in the second-reading speech and other speeches in the other place, we again confirm the validity of sentences that have been imposed since January this year so as not to disturb the actions of the courts in each of those cases.

In doing so, just to return to the road safety amendments, Mr Pakula also said there had not been consultation with the Magistrates Court on these amendments. In fact the road safety amendments have resulted from a request from the Magistrates Court. In addition to the police and VicRoads, the Magistrates Court asked the government to bring in this amendment for the very important road safety reasons that I have identified. That puts paid to any suggestion that there has not been consultation with the Magistrates Court in relation to the bill. Specifically in relation to the other courts, we have acted as expeditiously as we can following the Court of Appeal's decision.

I will close by quoting from an article that appeared in the *Geelong Advertiser* of 1 August, which refers to a counsellor and trainer in my electorate of Western Victoria Region — the region which I represent with Mr Koch and Mr Ramsay in this place — Mr Ashley Lynch. Following the lead-in words of 'Tough gig', the article states:

> Magistrates can now include anger management counselling in community correction orders, with offenders seeing anger management counsellors such as Torquay's Ashley Lynch.

The article talks about a growth in anger management being required between August and December. Then it says:

> The new community correction order, which began in January, has increased the power of magistrates to impose counselling and mental health to reduce reoffending.
>
> 'It has been steady', said Mr Lynch, who also runs a boxing gym.
>
> 'Definitely domestic violence is high. It's an angry world out there, but it's not just the stereotype. I see gangsters to tradespeople, doctors and lawyers.'

In its conclusion the article states:

> A Corrections Victoria spokesman said since the introduction of the flexible community correction order in January, magistrates could better tailor penalties, treatments and services, including addressing issues such as anger management, drugs and alcohol.
>
> Geelong family violence unit Sergeant Graeme Young welcomed the orders and more people undergoing anger management counselling. 'It's got to be of some benefit', he said.

With those remarks, I commend the government on bringing this bill to the house expeditiously. I commend all those people dealing with the issue of violence on our streets and otherwise look forward to the speedy passage of the bill.

Motion agreed to.

Read second time.

Third reading

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

> That the bill be now read a third time.

I wish to sincerely thank the members of the opposition and the Greens for their assistance in facilitating the speedy passage of this bill.

Motion agreed to.

Read third time.

CRIMINAL PROCEDURE AND SENTENCING ACTS AMENDMENT (VICTIMS OF CRIME) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Criminal Procedure and Sentencing Acts Amendment (Victims of Crime) Bill 2012.

In my opinion, the Criminal Procedure and Sentencing Acts Amendment (Victims of Crime) Bill 2012, as introduced to the Legislative Council, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will amend the Criminal Procedure Act 2009 and the Sentencing Act 1991 to:

clarify that the court may refuse to give a sentence indication if there is insufficient information before it about the impact of the offence on the victim;

require magistrates and judges to ask whether a compensation order relating to property damage, loss or destruction under section 86 of the Sentencing Act 1991 will be sought once a person is found guilty or convicted of the offence;

allow victims to provide a broader range of material to the court as evidence of the quantum or particulars of loss, damage or destruction of property;

provide that a court may of its own motion make a compensation order under section 86 of the Sentencing Act 1991 relating to property damage, loss or destruction, if there is sufficient evidence before it.

Charter act rights that are relevant to the bill

Under the new section 86(1B) of the Sentencing Act 1991 introduced by the bill, the court is able to order an accused who has been found guilty or pleaded guilty to an offence to compensate a victim whose property is damaged, lost or destroyed as a result of the offence, without an application by the victim or prosecutor. The fair hearing right in section 24 of the charter act is relevant to such an order.

The order is made by a court on the basis of evidential findings of a court or admissions of the accused. Under this provision, the offender must first be provided with a chance to be heard, including as to any additional documentary evidence about the loss or expense suffered, before any order can be made. These safeguards ensure the provision is compatible with the fair hearing right under the charter act.

I therefore conclude that the bill is compatible with the right.

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

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

The Victorian coalition government is committed to improving the way Victoria's justice system responds to victims of crime, including providing victims with a greater say and better enforcement of compensation rights. The reforms in this bill are a further instalment in delivering on the government's commitment.

The Criminal Procedure and Sentencing Acts Amendment (Victims of Crime) Bill 2012 will amend the Criminal Procedure Act 2009 and the Sentencing Act 1991 to strengthen procedures for victims to be consulted about sentence indications, and for offenders to be ordered to compensate their victims for property loss or damage.

Victim impact information and sentence indications

Part 2 of the bill amends the Criminal Procedure Act 2009 to promote consideration of the impact of a crime on victims when a court is asked to give a sentence indication.

Legislation permits the courts to give a defendant an indication of the type of sentence that would be imposed if the defendant pleads guilty at that time. For example, the Magistrates Court can indicate whether it would be likely to impose a fine, a community correction order or an immediate term of imprisonment. The higher courts can indicate whether or not an immediate term of imprisonment would be imposed. If the defendant then pleads guilty at the first opportunity, the court may not impose a more severe sentence than indicated.

Sentence indications can help a defendant decide whether or not to plead guilty, and can thus facilitate earlier resolution of matters. This can benefit victims of crime, sparing the stress of trials and the need for victims to give evidence. However, because sentence indications are usually given at an early stage in criminal proceedings, they generally occur before the

court has heard detailed information from the victim about the impact the offence has had on them.

A crime's impact on the victim is an important factor in determining a sentence. Consideration of that impact is required by the Sentencing Act 1991. By explicitly providing that a court may refuse to give a sentence indication if it has insufficient information regarding the impact of the offence on any victim, the bill makes clear to police and prosecutors that they need to consult with victims and be able to provide the court with that information whenever possible. This reinforces the principles of the Victims' Charter Act 2006.

The bill does not limit the court's existing discretion to refuse to give a sentence indication for any reason. Nor does it prevent a court from providing an indication even though it might not have detailed information about the impact of the offence on a victim, if the court feels that it has enough information to give an appropriate sentence indication in all the circumstances. However, the amendment reinforces the expectation that a court will obtain and consider information about the effect of a crime on the victim prior to giving a sentence indication unless there is good reason to do otherwise in a particular case.

Compensation for property loss and damage

Part 3 of the bill amends the Sentencing Act 1991 so that, wherever possible, offenders will be ordered to compensate their victims for the property damage and loss they have caused.

Currently section 86 of the Sentencing Act 1991 allows courts to order that an offender pay compensation to persons suffering loss or destruction of, or damage to, property as a result of the offence (not exceeding the value of that property). The bill amends section 86 to:

> require that courts ask whether a compensation order relating to property loss or damage will be sought;
>
> provide that in cases where evidence of property loss or damage has been presented to a court, the court may make a compensation order relating to property damage or loss of its own motion; and
>
> expand the range of materials that a court may consider in determining the quantum or particulars of the property damage or loss to include materials not adduced during the trial, provided this evidence is acceptable to the court.

The new power of the court to order compensation of its own motion is in addition to the power of the Director of Public Prosecutions or police prosecutor to bring an application for compensation for property loss or damage on behalf of the victim.

The own motion power will not expect criminal courts to consider complex compensation matters or claims that are difficult to establish. These will need to be settled in civil proceedings, as is currently the case. However, where it is clear that an offender has caused a victim to suffer readily quantifiable property loss or damage as a result of their offending, it is common sense to deal with such compensation matters as ancillary to the criminal trial.

Currently, evidence of property loss or damage must have been prepared for or admitted during the trial or plea hearings or via the victim impact statement process. However, where the quantum of property damage was not relevant to an element of the offence, the court may not have sufficient material before it to determine what compensation to order. By expanding the range of documents that the court can consider to include material provided by the victim, such as valuations, receipts or quotes for repairs, the bill will make it easier for relevant material to be available to the court to make an appropriate compensation order.

I commend the bill to the house.

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

Debate adjourned until Thursday, 23 August.

ROAD SAFETY AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. P. R. Hall; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Road Safety Amendment Bill 2012.

In my opinion the Road Safety Amendment Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill amends the Road Safety Act 1986 to —

> implement a government election commitment to require 'hoon' offenders to complete a safe-driving course;
>
> make changes to the vehicle impoundment and immobilisation scheme to reduce the costs associated with administering that scheme and to address several operational issues concerning the scheme; and
>
> introduce new, nationally agreed criteria for determining whether a damaged light motor vehicle is a statutory write-off.

Human rights issues

Section 12 — freedom of movement

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Safe-driving programs scheme

The bill will require persons who have been found guilty of certain 'hoon' traffic offences and who have had their vehicle impounded or immobilised to complete an approved safe-driving program. This requirement engages the right to freedom of movement to the extent that offenders who fail to complete the program will have their licence suspended (and, if already suspended, will incur a new suspension on the expiration of the existing suspension) or, if they do not hold a driver licence or permit, will be disqualified from driving in Victoria and from obtaining a driver licence or permit.

The right is not restricted, however, as any individual who is subject to these sanctions will continue to be free to use any forms of transportation (aside from driving a motor vehicle), including travelling as a passenger in a motor vehicle driven by another person, in order to move freely within Victoria.

Sale or disposal of vehicles deemed to be abandoned

The bill provides for a new process for deeming an immobilised or impounded vehicle to be abandoned, allowing it to be sold or disposed of. This process engages the right to freedom of movement, as a vehicle that has been sold or disposed of cannot be used by the former owner.

However, the right to freedom of movement is not limited because the affected person(s) are free to use other forms of transport such as walking, cycling, public transport or to drive or travel in an alternative vehicle. In many cases, the sale or disposal of an impounded or immobilised vehicle will not directly affect an offender's ability to drive a motor vehicle because the offender will have already been prohibited from driving a motor vehicle as part of their punishment for the commission of a serious traffic offence, for example.

It is also possible for anyone substantially affected by vehicle immobilisation or impoundment to make an application to a court for the release of the vehicle on the grounds of 'exceptional hardship'. If a successful application is made, then the vehicle will be released from immobilisation or impoundment and it can continue to be used for transport purposes. Furthermore, a vehicle will not be deemed to be abandoned, and will therefore not be sold or disposed of on that basis, if a person substantially affected by the proposed sale or disposal of the vehicle applies to the court for a declaration that the vehicle is in fact not abandoned and that the person has a genuine intention to collect or arrange for the vehicle's release.

Increased time to require surrender of vehicle

The bill will give police a longer period of time to require the surrender of a vehicle used to commit a 'hoon' offence where that offence is detected by a camera or through blood or oral fluid analysis. This increases the likelihood of vehicle impoundment or immobilisation for these types of offences and restricts the use of any affected vehicles, engaging the right to freedom of movement.

The right to freedom of movement is not limited, however. The relevant owner is free to use other forms of transport such as walking, cycling, public transport or to travel in or drive an alternative vehicle. In many cases, impoundment or immobilisation will not directly affect an offender's ability to drive a motor vehicle because the offender will have already been prohibited from driving a motor vehicle as part of their punishment for the commission of a serious traffic offence, for example.

It is also possible for anyone substantially affected by vehicle immobilisation or impoundment to make an application to the court on the grounds of 'exceptional hardship' for either the release of the vehicle or to prevent its immobilisation or impoundment.

New criteria for statutory write-offs

The right to move freely is engaged by the establishment of new, stricter criteria for assessing whether a damaged light motor vehicle is a statutory write-off to the extent that it is anticipated that this change will result in more light vehicles being assessed as statutory write-offs. This will mean that the vehicles in question will not be able to be re-registered for use on the roads which may affect the freedom of movement of the vehicle's owner. The right is not limited, however, as the owner will be able to purchase another vehicle and will continue to have access to other forms of transport.

Section 13(a) — privacy

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Relocation of immobilised vehicles

The bill confers additional powers on police and authorised persons concerning the relocation of immobilised vehicles. The exercise of these powers, including certain search and seizure powers, engages the right to privacy. The right is not limited, however, as the exercise of the powers will be authorised by law and the powers will not be used arbitrarily but will only be able to be used in certain circumstances in which the relocation of an immobilised vehicle is necessary.

The registration of financing statements

The bill requires additional notifications to be recorded on the commonwealth personal property securities register ('register') with respect to immobilised, impounded or forfeited vehicles. This requirement engages the right to privacy, as it would be possible for a person to infer, as a result of the notification, that the registered operator of the vehicle has been either accused of or has been found guilty of one of the offences set out in section 84C of the Road Safety Act 1986.

However, the requirement for the registration of a financing statement does not limit the right to privacy, as the registration will be authorised by law and will not be done arbitrarily, but will only take place in certain circumstances where enforcement action has been taken or is pending with respect to the relevant vehicle.

Section 20 — property

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with law.

Sale or disposal of vehicles deemed to be abandoned

The bill provides for a new process for deeming certain impounded or immobilised vehicles to be 'abandoned'. This process and the subsequent sale or disposal of that vehicle engages the right to property.

The right to property is not limited, however, as the process for deeming a vehicle to be abandoned and sold or disposed of will be authorised by law and will only apply in certain circumstances where particularly serious road safety offences are alleged to have been committed and where the alleged offender has failed to collect his or her vehicle within a reasonable period of time. If a vehicle is deemed to be abandoned and is sold or disposed of and the offender is subsequently found to be not guilty of the offence, fair compensation must be paid to any person with a proprietary interest in the vehicle.

Relocation of immobilised vehicles

The bill confers additional powers on police and authorised persons to relocate immobilised vehicles. The exercise of these powers, which include search and seizure powers, engages the right to property. The right is not limited, however, as the exercise of the powers will be authorised by law and will not be arbitrary. The powers will only be able to be exercised in certain circumstances in which the movement of the vehicle is necessary to, for example, address a road safety or public amenity issue or to enable the vehicle to be sold or disposed of.

The registration of financing statements

The bill requires certain notifications to be recorded on the commonwealth personal property securities register with respect to immobilised, impounded or forfeited vehicles. This requirement engages the right to property, as it may affect the ability of the vehicle's owner to sell the vehicle or use it as security.

However, the right to property is not unlawfully or arbitrarily interfered with, as applications to register financing statements will be authorised by law and will only be made in certain circumstances where enforcement action has been taken or is pending with respect to the relevant vehicle.

Requirement to obtain approval before moving an immobilised vehicle

The bill requires a person seeking to move an immobilised vehicle to obtain prior approval of the new location from the Chief Commissioner of Police. Placing a restriction on the movement of a vehicle necessarily engages the right to property.

However, the right to property is not limited, as the additional requirement to obtain approval before moving an immobilised vehicle will be authorised by law and will not be imposed in an arbitrary manner. It will continue to be the case that a vehicle will be able to be moved without the approval of the chief commissioner for a range of reasons including, for instance, that the vehicle is obstructing access to property.

New criteria for statutory write-offs

The establishment of new nationally agreed criteria for assessing whether a damaged light motor vehicle is a statutory write-off will engage the right to property as it is expected to result in more vehicles being assessed as statutory write-offs. This will mean that the vehicles concerned cannot be re-registered, restricting their use.

The right is not limited, however, as the assessment of a vehicle as a statutory write-off under the new criteria will be made in accordance with law and will not be made arbitrarily. The criteria must, for instance, be applied by assessors in accordance with the technical guide approved by the association of Australian and New Zealand road transport and traffic authorities (Austroads).

Section 24(1) — fair hearing and section 25(1) — right to be presumed innocent

Section 24(1) of the charter act provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Section 25(1) of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Sale or disposal of vehicles deemed to be abandoned

The bill creates a new process for deeming certain impounded or immobilised vehicles to be 'abandoned' and subsequently sold or disposed of. The changes mean that this process can occur before all legal proceedings relating to the relevant offence have been completed. These changes limit the right to a fair hearing and the right to be presumed innocent, as the sale or disposal of a vehicle is analogous to a form of punishment and is being imposed for alleged criminal behaviour before any formal finding of guilt by an independent and impartial court or tribunal.

Taking into account all relevant factors, however, including the following, the limitation is reasonable.

(a) the nature of the right being limited

Where the sale or disposal of a vehicle that is deemed to be abandoned occurs prior to any formal finding of guilt by a court, it limits both the right to a fair hearing and the right to be presumed innocent to the extent that those rights implicitly require that no punishment for alleged criminal behaviour be imposed unless the alleged offender has received a fair hearing and been proved guilty according to law.

(b) the importance of the purpose of the limitation

The sale or disposal of 'abandoned' immobilised or impounded vehicles is necessary to ensure that vehicles are released from immobilisation or collected from their place of impoundment in a timely fashion. To date, a high percentage of vehicles that are available for collection have not been collected but have been effectively 'abandoned'. The figure for January 2012, for instance, is 23 per cent.

A factor in the number of impounded vehicles not being collected is the requirement for the owner to pay towing and storage charges before the vehicle's release. These costs, and any additional costs which may apply to, for instance, make

the vehicle roadworthy, may exceed the value of the vehicle. It is anticipated that there will be a similarly high percentage of immobilised vehicles that will not be released from immobilisation in a timely manner once the use of vehicle immobilisation becomes more widespread.

Where a vehicle is abandoned, Victoria Police is left with the burden of the unpaid designated costs and the cost of the vehicle's sale or disposal. In the case of immobilised vehicles which are left unreleased, this can create public amenity issues and difficulties for police in recovering immobilisation devices for re-use.

(c) the nature and extent of the limitation

A number of safeguards apply to the new deeming process. The notification process to have a vehicle deemed to be abandoned can only commence seven days after an impounded vehicle becomes available for collection and three months after an immobilised vehicle becomes available for release. This process cannot commence at all if the Chief Commissioner of Police is aware that proceedings for the release of the vehicle on exceptional hardship grounds are already on foot.

The formal notification process will also give vehicle owners 30 days to pay the relevant designated costs and collect the vehicle. A person substantially affected by the possible sale or disposal will also be given 30 days to apply to the Magistrates Court for an order that the vehicle is not abandoned and that he or she has a genuine intention to collect or arrange for the release of the vehicle. If an application is successful, then the vehicle can only be disposed of once all legal proceedings relating to the offence have been completed or the Chief Commissioner of Police has obtained a disposal order under subdivision 3 of division 5 of part 6A of the Road Safety Act 1986.

If an abandoned vehicle is sold or disposed of and a person is not charged within a defined period or is ultimately found not guilty of the relevant offence, persons with a proprietary interest in the vehicle must be fairly compensated. It will continue to be the case that where a person pays the designated costs in respect of an impounded or immobilised vehicle before the relevant court proceedings have been finalised and that person is ultimately found not guilty of the alleged offence, the designated costs will be repaid.

(d) the relationship between the limitation and its purpose

The limitation of the right to a fair hearing and the right to be presumed innocent is directly linked with the primary purposes of the limitation, which are to ensure that vehicles are released from immobilisation or collected from their place of impoundment in a timely fashion and to prevent unreasonable costs from being incurred by the police in relation to vehicle impoundment and immobilisation.

(e) any less restrictive means reasonably available to achieve its purpose

It would be possible to delay the deeming of a vehicle as abandoned to allow offenders more time to collect or arrange for the release of their vehicles. However, this would reduce the effectiveness of the changes in terms of encouraging the timely collection and release of vehicles and the minimisation of costs associated with the scheme.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006. Provisions of the bill engage, but do not limit, rights conferred by sections 12, 13(a) and 20 of the charter act. The provisions of the bill that limit human rights under sections 24(1) and 25(1) of the charter act are reasonable and proportionate taking into account all relevant factors including those set out in section 7(2) of the charter act.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills)

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill:

implements an election commitment to require 'hoon' offenders to undertake a safe-driving course;

will make the vehicle impoundment scheme more efficient for Victoria Police and reduce government costs in administering the scheme; and

will establish new, more stringent and nationally agreed criteria for assessing whether a damaged light motor vehicle is a statutory write-off.

Safe-driving course for 'hoon' drivers

The bill will require the courts to order a person who has had his or her vehicle impounded or immobilised after committing an offence such as an excessive speeding, street racing or a 'loss of traction' offence, to complete a safe-driving course approved by VicRoads. VicRoads will administer the safe-driving course program, approve the course providers and monitor the program.

Offenders who do not complete a course as required by the courts will be subject to licence suspension (or, if their licence is already suspended, a further suspension on the expiration of the existing suspension) or disqualification from driving in Victoria or from obtaining a Victorian driver licence or permit.

The introduction of the safe-driving course program, together with recent changes such as the increase in the period of immediate impoundment for first-time 'hoon' offenders to 30 days and the increase in the range of offences for which vehicles can be impounded, are part of the government's commitment to dealing more effectively with 'hoon' drivers. The government's approach, which combines tough penalties with programs that encourage behavioural change, provides a firm response to 'hoon' driving, making it clear that the

dangerous and antisocial behaviour of 'hoon' drivers will not be tolerated in Victoria.

The costs of implementing and administering the safe-driving course will be recovered in full through a fee paid by the 'hoon' offenders.

Vehicle impoundment scheme

Under the current vehicle impoundment scheme, impounded vehicles are frequently abandoned. The high rates of abandonment have made the scheme expensive for the state.

Where an impounded vehicle is not in a roadworthy condition or has a low value, the expenses of any outstanding towing and storage fees (which must be paid before the vehicle is released) and the vehicle repair costs (which must be paid before the vehicle receives a roadworthy certificate) can exceed the value of the vehicle, leading some vehicle owners to abandon their vehicles rather than pay for their release.

Under the current scheme it can take an average of between 12–14 months for the sale or disposal of uncollected impounded vehicles as the current provisions prevent Victoria Police commencing the sale or disposal process until all the court proceedings relating to the relevant 'hoon' offence have been finalised and the appeal period has expired. The delay in commencing the sale or disposal process increases the storage costs that Victoria Police incurs but is unable to recover from offenders.

The bill introduces a new process, allowing for the earlier sale or disposal of uncollected vehicles. If a vehicle has remained uncollected for seven days after it becomes available for collection, the Chief Commissioner of Police may notify affected persons that the vehicle will be deemed to be abandoned unless, within 30 days of the notice, it is collected or certain appeal rights are exercised. An affected person may then apply to the Magistrates Court for an order declaring that the vehicle is not in fact abandoned. Obtaining such a court order would end the new process, leaving the vehicle to be dealt with according to the procedures currently in the act — that is, the sale or disposal process could not commence until all the court proceedings have run their course and relevant appeal periods have expired.

It is expected that the new process will assist Victoria Police in reducing the cost of managing the vehicle impoundment scheme and will ensure that sufficient vehicle storage capacity is available for impounded vehicles.

The bill provides for a similar mechanism for deeming immobilised vehicles to be abandoned if they have remained unreleased for three months.

The bill makes a number of other refinements to the vehicle impoundment and immobilisation scheme.

The surrender powers are subject to time constraints — not only must police officers wait 48 hours before issuing the notice, but the notice must be served within 28 days of detection of an offence by a road safety camera and within 10 days of detection in any other case. The time constraints can be impractical where more time is needed to ascertain the identity of a driver or await the results of blood or oral fluid sample analysis.

The bill removes the 48-hour restriction and extends the time which Victoria Police have to issue a surrender notice. It provides that if an offence is detected by a road safety camera, the notice must be served within 42 days and if the offence depends on the analysis of a blood or oral fluid sample, the notice must be served within three months after the commission of the offence.

The bill also makes a range of improvements to the operation of vehicle immobilisation, including providing for the central management of vehicle immobilisation by one unit of Victoria Police, allowing police officers and authorised persons to move immobilised vehicles that have been left in dangerous or inappropriate locations and encouraging the recycling of low-value vehicles.

New criteria for assessing whether a damaged light motor vehicle is a statutory write-off

There are two types of written-off vehicles: repairable write-offs and statutory write-offs. A repairable write-off can be repaired and re-registered if it meets certain statutory requirements (although it may not be economic to do so). A statutory write-off, by contrast, cannot be re-registered and its vehicle identification number is not permitted to be used on another vehicle.

The bill will implement new, stricter criteria for assessing whether damaged light motor vehicles (that is, motor vehicles, other than motorbikes, that have a gross vehicle mass 4.5 tonnes or less) should be entered as statutory write-offs on the written-off vehicles register maintained by VicRoads. The new criteria are part of a national scheme and address a range of additional structural areas of vehicles (including the pillars, the chassis and supplementary restraint systems) which are relevant in determining whether a vehicle is a repairable or a statutory write-off.

The changes will assist in ensuring that badly damaged vehicles cannot be re-registered for use on the roads and will also reduce the potential for the 'rebirthing' of damaged vehicles.

Conclusion

To conclude, the measures in this bill will make valuable changes to the impoundment and immobilisation scheme, deliver on the government's commitment to make 'hoon' offenders complete a safe-driving course and introduce new, stricter and nationally agreed criteria for assessing whether written-off light motor vehicles are statutory write-offs.

I commend the bill to the house.

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

Debate adjourned until Thursday, 23 August.

CRIMINAL PROCEDURE AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Criminal Procedure Amendment Bill 2012.

In my opinion, the Criminal Procedure Amendment Bill 2012, as introduced to the Legislative Council, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

This bill amends the Criminal Procedure Act 2009 to:

(a) allow recorded evidence-in-chief under division 5 of part 8.2 to be used in another proceeding before a court or a tribunal;

(b) simplify the procedures that must be followed after the execution of a warrant;

(c) enable the County Court and the Supreme Court to use the power to impose aggregate sentences more effectively;

(d) provide the Court of Appeal with a limited power to correct an error in a sentence when refusing leave to appeal.

The bill amends the Magistrates' Court Act 1989 and the Drugs, Poisons and Controlled Substances Act 1981 to simplify certain aspects of search warrant procedures. The bill clarifies the existing aggregate sentencing powers under the Sentencing Act 1991 to enable the County Court and Supreme Court to more effectively use the power to impose an aggregate sentence of imprisonment and to simplify the task of a judge when imposing sentences reduced by virtue of a plea of guilty. The bill also includes amendments that are technical or consequential in nature.

Charter act rights that are relevant to the bill

Section 13: privacy and reputation

Clause 23 of the bill amends the Criminal Procedure Act to provide that a court or tribunal may order the production of a child or cognitively impaired witness's recorded evidence-in-chief for use in a proceeding (other than the original proceeding for which it was produced) before that court or tribunal.

This amendment is compatible with the right to privacy because it does not involve an unlawful or arbitrary interference with a witness's right to privacy or reputation. This amendment will only allow the use of a child or cognitively impaired witness's recorded evidence at another proceeding when the court determines that it is in the best interests of the witness to do so, having regard to the need to protect the privacy of the witness. The purpose of this amendment is to prevent that witness from having to give evidence more than once and thereby minimise the stress and trauma that the witness is exposed to.

Section 24 — fair hearing and rights in criminal proceedings

Section 24(1) of the charter act provides that a person charged with a criminal offence has a right to a fair and public hearing and section 25(2)(g) provides that a person may examine, or have examined, witnesses against him or her.

Clause 38 amends the Magistrates' Court Act 1989 in relation to the procedural requirements that police must adhere to following the execution of a search warrant. Clause 41 makes the same change to the Drugs, Poisons and Controlled Substances Act 1981.

Currently, an item that is seized by police pursuant to a warrant must be brought physically before the court, except if that item is deemed to be bulky or cumbersome. An item that is 'bulky or cumbersome' may be brought before the court by giving evidence on oath to the court as to the present location of the items and by producing a photograph of the seized item. The bill removes the condition that the item must be bulky and cumbersome for this exception to apply. The amendment will mean that the requirement to bring any item before court may be satisfied by adducing evidence on oath as to the physical location of the item as well as photographic evidence of the item seized.

It may be argued that this is relevant to the right to a fair hearing under the charter act because it may raise issues in relation to the integrity of the seized item and possible non-compliance with the terms of a search warrant.

However, these amendments simply extend the current exception that applies to bulky or cumbersome items to all items seized under a search warrant. The obligation on police officers to adhere to the terms of a search warrant and the relevant legislation is not affected. Once an item is brought before the court by photograph and by evidence on oath, it will still come under the direction of the court in the same manner as if it had been physically produced to the court. Furthermore, under current practice, items produced to the court are generally returned immediately to the possession of the police after being sighted by a magistrate. For these reasons, these provisions in the bill are compatible with the right to a fair hearing and rights in criminal proceedings.

Section 27: retrospective criminal laws

Section 27 of the charter act prohibits the retrospective application of criminal liability.

Clause 46 of the bill inserts new section 145 in the Sentencing Act 1991. New section 145 is a transitional provision which clarifies the way the Supreme Court or County Court may impose aggregate sentences of imprisonment. The transitional arrangement established by this provision means that the new aggregate sentencing provisions will apply to sentences

imposed after the commencement of the relevant provisions, irrespective of when the relevant offences (which are the subject of the sentences of imprisonment) were committed.

I do not consider this clause to be relevant to section 27 of the charter act because it does not alter the criminal liability of an accused nor does it alter the penalty that may be applied in respect of an offence committed prior to the commencement of the provision. Rather it simply clarifies the sentencing arrangements that may apply to a person who has been tried and convicted of an offence.

Clause 32 of the bill inserts new section 442(1) into the Criminal Procedure Act. New section 442(1) is a transitional provision which enables a single judge of the Court of Appeal to apply the new test for determining a leave application to all pending applications for leave to appeal against sentence, irrespective of when the sentence was imposed or when the application was commenced. The new test ensures that errors in sentences are corrected and should also assist the Court of Appeal in managing its significant appeals workload. This transitional arrangement does not limit section 27 of the charter act.

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

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

The just and efficient operation of criminal procedure laws is crucial for an effective criminal justice system. This bill further delivers on the government's election commitment to tackle delays and inefficiencies in the justice system.

The bill gives the courts greater flexibility in a range of criminal procedures so that cases can be determined more quickly. The bill will also simplify cumbersome warrant procedures that unnecessarily take up the time of police and magistrates.

Appeals by an offender against sentence

In February last year, the Court of Appeal introduced far-reaching procedural reforms to reduce the backlog of criminal appeals. In just one year, the Court of Appeal was able to reduce the number of pending appeals from 532 to 268. The government has supported the Court of Appeal's ongoing work to reduce delays by providing ongoing additional funding totalling $3.2 million over the next four years in this year's budget.

A crucial element of the court's reforms is refusing leave to appeal against sentence where there is no reasonable prospect that the sentence will be reduced. However, in cases where an offender has been sentenced to imprisonment for a number of offences, the court currently does not have the power to refuse leave to appeal where there is an error in one of the sentences imposed, even though that error may make no difference to the overall total effective sentence imposed on the offender.

Division 1 of part 2 of the bill introduces an amendment to enable the Court of Appeal to refuse leave where there is an error in an individual sentence but there is no reasonable prospect that the Court of Appeal would reduce the total effective sentence. If leave to appeal is refused in that circumstance, the court will be able to exercise a limited power to correct an individual sentence. This power may also be exercised where the Court of Appeal is constituted by a single judge.

This approach will avoid court resources being tied up in a full appeal where there is no reasonable prospect of the court reducing the total effective sentence, while still allowing the court to rectify errors in an individual sentence that do not affect the total effective sentence.

Aggregate sentences

The bill also reforms the law relating to the imposition of aggregate sentences in the trial court.

In recent years, the power of Victoria's higher courts to impose aggregate sentences of imprisonment in respect of two or more offences has become a highly complex and technical process. The general power to impose an aggregate sentence of imprisonment under the Sentencing Act 1991 was considered by the Court of Appeal in *DPP v. Felton* [2007] VSCA 65 (Felton's case). In this decision, the Court of Appeal determined that, when imposing aggregate sentences of imprisonment, it is necessary for sentencing judges to identify the separate events giving rise to specific counts and to consider each separate sentence to be imposed in respect of each offence. This effectively required the court to do almost everything that is required when imposing individual sentences except formally make orders for concurrency or accumulation.

This requirement has placed an onerous burden on sentencing judges. It has also diminished the overall utility of aggregate sentences.

Division 3 of part 4 of this bill amends the Sentencing Act to clarify the use of aggregate sentencing in the County Court and the Supreme Court and to provide that the technical requirements imposed by the Court of Appeal in Felton's case no longer apply. The amendment will make clear that, in the course of imposing an aggregate sentence of imprisonment, a sentencing judge is not required to identify the separate events giving rise to specific offences, the individual sentences that would have been imposed for each specific offence or whether those sentences would have been imposed concurrently. This change simplifies the sentencing process, reduces the risk of technical appeal points, and addresses the onerous limitations imposed by the decision in Felton's case. The bill also applies these principles of aggregation to sentences involving fines, as well as those involving imprisonment.

These amendments will simplify plea hearings and enable judges to sentence more efficiently in cases involving multiple offences, where at present orders as to concurrency and cumulation can become very complex. The effective use

of aggregate sentencing is also important for victims of crime and the broader community, because it focuses on the total effective sentence imposed in response to the offender's overall offending.

Sexual offence reforms

Clauses 21 to 23 of the bill will expand the use of recorded evidence-in-chief of children and cognitively impaired witnesses. Currently, this type of recorded evidence can only be used in the prosecution of sexual offences or specific indictable assault offences.

The bill will allow prerecorded evidence to be admissible in proceedings for offences involving child pornography and sexual performance involving a minor, as well as for proceedings for summary assault offences when they are related to the specified indictable offences for which recorded evidence can be used. The bill will also allow evidence that has been recorded to be used in other proceedings in another Victorian court or tribunal — for example in family violence proceedings and hearings before VOCAT, if the court or tribunal is satisfied that it is in the best interests of the child to do so. The broader use of recorded evidence will help avoid a child having to give their evidence about a traumatic criminal offence on multiple occasions.

Special hearings are an important process established for taking evidence from children and cognitively impaired complainants in sexual offence proceedings. The special hearing provisions were introduced in 2006 to implement recommendations of the Victorian Law Reform Commission in its 2004 final report, *Sexual Offences — Law and Procedure*.

Currently, special hearings are conducted prior to the commencement of the trial and the complainant's evidence is prerecorded, admitted into evidence at the trial and played before the jury. In 2011 the Sexual Assault Reform Strategy evaluation found that the conduct of special hearings as a separate pretrial process has contributed to increased delays in the prosecution of other sexual offence cases and has placed an increasingly onerous burden on court resources. It has also contributed to court delay by effectively doubling the time that would be required if the complainant were to give evidence during the trial. This is because the special hearing must be recorded, which will often take one to two days, and then the recording is played to the jury once the trial has commenced.

Over the six years that special hearings have been in use, much has been learnt about how a special hearing can best be conducted. The special hearing is not a substitute for a committal proceeding. It is part of the trial process. Counsel need to conduct the special hearings accordingly and not as a 'dry run' in which the evidence of a complainant can be later edited to ensure admissibility.

To reduce the delay caused by this dual process, this bill introduces an amendment to allow the court to conduct special hearings either before a trial or during a trial. Clause 24 sets out a number of factors to which the court must have regard in determining whether to conduct the special hearing before or during a trial. These factors will enable the court to consider the needs of complainants in each case to determine the best approach to adopt.

Where a special hearing is conducted during the trial, clause 26 of the bill will provide greater certainty for complainants as to when they will need to give evidence and will support the need for the complainant's evidence to be completed without disruption if possible. This recognises that if a special hearing is conducted during a trial, there will be other factors that affect the conduct of the special hearing. These requirements preserve key benefits of the pretrial process while avoiding the duplication of time and resources involved with conducting special hearings before the trial.

This change will enable the courts to manage cases in a more efficient manner while recognising the individual needs of each case and each complainant.

Children's Court appeals

The bill contains a number of amendments to appeal processes, particularly in part 3 of the bill concerning appeals from the Children's Court. These reforms include providing a new power to reserve a question of law for consideration by the Court of Appeal where a difficult legal issue arises in an appeal from the Children's Court to the County Court or the trial division of the Supreme Court. A similar power is provided where an appeal from the Magistrates Court is heard in the County Court. This and other reforms to appeal processes in this bill will ensure that the same processes are available whether a case commences in the Children's Court or the Magistrates Court.

Warrants

Search warrants are an important investigative tool for Victoria Police. Divisions 1 and 2 of part 4 of this bill amend provisions for warrants under both the Magistrates' Court Act 1989 and the Drugs, Poisons and Controlled Substances Act 1981. Under both acts, once police have executed a search warrant they must bring the items they have seized before the Magistrates Court for the item to be dealt with according to the law. In practice, this generally results in items being returned immediately to the possession of the police after being sighted by a magistrate. This is time consuming for both police and magistrates. An exception to the current requirements is provided under the Magistrates' Court Act where the item is bulky or cumbersome. In this situation the police officer may provide evidence as to where the item is and produce a photograph of the item. The bill will enable this simple and practical approach to be used for all items, irrespective of whether the item is bulky or cumbersome. This will provide more efficient processes for both police and magistrates.

The amendments made by this bill will introduce important improvements to the criminal justice system that will help reduce delays and better provide for the needs of vulnerable victims of crime when giving evidence before our courts.

I commend the bill to the house.

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

Debate adjourned until Thursday, 23 August.

LOCAL GOVERNMENT LEGISLATION AMENDMENT (MISCELLANEOUS) BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. P. R. Hall; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Local Government Legislation Amendment (Miscellaneous) Bill 2012.

In my opinion, the Local Government Legislation Amendment (Miscellaneous) Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act.

Overview of bill

The bill has the following main purposes:

1. to generally improve the operation of councils and council elections;

2. to provide for the appointment of a probity auditor;

3. to amend the method by which interest is charged on unpaid rates and charges;

4. to clarify costs matters in VCAT hearings into councillor misconduct.

Human rights issues

The bill engages the following human rights:

1. Recognition and equality before the law — section 8 of the charter act

Clause 17 repeals section 101(2) of the Local Government Act 1989 (act). Section 101(2) provided that the Local Government (Long Service Leave) Regulations 2012 (long service leave regulations) cannot reduce or adversely affect the position of council staff in respect of their service or reduce their entitlements held at the time of the Local Government Act 1958 and prior to the 1989 act.

The effect of section 101(2) was to preserve privileges in the current long service leave regulations which are out of step with current norms, and which discriminate based on marital status and whether a person has children.

Repealing section 101(2) of the act therefore removes the preservation of the rights held at the time of the 1958 act, and as such positively engages section 8 of the charter act.

2. Privacy and reputation — section 13 of the charter act

Clause 7 repeals section 57 of the act, which made it an offence to make or publish false or defamatory statements in relation to a candidate in a council election.

Although clause 7 engages a candidate's right not to have his or her reputation unlawfully attacked, it does not limit this right. The Defamation Act 2005 (Defamation Act) already codifies the common law of tort of defamation, providing a person with a right of action if another person makes a defamatory statement about them. This effectively covers the types of statement to which section 57 of the act is intended to apply. Furthermore, not only were prosecutions under section 57 very uncommon, under the Defamation Act courts are provided with a wide discretion to impose damages up to $250 000 for non-economic loss, which is considerably more than the penalty under section 57 of the act.

Clause 9 requires the chief executive officer of a council to make available on the council's internet website the names of candidates in an election that submitted their election campaign donation return, and the names of persons that made a gift and the total value of the gifts.

The type of information provided under clause 9 does not arbitrarily breach a person's right to privacy, since it is already public information under the act, and is only limited to ensuring full disclosure of donations provided to fund election campaigns of candidates. Since council decisions can have a significant impact on people and the community, the stakes involved in council elections are quite high. As such, certain people may donate generously to the election campaigns of candidates. Public transparency in regard to such donations is therefore essential.

Clause 18 allows a probity auditor to require a councillor or member of council staff to produce documents, provide information or give reasonable assistance where it will assist in his or her duty to monitor council processes in dealing with a complaint about a council chief executive officer. Such information may include private information. This amendment does not interfere with the councillor's or member's privacy, since the material is limited to information relating to council processes, and furthermore it is a key role of the auditor to monitor the integrity of council processes to ensure that the privacy of personal information is protected.

Clause 20 amends section 139(4A) of the act to require that members of council audit committees lodge primary and ordinary returns, disclosing members' interests including interests in a corporation or land within the municipality.

This amendment is lawful and does not amount to an arbitrary interference with the member's privacy, especially given members' existing obligations relating to conflict of interests and duties of disclosure under the act. The purpose of such a disclosure and the maintaining of a register are important to ensure transparency and accountability in local government.

3. Property rights — section 20 of the charter act

Clauses 21 and 22 positively engage property rights since they provide for the minister to intervene to ensure that the type or class of land specified by a council for the levying of

differential rates is fair and appropriate, and for a fairer method of calculating interest payable by ratepayers in relation to unpaid rates and charges, respectively.

Further, clause 28 improves the owner of the vehicle's ability to reclaim their property and therefore positively engages this right.

4. Fair hearing — section 24 of the charter act

Clause 32 provides that councils are only liable to bear the legal costs of parties to a councillor conduct panel or Victorian Civil and Administrative Tribunal (VCAT) hearings, where the council is a party to the hearing at its own initiative, rather than in all VCAT hearings. Clause 32 positively engages the right to a fair hearing as it continues to ensure that individual councillors are not disadvantaged when taken to VCAT by a well-resourced council.

5. Rights in criminal proceedings — section 25 of the charter act

Clause 18 provides that under new section 108(3) a probity auditor may require a councillor or a member of council staff to produce a document, provide information or give reasonable assistance if the probity auditor considers it will assist in performing his or her duties.

This does not limit the right that a person charged with a criminal offence is not to be compelled to testify against himself or herself or to confess guilt. Under new section 108(4), a failure to comply with such a request of the probity auditor is only reported where the refusal is unreasonable. A person may therefore reasonably refuse to comply, where for instance the person reasonably considers that doing so would result in self-incrimination. Further, the type of information is limited to information that will assist the probity auditor in its role in advising the council on probity issues relating to a complaint against the chief executive officer.

Conclusion

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

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

The Local Government Legislation Amendment (Miscellaneous) Bill 2012 will make a variety of amendments to local government legislation to improve the operation of councils. It includes amendments to the Local Government Act 1989, the City of Melbourne Act 2001 and the Victorian Civil and Administrative Tribunal Act 1998.

Amendments to the Local Government Act will improve the conduct of council meetings and clarify decision-making processes.

This includes inserting a clear statement in the Local Government Act about the way council decisions may be made. Council decisions may only be made in a properly constituted council meeting or, if council has delegated its decision-making power to a committee or officer, by that committee or officer.

A council decision must not be made in an assembly of councillors, such as in an advisory committee or in a councillor briefing.

The bill will remove an unenforceable provision that makes it compulsory for all councillors in a council meeting to vote. This will be replaced by a provision specifying that a majority of the councillors in the meeting must vote in favour of a motion before the motion can pass. This will allow a councillor to abstain from voting in a meeting, but the abstention will not alter the number of votes required for the motion to pass.

A councillor who has left the meeting because of a conflict of interest, or who is otherwise absent, is not counted as either having voted or as an abstention for the purpose of this provision.

The bill also includes some specific procedural improvements for conflicts of interest. These include allowing a councillor with conflicts of interest in sequential items before council to make all his or her disclosures before the first item, rather than having to re-enter the meeting to disclose for each one.

A councillor who has a conflict of interest in an item in the council plan will be able to vote on the final council plan if, and only if, council has previously voted to include that item in the plan and the councillor disclosed the conflict of interest when the previous vote was taken. It is important that all councillors are able to participate in approving the council plan.

Some amendments deal with processes to be followed when dealing with alleged misconduct. New provisions will allow the appointment of a probity auditor, at the discretion of the Secretary of the Department of Planning and Community Development.

A probity auditor may only be requested by a chief executive officer or a mayor. A council does not require the ability to request a probity auditor, as it has the power to appoint a probity auditor at its own discretion.

The role of a probity auditor would be to monitor internal council processes where there has been a formal complaint of bullying, victimisation or harassment against the chief executive officer. The probity auditor may also provide advice to the council.

A probity auditor's area of interest will be limited to council processes in relation to the complaint. He or she will not deal with the substance of the complaint, which will continue to be subject to any relevant judicial, administrative or contractual arrangements.

At the conclusion of an audit, the probity auditor will provide a report to the council, the mayor, the chief executive officer and the secretary.

In regard to councillor conduct matters, an amendment to the VCAT act will help clarify some issues in councillor conduct hearings.

An existing provision, which requires the council to pay the costs of individual councillors in a VCAT hearing, will be limited to situations where the council is the applicant in VCAT or where the council voluntarily becomes a party to the matter.

The purpose of this amendment is to remove a possible inducement for individual councillors to apply for their councillor conduct panel matter to be referred to VCAT so that council will have to pay their legal costs. It will retain the protection for an individual councillor when the council has initiated action against him or her in VCAT.

The members of a councillor conduct panel are required to be parties to any application to VCAT when there has been an application for a review of the panel decision. The bill will extend the term of office of panel members to the end of any such VCAT hearing. This is to ensure that panel members continue to be subject to immunity under the Local Government Act and they continue to be paid by the council.

A significant amendment in the bill will require each chief executive officer to publish a summary of election campaign donations, disclosed by candidates in the council's elections, on the council's website. This will include the name of each donor and the value of the donations made by each donor.

The bill will remove a provision making it an offence to defame a candidate in a council election. This is an inappropriate and ineffective provision. Defamation is treated as a civil matter in state and federal elections and should be the same in local government elections.

The bill will alter the meeting requirements for regional library boards. Currently regional library boards must comply with meeting requirements that apply to councils, which imposes some unnecessary burdens. The bill will allow members of a library board to attend meetings by electronic means, subject to approval of its local law by the member councils.

Significant reforms are proposed to legislation relating to the levying of differential rates. This is in response to a recent trend for councils to use differential rates in ways that discriminate against particular industries or businesses by imposing artificially high rates on them.

The bill includes a head of power for the minister to issue guidelines on the appropriate uses of differential rates. Councils will be required to have regard to the guidelines when setting differential rates.

If the minister considers that the imposition of a differential rate will be inconsistent with the guidelines, he or she will be able to seek an order in council to prevent the levying of a differential rate in respect of the particular type or class of land.

The bill will require councils to publish details of differential rates on the internet as well as increasing, from 30 to 60 days, the time allowed for a person to seek a review in VCAT about the way their land has been classified for differential rating.

An amendment is also proposed to the way penalty interest is calculated on unpaid rates and charges. In future, penalty interest will only be payable from the date when each quarterly instalment is due. This will apply even when a council allows payment in a lump sum. If a lump sum is not paid on time, penalty interest will be calculated as if the rates were being paid in instalments.

The bill includes a number of administrative changes.

Members of council audit committees, who can have access to confidential and sensitive information, will be required to lodge regular returns in which they disclose their interests.

An obsolete provision, preserving long service leave rights in a way that is inconsistent with the Charter of Human Rights and Responsibilities Act 2006, will be repealed.

Provisions allowing councils to dispose of unregistered and abandoned vehicles will be amended to mirror provisions in the Road Management Act 2004, applying to VicRoads. This will include having to take reasonable steps to notify a vehicle's owner before disposing of the vehicle.

As titled, this bill will make a number of miscellaneous amendments to local government legislation. Some of these amendments are quite significant and the bill will substantially improve the administration of local government in Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 23 August.

PORT MANAGEMENT FURTHER AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. P. R. Hall; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Port Management Further Amendment Bill 2012.

In my opinion, the Port Management Further Amendment Bill 2012, as introduced to the Legislative Council, is

compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill improves the safety and environmental management plan (SEMP) scheme in the Port Management Act 1995 through a number of means including establishing a statement of objectives for SEMPs and requiring three-yearly audits to be undertaken of all port managers. The proposal also establishes the Victorian Regional Channels Authority as the responsible authority for the port development strategy required under the Port Management Act 1995 for the port of Geelong. Finally, the bill clarifies the regulation of hazardous activities at the port of Melbourne.

Human rights issues

No human rights issues arise from the bill.

Conclusion

In my opinion, the Port Management Further Amendment Bill 2012 is compatible with the charter act.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

This is a small bill which is consistent with the government's clear long-term vision for the development of commercial ports in Victoria. This bill improves standards and efficiency at Victoria's ports.

The bill improves the safety and environment management plan (SEMP) scheme in the Port Management Act 1995 by ensuring that the SEMP process is more outcome focused. This is achieved by establishing a statement of objectives for SEMPs, which are to promote improvements in safety and environmental outcomes and an integrated and systematic approach to risk management.

Port managers are required to set out how they intend to improve port safety and environmental outcomes. Certification requirements are also removed to eliminate duplication with audits and to reduce the red tape burden on industry. Audits will be needed for all ports every three years. Port managers will also need to provide an annual report to the minister on port safety and environmental performance.

The bill also establishes the Victorian Regional Channels Authority as the responsible authority for the port development strategy required under the Port Management Act 1995 for the port of Geelong. This change facilitates better coordination of whole-of-port planning for the port.

The bill also makes a small change to improve the hazardous activities scheme at the port of Melbourne.

Honourable members are referred to the explanatory memorandum and clause notes for the bill for more detailed information about the proposal.

I commend the bill to the house.

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

Debate adjourned until Thursday, 23 August.

RESIDENTIAL TENANCIES AMENDMENT BILL 2012

Second reading

Debate resumed from 21 June; motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Mr ELASMAR (Northern Metropolitan) — I rise to contribute to this debate, and I state at the outset that we in the Labor Party do not oppose the amendments contained in the Residential Tenancies Amendment Bill 2012. The bill has several primary provisions, some of which further protect the rights of tenants and some of which protect the interests of landlords.

The bill clarifies the implementation of serving a notification of breach of duty by a tenant or a landlord. A notice to vacate or a notice of intention to vacate may be served following the third successive breach of duty. Breaches entail failing to maintain the property properly, breaking the peace by inflicting unacceptably loud noise on the neighbourhood, inappropriate aggressive behaviour or generally being in breach of the lease contract — in other words, three strikes and you are out. However, dispute settlement arrangements are clarified to allow tenants and landlords to resolve difficulties between the parties within reasonable time frames.

There are still too many reported incidents of landlords ripping off tenants for their bond money, so as an additional protection for tenants the bill will prohibit a landlord from requesting a tenant's signature on a bond claim unless the bond repayment amounts have first been entered on the form. Under this bill's provisions, bond repayment amounts cannot be filled in later by the landlord in the absence of the tenant. The bill also specifies the duty of a landlord to lodge a bond with the Residential Tenancies Bond Authority to include

lodgement of part payments or instalment payments of a bond.

Importantly, those bond moneys provided by the director of housing and held by the RTBA will be repaid to the director of housing. This will free up money to assist other people who are seeking a tenancy but are without sufficient funds to pay their bond money up-front. The total amount of bond loans currently held by the Residential Tenancies Bond Authority is $740 000. It is time these funds were released to where they will do the most good.

I turn now to the issue of rooming houses, which have been operating in Victoria for several years. The bill provides protection for those vulnerable or at-risk members of our community who find themselves homeless and in a position where they have no other options available to them but to take a room in a rooming house at extremely high rent. In some cases the rooming houses are in an appalling condition. There has been a lot of publicity in the media about rooming house tenants being exploited by greedy landlords and fly-by-night operators who are only in the business of making a fast dollar at the expense of the most desperate and needy in our community. The legislation will enhance the standard of accommodation, and frankly this reform is long overdue.

The bill amends the Residential Tenancies Act 1997 relating to caravan parks and rooming houses as well as the Public Health and Wellbeing Act 2008. It also provides for the establishment of a rooming houses register, a mechanism that will assist in the monitoring and regulation of those properties on the list. The bill also amends the Business Licensing Authority Act 1998 in relation to delegation powers, and it amends the Consumer Affairs Legislation Amendment (Reform) Act 2010 and the Sale of Land Act 1962 in relation to contracts for the sale of lots in a plan of subdivision and for other purposes.

Some of the amendments are purely housekeeping, while others seek to establish a humane and protected living environment for the less fortunate in the community. We support this bill, and I wish it a speedy passage.

Ms HARTLAND (Western Metropolitan) — I thank the previous speaker for providing such comprehensive detail of the technicalities of this bill. The Greens will be supporting the bill because it is an extremely straightforward piece of legislation that will provide assistance to people who need it. Like the previous speaker, I was quite astounded when I read that there is an amount of $740 000 sitting with the Residential Tenancies Bond Authority. This is money that the Office of Housing uses so that people can get a bond to get into new premises. It is something that helps people to re-establish private rental. If all that money is just sitting there because the mechanism is not straightforward enough, that is one of the really important things that this bill will address and it is one of the reasons why we are supporting it. In the past few years we have heard dreadful stories about rooming houses, particularly about what people in rooming houses have to pay when for whatever reason that ends up being their only choice of accommodation.

With those few words, the Greens will be supporting this bill because it is an important but very straightforward bill and it is quite necessary.

Mr ELSBURY (Western Metropolitan) — It is very heartening to hear that the government has the support of both the opposition and the Greens on this bill, because it provides greater certainty to landlords as well as tenants when a rent agreement is established. This will be brought about through the clarification of the provisions relating to the duties that both parties are required to undertake, whether it be keeping the property clean as a tenant or maintaining the property as a landlord. When a duty is breached on a number of occasions there needs to be the ability for the aggrieved to bring the agreement to a close. It may be that a landlord does not act when a toilet backs up or there is a problem with the heater and cumulatively that makes it very difficult for the tenant to use the premises for their accommodation. Alternatively, if the premises are not being kept clean or a tenant is making undue noise and is disruptive in the neighbourhood, a landlord needs to be able to act.

Once the bill is passed the amendments made by it will apply to the Residential Tenancies Act 1997. The amendments will apply to a landlord in a fixed-term tenancy, as provided by section 240; a tenant of a rented premises, as provided by section 249; a resident of a rooming house, as provided by section 283; a caravan park resident, as provided by section 308; an owner of a part 4A site, as provided by section 317V; and a tenant of a part 4A site, as provided by section 317ZB. You are almost thinking of supplementary numbers after that! As mentioned, this bill provides greater protection for those utilising rooming houses, and I look forward to future legislation reaching this house which will further entrench the rights of rooming house tenants to receive a minimum duty of care from their landlords.

These amendments have come about following decisions by the Victorian Civil and Administrative

Tribunal which guided judgements that breaches of the same duty had to have occurred three times before an action could be taken. We will change that so that the third occasion of a breach is the trigger for an agreement to come to its conclusion. These amendments to the Residential Tenancies Act 1997 preserve the right of those to whom a duty is owed to have action taken to rectify an issue or to have a rent agreement voided. The amendments will also solidify the duty of landlords to place bond money with the Residential Tenancies Bond Authority registry. Landlords will be required to place instalments for bonds with the registry if that is the way they have agreed to receive the bonds.

Some issues have been caused in the past by landlords holding bond deposits until the full bond amount has been accumulated. By ensuring that all funds are deposited into the register as they are collected, we are ensuring that should an issue arise over the time the payments of the bond are being made they can be claimed by a tenant or utilised by a landlord via legitimate means. In some cases the Department of Human Services can pay all or part of a bond on behalf of a tenant. This means that a person seeking assistance for housing can move into a property even if they are having difficulty in raising a lump sum bond or the department is providing rent assistance to the tenant. This arrangement works well. However, there are instances when a tenant leaves a rental property and the bond remains in the register. Unfortunately in this case, where the department has paid the bond, there is no incentive for the tenant to actually do the paperwork required to release the moneys — or they just plain forget. This means that we have $740 000 of the department's money floating around in limbo. This legislation will release that money, allowing for the department to provide more assistance to needy people right across our state.

In relation to the filling out of forms to release bond money from the Residential Tenancies Bond Authority, it will be illegal for a landlord to have a tenant sign a blank form or a form on which the refund amount has not been filled in. There has been a practice of landlords saying, 'Just sign off on it; I'll fill in the rest'. That will not be allowed any more. It will be illegal to do so, and that is a good thing. If someone signs a legal document — and they should not be doing that anyway — which says, 'This is the amount of money that I agree needs to be paid to my landlord at the end of this lease agreement', they now have this legal protection such that they cannot be forced into signing a blank or incorrectly filled out form for having their bond returned to them.

In conclusion, the Residential Tenancies Amendment Bill 2012 clarifies the position of both tenants and landlords. It sets out clearly the way in which issues for a tenant or landlord should be progressed if remedies are not attempted, and ultimately it allows for the aggrieved party to seek an exit from the arrangement. The amendment allows for the Department of Human Services to recoup the bonds it pays on behalf of a tenant at the end of their lease so that resources can be redeployed to assist others seeking help getting into a home.

Both the Real Estate Institute of Victoria and the Tenants Union of Victoria were consulted. These changes will be communicated through changes to the Consumer Affairs Victoria *Renting a Home — A Guide for Tenants* booklet, as well as updates to the Consumer Affairs Victoria website, and communication will be entered into with relevant stakeholders. Considering that the opposition and the Greens do not oppose this bill, I look forward to its passage.

Mr EIDEH (Western Metropolitan) — I rise to make a brief contribution to a very important piece of legislation, one that affects landlords and tenants across the state and which is critical to the ongoing strength of the residential tenancy market. The rental market is a key part of housing options for Victorians. Many people cannot afford to buy their own homes, more so today given the growing thousands who have lost their jobs since the Baillieu-Ryan government took office. Others simply choose not to buy their own homes. Renting is the best option for such persons, but the Victorian Civil and Administrative Tribunal has made this a little more difficult. The manner in which VCAT has interpreted the existing act is forcing us to bring this amendment forward. Two residential tenancy cases, *Burwah Holdings Pty Ltd v. McLaren* and *Leonard and Pekar v. Tein and Cheng*, stand out as examples of where VCAT has produced an interpretation that differs from that which the Parliament raised when the original bill was put before us.

However, what seriously concerns me is yet another example of this government failing to consult and thus producing legislation that barely scratches the surface of making life better for Victorians. I have been advised that relevant bodies were not consulted about this legislation. If that is the case, I must ask if the government of Mr Baillieu and Mr Ryan truly believes in representative democracy and in discussing and developing good legislation rather than legislation on the run, which has been the mantle of this confusing regime.

If the Baillieu-Ryan government had learnt how to spell the word 'consultation', it would have realised that benefits come from positive actions such as talking to people and listening and seeking to create good laws and policies rather than average ones. To me, this is also a lost opportunity to make further changes to the act to strengthen requirements for both tenants and landlords — about appropriate behaviour, about how property should be treated, about repairs and about the many issues that effectively lead some landlords into war with their tenants.

Most landlords and tenants are honest. Most respect the other and do the right thing. But those who do not do the right thing hurt the market for everyone, and this is where we must act. For example, in this bill we are told that unclaimed bond moneys, currently some $740 000, will be given to the director of housing. What will happen to this money? The information on this is not as clear as it should be. For example, after 12 months or even 24 months of bond moneys being unclaimed, landlords could make claims of up to $5000 to help cover clean-up costs after bad tenants have left without doing the right thing. Interest-free loans could also be made to university students who are seeking to rent a property, especially international students, to help that market recover from the slump that has occurred since this government came to power. There is a difference between paying rent and paying the bond that landlords have a right to seek. Sometimes that bond is too much for a young person to even start in the rental game.

This bill goes nowhere near such issues. As such, it is a wasted opportunity to craft legislation geared for now and prepared for tomorrow, legislation that also covers the sometimes darker world of rental properties known as rooming houses, where there are many problems and issues, as a number of people have advised me. There are many aspects of this bill which demand greater attention. Members on this side of the house will pursue those matters, although the history of this government is that it simply does not listen. The opposition does not oppose this bill as it does mark a step forward.

Motion agreed to.

Read second time; by leave, proceeded to third reading.

Third reading

Motion agreed to.

Read third time.

PLANNING AND ENVIRONMENT AMENDMENT (VICSMART PLANNING ASSESSMENT) BILL 2012

Committed.

Committee

Clause 1

Mr TEE (Eastern Metropolitan) — The minister's media release of 7 June says the amendments made by the bill follow the recommendations of the Victorian Planning System Ministerial Advisory Committee. One of those recommendations is that:

> A code assess process be developed and piloted in selected municipalities for a variety of buildings and/or works and/or nominated subdivision proposals.

I ask the minister if it is intended that that pilot proceed.

Hon. M. J. GUY (Minister for Planning) — The pilot nominated by the ministerial advisory committee is different to the VicSmart legislation.

Mr TEE (Eastern Metropolitan) — I hope the minister can elaborate somewhat, because there is a reference to a code assess process being developed in the pilot, and I wonder on what basis it is different from the VicSmart legislation.

Hon. M. J. GUY (Minister for Planning) — The recommendation of the advisory committee is to trial and pilot in relation to building and construction permits. That is not what the VicSmart process is about; it is about small-end permits. That is not what the government's intention is for VicSmart.

Mr TEE (Eastern Metropolitan) — Just to be clear, the recommendation is that a process be developed and piloted in selected municipalities for a variety of buildings and/or nominated subdivision proposals. I ask the minister whether the government supports the pilot recommended by the advisory committee. Will it proceed?

Hon. M. J. GUY (Minister for Planning) — That is different from the bill we are debating at this point in time.

Mr TEE (Eastern Metropolitan) — Another recommendation in relation to assessment streams for permit applications is for an audit. Just on that, is the minister able to give us any indication as to whether that pilot will proceed?

Hon. M. J. GUY (Minister for Planning) — That is not something I am considering at this point in time.

Mr TEE (Eastern Metropolitan) — The other recommendation is that an audit of existing permit triggers in the planning scheme be undertaken to identify where permit triggers can be reduced. I ask the minister: will he be conducting that audit?

Hon. M. J. GUY (Minister for Planning) — Again, it is not something that is on my desk at this point in time.

Mr TEE (Eastern Metropolitan) — In the minister's media release I think he talks about hoping to have a 10 per cent reduction in annual permit activity. Is that — the progress the bill makes once it becomes legislation — something that he will be reporting on to the Parliament, and is it something that will be monitored, audited, reviewed and made public? I suppose the question is: will the community be able to have a sense of the impact of the bill in terms of the reduction in annual permit activity?

Hon. M. J. GUY (Minister for Planning) — That is a good point. I have not considered that, but I am happy to consider it.

Mr TEE (Eastern Metropolitan) — I am pleased that the minister is happy to consider it, and I ask: will he be happy to report back to this chamber on the outcome of his considerations?

The DEPUTY PRESIDENT — Order! I hope the minister is still pleased and happy and all the rest of it.

Hon. M. J. GUY (Minister for Planning) — Yes, I am happy to have an assessment of how it is going after a period of, say, 12 months to see where it is implemented, and I am happy to report back.

The DEPUTY PRESIDENT — Order! Like a bunch of little Vegemites! Mr Tee?

Mr TEE (Eastern Metropolitan) — We will move through this reasonably quickly with that positive attitude. I think the second-reading speech talked about the implementation of the bill in the sense that the bill is very broad, almost in effect an enabling bill, and that the fine grain will be set out in planning scheme amendments and regulations. In terms of the planning scheme amendments, is it envisaged that a local council will be able to initiate a planning scheme amendment under the VicSmart proposals?

Hon. M. J. GUY (Minister for Planning) — No. As Mr Tee correctly stated, this is an enabling bill — it is a head of power — and then through what already exists within the zoning structure the councils will be able to use or develop a codified system. Once the system is developed by a council then it will be a permit process, so once the codified permit process is in place a council will then be able to take an application. If it meets the guidelines outlined in the codified system, it will then flow through the permit process according to the principles of VicSmart, which is simply the enabling legislation that has been put forward. Obviously through the schedules a planning scheme amendment would not be necessary, given that a number of those zones are already active in terms of the implementation of the VicSmart model.

Mr TEE (Eastern Metropolitan) — I am having a quick look at the second-reading speech. Will there be a planning scheme amendment that will implement the code assess process in the sense of there being a planning scheme amendment that will set out the requirements?

Hon. M. J. GUY (Minister for Planning) — As I said, the details of the zoning structure already exist to be able to bring in the VicSmart model. In terms of implementation, a planning scheme amendment process will be put in place for councils that do not have the correct zoning structure, and that will enable VicSmart to be implemented in those municipalities.

Mr TEE (Eastern Metropolitan) — The second-reading speech states:

> A planning scheme will be able to exempt specified applications from the formal 'further information' requirements of the act and from certain decision-making criteria in the act.

If members of the public want to see which class of permits are exempted, would they look to a planning scheme amendment for that?

Hon. M. J. GUY (Minister for Planning) — Yes, that is correct.

Mr TEE (Eastern Metropolitan) — Just to be clear, is that planning scheme something a local council can initiate?

Hon. M. J. GUY (Minister for Planning) — A council can initiate that.

Mr TEE (Eastern Metropolitan) — Does the minister envisage that in terms of the way the planning schemes will operate — and I leave aside the capacity for councils to initiate planning schemes — it is his intention to initiate a planning scheme to cover most of

the classes? I suppose the question is: will the planning scheme amendments be required to identify that?

Hon. M. J. GUY (Minister for Planning) — If I understand Mr Tee correctly, the answer is yes, you would need to, for example, bring a codified system for a fence into the planning scheme, and that will set the detail, as he correctly says, of the identified permit applications that are being codified into the planning schemes so that people will obviously know what is in the VicSmart system.

Mr TEE (Eastern Metropolitan) — I suppose the other way of looking at it is if a member of the public wanted to see which class of permits were in the VicSmart process, they would need to have a look at the planning scheme amendment. I want to ask what the minister's intentions are in terms of initiating those planning scheme amendments. Does he intend to have a number of planning scheme amendments? Is there a process he has in mind in terms of consultation with councils and communities?

Hon. M. J. GUY (Minister for Planning) — The default is of course yes, although the detail will be worked out if and when this bill passes the Parliament.

Mr TEE (Eastern Metropolitan) — The answer is yes, there will be a consultation process with councils and with the community in terms of what goes into that planning scheme — the detail — which will set out the class of permits that are part of the VicSmart process.

Hon. M. J. GUY (Minister for Planning) — That level of implementation will be worked through if and when this bill passes the Parliament.

Mr TEE (Eastern Metropolitan) — As the minister says, I think we are in furious agreement, but just to be clear: the bill is an enabling provision, it does not provide any limits in terms of the powers, so in terms of height restrictions, for example, those are not found anywhere in the bill. Is that correct?

Hon. M. J. GUY (Minister for Planning) — As Mr Tee correctly says, it is an enabling bill, so the details of where it will apply are set out in the government's fact sheet, and the necessity to bring those into local planning schemes will require a planning scheme amendment so that you have a codified system of those permit applications which may fit into a VicSmart regime. That is the government's intention.

Mr TEE (Eastern Metropolitan) — Can the minister also confirm that there is material he has put out which says that if after, I think, 10 days the permit is not granted, the applicant can go to the Victorian Civil and Administrative Tribunal? Under the VicSmart process is there any capacity for councils or third parties to bring a VicSmart permit to VCAT?

Hon. M. J. GUY (Minister for Planning) — The VicSmart permit is a codified system. The council codifies its own system, so it would be an odd occurrence for a responsible authority to bring itself to VCAT on a codified system.

Mr TEE (Eastern Metropolitan) — If I can break up the question into two parts, if a VicSmart permit application is approved by the CEO of the council, is a member of the community able to challenge that permit application in VCAT?

Hon. M. J. GUY (Minister for Planning) — The whole process of a VicSmart permit, which is reflective of what the previous government brought forward in the *Cutting Red Tape in Planning* document, is the same as the process that exists in a residential zone, a capital city zone or a property development zone, and in the VicSmart case, once you have the level of detail known, it is a codified system.

The only ability of a proponent to go to VCAT is if a decision has not been made within the designated period. It is not if the decision does not go the way of the applicant who has put the permit application in. It is not in relation to the merits of the decision, it is only in relation to the timing of the decision, and that then makes VCAT the determinant or responsible authority in that sense — the point obviously being that we have set down a 10-day time frame. If that is not met, then the matter needs to be determined. We are saying that triggers a determination which will then go into a VCAT list, as opposed to a permit applicant putting in a VicSmart permit application and being knocked back. That applicant obviously cannot appeal to VCAT themself.

Mr TEE (Eastern Metropolitan) — I thank the minister. That is reasonably helpful, but if I could just for my own sake be clear: VCAT has a very limited role. Its only role is if the responsible authority, the CEO of the council, does not deal with the permit application within the 10-day period. Beyond that, in terms of a review by VCAT on the merits, whether it is initiated by the proponent, the applicant, the community or indeed the council, there is no role for VCAT. Is that correct?

Hon. M. J. GUY (Minister for Planning) — In a codified regime that is correct. In a codified regime such as ResCode or as detailed in Mr Tee's

government's *Cutting Red Tape in Planning* document, that is correct. A codified system sets the code, and it is prescriptive. It is the same as a mandatory height requirement, for example. I have brought a number of mandatory controls in, and mandatory controls are what they say — that is, mandatory requirements. If you meet the mandatory control, you can get a permit. If you cannot, you cannot appeal it. That applies to an objector, that applies to a proponent and that applies to a council, and it brings a very strong degree of certainty into the permit process.

That is what has been requested by councils and community groups for some time: a level of prescription in the system. You put in a code and set the rules, and once the rules are known people know that if they meet those rules, they can get a permit. That is the premise behind it; that was the premise behind the code assess principle from, I think, three years ago, although VicSmart is slightly different. That is the principle under the development assessment forum model, which the April 2012 communiqué from the federal Labor government asked states to consider. It is about setting a prescriptive level of planning so that people know the parameters in which they are going to operate.

Mr TEE (Eastern Metropolitan) — Just moving on, the nature of this process means that in relation to particular permit applications there is no requirement for the proponent to notify any adjoining landowners or any others who may be detrimentally affected by the permit application. Is that correct?

Hon. M. J. GUY (Minister for Planning) — That is actually not specified in the bill, but the point on that is that this process is no different to a priority development zone, which was applied to Footscray by the previous government and to the zoning all throughout central Dandenong, which was put forward by the previous government and which I might say many members of the previous government think of as their crowning achievement. It is no different to a capital city zone, and it is no different to a residential zone 2, which exists at the moment and has existed for a long period of time. It is not a new feature but a zoning structure that has been around for some years. As I said, it has certainly been applied over the last 10 years in a number of locations around Victoria.

Mr TEE (Eastern Metropolitan) — I am sorry, Minister, I lost track of that answer. Again, in a permit application situation today where an adjoining landowner or indeed another party who may be detrimentally affected by a proposed development currently has notification rights, under the VicSmart process they do not have rights to be notified. I am just asking if that is the minister's understanding of the process as envisaged by the bill.

Hon. M. J. GUY (Minister for Planning) — I want to get some clarification around the language Mr Tee is using around the proposed development. VicSmart is very clear in terms of what we are talking about here — building or extending a fence, realigning a common boundary, managing vegetation, erecting a small advertising sign or altering a road access — so when we are talking about the proposed development, that is what VicSmart is dealing with. As I said before, it is comparing the proposed development in, say, a capital city zone, which is the CBD of Melbourne; a priority development zone, which is in places such as Footscray, where it has been for four or five years, I understand; and certainly through central Dandenong. Again there were no notice and appeal rights for anyone in central Dandenong when that was being redeveloped.

When we are talking about a development — the language being 'a development' — the Parliament needs to be clear about what kinds of applications VicSmart deals with. The government has made very clear what it is intending here, as opposed to a development and related third-party appeal rights in a development which might have existed in the capital city zone, the priority development zone or even in the residential zone 2. Those appeal rights have been around for some period of time and have been used quite liberally over the last 10 years.

Mr TEE (Eastern Metropolitan) — I want to focus then on residential zone 1 and compare the rights that existing residents have to be notified of any development application to which they are the adjoining landowner or which may detrimentally affect them. I am wondering whether those residents will have the same rights under the VicSmart process?

Hon. M. J. GUY (Minister for Planning) — Let us look at residential zone 1 and at what a council can already exempt from third-party notice and review. This includes a two-lot subdivision, in accordance with an approved development, and subdividing land into lots, each containing an existing building connected to services or car parking space. You can at this point in time still subdivide land in residential 1 areas, which obviously would facilitate development once you got the subdivision through. Obviously a permit would then go through, but the subdivision can be turned off in a current residential zone 1 at this point in time. There are provisions for councils to turn off third-party appeal rights already in a residential zone 1.

Mr TEE (Eastern Metropolitan) — I do not want to labour the point. It seems to me that the regime envisaged here is a regime where within a 10-day period there is no capacity or necessity to notify the adjoining landowner or others who may be adversely affected. I am not sure why the minister is unable to confirm that to the Parliament.

Hon. M. J. GUY (Minister for Planning) — It is not about confirming it to the Parliament. Let me give an example. A Labor member of Parliament wrote to me six or seven months ago about a local council in the north-east of Melbourne which required a permit to be applied for to remove a fallen tree. You had a situation where a resident needed to go through a permit process to remove a dangerous piece of vegetation on their own block of land, which obviously was causing some difficulties for the owner of the land. That Labor member of Parliament wrote to me and quite correctly said, 'This is ridiculous. Can you do anything to help in this situation?'.

This is one of the applications, or one of the possible classes of application, that VicSmart is trying to assist with. In a sensible situation such as that, you would expect that a land-holder would be able to get a permit fairly quickly — that is, once they had met a codified system. Obviously they are not going to go to extremes and remove an entire tree or something more extreme; there is a codified structure in place.

It is a very clear situation, and it is about providing a codified model, which again I say has been proposed. Mr Tee would probably remember it, having been a ministerial adviser for the minister who introduced the document *Cutting Red Tape in Planning*. It says:

> … the applicant could seek a review of the decision; however, there would be no third-party notice or right to review.
>
> …
>
> The criteria must be able to be clearly assessable against prescriptive or performance standards.

Our VicSmart model does not go as far as that, but it puts forward a level of prescriptive standards in terms of the number of small applications that can then go forward in a codified system very quickly. As the document notes, the owner would then be able to get on with tree removal, fence erection or, if it were a business, putting up an advertising sign, for example.

Mr TEE (Eastern Metropolitan) — I am wondering if it would make it easier if the question were turned around. Under the VicSmart regime, what rights does an adjoining landowner have in relation to being notified of a permit application?

Hon. M. J. GUY (Minister for Planning) — It depends on the reason the council has applied the VicSmart regime. If in the northern suburbs there needed to be the removal of a tree, the council would codify the regime and the land-holder would be able to go directly to the council to get it removed. For an objector who lives in Frankston, to turn to third-party appeal rights for the removal of fallen vegetation on someone's home in, say, Montmorency would be an interesting situation, but in those situations we are trying to give councils a level of codified support so that they can implement their policy fairly quickly.

Mr TEE (Eastern Metropolitan) — I take it from your answer that councils will, as part of their codification process, include a right for adjoining landowners or others who are detrimentally affected by a permit application to be notified.

Hon. M. J. GUY (Minister for Planning) — If they wanted to do that, they would not use that level of application in a VicSmart process.

Mr TEE (Eastern Metropolitan) — Is the minister suggesting again that councils can use other mechanisms to give, say, adjoining landowners the right to be notified of a permanent application under the VicSmart regime?

Hon. M. J. GUY (Minister for Planning) — No, what I am saying is that if councils do not want to use the VicSmart regime for that level of permit application, they do not have to.

Mr TEE (Eastern Metropolitan) — I want to move on, but I just want to be clear. The planning scheme amendment will set out the classes of applications under the VicSmart regime. That is something that local councils can opt in to and opt out of. If a local council does not apply the VicSmart regime, then there is no capacity for a proponent or a person who is applying for a permit to use the VicSmart process. Is that correct?

Hon. M. J. GUY (Minister for Planning) — If I take Mr Tee's question to mean, 'Will there be two regimes in councils in regard to permit applications on the same level?', then I can say in relation to the intention of this legislation that my answer is no.

Mr TEE (Eastern Metropolitan) — Is the council able to not have the VicSmart process, once it is laid out, apply to their council area?

Hon. M. J. GUY (Minister for Planning) — It is not an opt-in or opt-out piece of legislation.

Clause agreed to; clause 2 agreed to.

Clause 3

Mr BARBER (Northern Metropolitan) — Clause 3 amends section 6 of the Planning and Environment Act 1987 in various ways. Section 6 lays out what the planning scheme can provide. The minister is seeking to add, in relation to the things that can be in a planning scheme, classes of applications for permits that are exempt from the requirements in section 54, section 60, section 84 and various other bits of the act. Those provisions do not currently exist; therefore there can be classes of permits that are exempt from other sections of the act. For example, at the moment under section 6(2)(kc) you could be exempt from part of the notification requirements in section 52. You could be exempt from section 54, which is part of the decision requirements. Is it not the case that by amending a planning scheme and using this section it would be possible to make almost any class of permit exempt from sections 54 and 60?

Hon. M. J. GUY (Minister for Planning) — I missed the last part of Mr Barber's question.

Mr BARBER (Northern Metropolitan) — Using this provision, you could make almost any class of permit exempt from the provisions of sections 54 and 60?

Hon. M. J. GUY (Minister for Planning) — That is not the intention of the VicSmart process. The government has laid out very clearly what the intention of VicSmart applications will be, and our intentions are clear and transparent The intentions are what have been put forward.

Mr BARBER (Northern Metropolitan) — I take the minister at his word. I have read his fact sheet where he says what classes of permit are intended to be used by this section. But let us say another minister comes along, or let us say the Leader of the Opposition, Daniel Andrews, gets his wish to make this a one-term government and Mr Tee is now the planning minister. Could he not use this new section that the minister is adding to exempt any class of permit from the requirements of sections 54, 60 and 84?

Hon. M. J. GUY (Minister for Planning) — You can do that right now, and I will give Mr Barber a perfect example. Under the previous government it was done through a wind farm policy, so you do not need to use VicSmart or any other process to usurp third-party appeal rights, notification or any other method of communication in a permit. You can do it right now, and it was done — I might add with Mr Tee's support — right up until the last election in relation to wind farm permits; there were a thousand of them around the state. It can be done today, it could be done after the election, it could be done with VicSmart or without it and it has been done in the past by previous Labor governments.

Mr BARBER (Northern Metropolitan) — You cannot do it right now, and that is why the government has brought this bill before the Parliament. What you can do right now, referring back to the principal act, is set out a class of permit that can be exempt from section 52. You can lay out, through the planning scheme, a class of permit or application that is exempt from section 64. What this bill does is it brings in section 54 and section 60 and section 84 — provisions not currently available. I agree you can do something like this, but this bill does some new things. What I am asking the minister is: could any class of permit, through the mechanism of the planning scheme, which we know the minister of the day controls, be added to this? Could we have code assessment for wind farms? I will put it to the minister like that.

Hon. M. J. GUY (Minister for Planning) — Through ResCode you could do that right now, which is why I said you could do it right now. Through ResCode, which is already a codified system, you can codify a range of details within a local planning scheme. Yes, there is further clarification that is needed by VicSmart, which is what is being done through this bill and through a head of power to create a permit application and then attach classes to it, but at the end of the day, as I said and as Mr Barber said quite correctly, the minister of the day has a great deal of power — an enormous amount of power — and a planning minister can use those, through ministerial orders, to provide a great deal of clarity through the existing system right now if they choose to do so.

What the Baillieu government is doing is actually creating an application process that is clear, transparent and new, as opposed to rejigging existing structures and using existing zoning, which in many ways could have been done to achieve the same result. We are choosing to provide a new, clean, simple planning permit process that is contained in one bill — which is obviously being debated in this Parliament — as opposed to using existing structures to achieve what might be, through new zonings, the same mechanism.

Mr BARBER (Northern Metropolitan) — However, the government is exempting these applications from different and new sections of the act. Currently, for example, the minister can exempt any class of application from section 52 of the act — that is,

the requirement to give notification. In the capital city zone a schedule can specify that an applicant is exempt from section 52. The bill in front of us today allows the minister to exempt a certain class of applications from a new subsection of the Planning and Environment Act — that is, subsection 54(3). Section 54 contains a requirement for more information. What happens is that when someone makes an application the planning officer says, 'There is not enough information in your application in order for me to judge it. I can send you back to the drawing board to give me more information'. So that is new.

Again, under my favourite, the capital city zone, you can have an application which is not subject to the decision requirements of section 64, but what is being added here is that some types of applications — in fact any type that the minister of the day decides — will actually be exempt from section 60. That is new. What is in subsection 60(1) are paragraphs (b) to (e). Paragraph (b) sets out the requirement for a decision-maker to consider the objectives of planning in Victoria, which is a big thing when it comes to the planning system. The authority will not need to take into consideration:

> (c) all objections and other submissions which it has received and which have not been withdrawn …
>
> (d) any decision and comments of a referral authority which it has received …
>
> (e) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development.

That is a pretty big thing, considering that the impact of an application on the environment is kind of a big thing. At the moment all decision-makers looking at any application under the Planning and Environment Act must consider its impact on the environment. When this bill passes, and we know it will, the minister of the day will be able to set out certain classes of applications for permits which do not need to consider the environment.

I can understand that if it is a fence, and at the moment we are talking about just fences, but later the current minister, another minister or a minister of an Andrews government — if they ever make it — will be able to set out certain classes of applications that do not need to consider the objectives of planning in Victoria, comments or decisions of referral authorities or, for that matter, the impact on the environment. That is new. I was simply asking the minister to confirm that that is the case.

Hon. M. J. GUY (Minister for Planning) — If Mr Barber considers that building or extending a fence within 3 metres of a street or altering road access where the road is or will be in a road zone category 1 is, in his words, a 'pretty big thing', then I guess that is his view. My view is that the kinds of applications being considered for VicSmart are known; they have been public for months. I cannot comment on what the Andrews-led Labor Party would want to do with a future planning process should it ever form government or what any other minister might do — or even what a Greens minister in an Andrews-led Labor-Greens coalition government might want to do — —

Mr Barber — There is not going to be one of those, I am informed.

Hon. M. J. GUY — Maybe they will find other ways to obtain your parliamentary support, should they need it. I cannot comment on any of that; that is hypothetical. I can only give what is a factual response in relation to this bill before the Parliament, and part of the material that accompanies this is of course the factual documentation which clearly states:

> The types of … applications being considered for VicSmart —

and it runs through just under a dozen of them. That is our intention, and it is there for all to see.

Mr BARBER (Northern Metropolitan) — I am not in any way questioning the minister's sincerity in laying out his intentions. I was not asking him to be hypothetical; I was asking him to be factual. I was asking if he could confirm that it is a fact that this power, and in particular the provisions of clause 3 of his bill, would give a minister the power to exempt any type of application they wanted to from the requirement to consider whether it has an impact on the environment.

Hon. M. J. GUY (Minister for Planning) — The amendment to introduce the criteria — the planning scheme amendment — would have to consider those issues Mr Barber is asking about. Again, I hope this gives a bit of clarity as to what Mr Barber is asking.

Mr BARBER (Northern Metropolitan) — We are amending section 6 of the Planning and Environment Act 1987, which is headed 'What can a planning scheme provide for?'. When we get down to section 6(2)(kc), the government starts adding new paragraphs. One of those new paragraphs says:

> (kcb) set out classes of applications for permits that are exempted wholly or in part from the requirements of section 60(1)(b) to (e) …

When I go to section 60(1)(b) to (e) of the principal act, it includes the objectives of planning in Victoria, objections from other people, decisions and comments of referral authorities and significant environmental impacts. I understand what the minister says he is trying to do; I want to know what this legislation actually will do.

Hon. M. J. Guy — Can you ask that again?

Mr BARBER — I think I have asked it a few times, but let me expand a bit. I understand the minister is fully sincere in that he intends to develop code assessment — that is, that there will be these codes and the codes will say, 'This is how you build a fence'. If you comply with that code in putting forward your fence application, you will get a tick under these new sections. However, those codes are created through the planning scheme; they are not being created by this legislation here tonight, are they?

Hon. M. J. GUY (Minister for Planning) — That is correct.

Ms Pulford — Deputy President, I draw your attention to the state of the chamber.

Quorum formed.

Mr BARBER (Northern Metropolitan) — I understand it is the minister's intention to create these codes and embed them in the planning scheme in some way and then to make those types of applications subject to these new provisions. However, the minister does not have to do it that way; the minister does not need to create codes. If the minister wanted to, he could simply designate any class of application as being subject to these provisions, and then a decision-maker would not need to take any notice of the things I previously listed. Is that correct?

Hon. M. J. GUY (Minister for Planning) — No, because section 12 of the Planning and Environment Act 1987 requires a planning scheme amendment to take into account everything Mr Barber listed.

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! I ask the tone of the conversations being conducted behind me to be lowered. I have called upon both sides of the house now. It is 25 minutes to 7, and it is just going to slow things down if I cannot hear what is going on in the debate.

Mr BARBER (Northern Metropolitan) — Section 12 of the act — if the minister is referring to subsection (2) — says:

> In preparing a planning scheme or amendment, a planning authority —

that will be the minister in this case —

> (a) must have regard to the Minister's directions; and
>
> (aa) must have — —

Hon. M. J. Guy — Or the council.

Mr BARBER — You'll be signing it off.

Hon. M. J. Guy — Yes, but the council is preparing it.

The DEPUTY PRESIDENT — Order! Mr Barber has the call. I am happy for these to be direct and short questions. I will call the minister to respond to each individual question.

Mr BARBER — In preparing a planning scheme amendment the authority must have regard to that, but Mr Guy as the minister is the guy who ends up signing it off. You cannot tell me that in signing off a planning scheme amendment you are required to have regard to those things I listed earlier or that if you do not do that, I can block one of your planning scheme amendments.

The DEPUTY PRESIDENT — Order! I say to Mr Barber that this is not a conversation between him and the minister. He will direct his remarks through me, and I will call the minister to answer.

Hon. M. J. GUY (Minister for Planning) — I am not sure about the conversational tone of the question. I am not sure what you are asking me, Mr Barber — whether you want me to codify the section 12 requirements of the minister. I am not sure what you are actually asking me. Is it whether, in terms of the planning scheme amendment, I must consider the section 12 Planning and Environment Act requirements, which would not be requirements in terms of the application process for, say, a VicSmart provision but which would be requirements for a planning scheme amendment — something Mr Tee was correctly asking about before — when the planning scheme amendment is prepared by the council to bring VicSmart into its planning scheme?

The answer is: in preparation for the kinds of application specified by the government's guiding documentation, the council, when preparing the planning scheme amendment, would be required to

consider section 12, constituting the points you mentioned. It would be expected and indeed noted by my department that those points were given consideration.

The DEPUTY PRESIDENT — Order! I inform the minister that the same applies to him as applies to Mr Barber: he should direct his remarks through me. He can refer to Mr Barber's question. I say for the benefit of both members that this will work better if we do it in the traditional way.

Mr BARBER (Northern Metropolitan) — What I am asking the minister about is the point that his new section 6(2)(kca) gives someone, the minister in this case, the power to set out classes of applications for permits. That is the planning scheme amendment. The planning scheme amendment is when you set out the classes, and if the class of permit application is the class relating to a coalmine — —

Hon. M. J. Guy interjected.

Mr BARBER — This is looking forward; this is any future minister at any time in the future. If that minister determines that the class of application for a permit is the class relating to a permit for a coalmine, then there does not have to be a code assessment that goes with that coalmine. This is only a short bill. If I have missed some provision somewhere else that prevents this from happening, by all means show it to me, but the class of applications that includes those designated coalmines or for that matter wind energy facilities — or any applications like that — is no longer subject to section 54, section 60 or section 84. To me that is obvious.

Hon. M. J. GUY (Minister for Planning) — The Mineral Resources (Sustainable Development) Act 1990 and its, I think, 260 pages of regulations would make it very clear that a coalmine would not be able to go through a 10-day VicSmart process.

Mr BARBER (Northern Metropolitan) — However, applications for coalmines have in the past been caught up in the Planning and Environment Act 1987, and there have been challenges to the way they have been considered under that act. For example, when Mary Delahunty was Minister for Planning there was a challenge to a coalmine extension, and it was a panel process rather than an application in that case because the Planning and Environment Act was not going to consider the impact of greenhouse gas emissions — that is, it was not going to consider the impact on the environment. That is what I was asking the minister about earlier. I believe my example stands. There are instances when coalmines need Planning and Environment Act approval, and under this legislation the application for the permit would not need to consider the environment.

Hon. M. J. GUY (Minister for Planning) — There is the Mineral Resources (Sustainable Development) Act 1990, and there is the environment effects statement that would need to accompany it. I cannot be any clearer in saying that there is enough regulation outside the Planning and Environment Act in terms of governing any future coalmine to ensure that the application process would be very thorough. Let me be very clear that this government has no intention — not now, and certainly not into the future — of applying a VicSmart code assessed process to the approval of a coalmine, nor any other form of energy generation in Victoria.

Mr BARBER (Northern Metropolitan) — I am not suggesting that the current minister or any future minister would provide a code assessment. I am simply pointing out that the implications of this bill once it is passed here tonight, as we know it will be, are that any minister at any time has the power to exempt a class of applications from various sections that relate to the necessity of following the objectives of planning to consider the environment, to request more information from a proponent, according to section 84B, and to consider some of the things that the Victorian Civil and Administrative Tribunal has to consider. That is where I think it gets really interesting, when you take a matter to VCAT.

While the minister has absolutely no intention of using that — and I completely take him at his word that for him it is simply about that small class of applications — that power would be in the hands of a minister, and it would be awfully tempting, I would have thought, if there should be a wind farm application or some other type of application that was just giving the minister the irrits, to say, 'I am getting out of all this. I will exempt it from section 54', which would mean the council could not bug the applicant anymore with endless requests for more information. That would bring it down to 10 days, then — bang — the guillotine would drop, and nor could there be an appeal to VCAT.

In considering clause 9, headed 'Matters for Tribunal to take into account', let us have a look at subsection 84B(2)(b) and the following subsections of the principal act, which read:

> (b) must have regard to the objectives of planning in Victoria;

(c) must (where appropriate) take account of the approved regional strategy plan under Part 3A;

…

(da) must (where appropriate) take account of the approved strategy plan under Part 3D;

(e) must take account of and give effect to any relevant State environment protection policy …

The tribunal can ignore the state environment protection policy if it wants to.

Section 84B(2) continues:

(f) must (where appropriate) take account of the extent to which persons residing or owning land in the vicinity of the land which is the subject of the application … were able to and in fact did participate in the procedures required …

If I am getting this right, under the bill before the house the tribunal is no longer required to:

(g) … have regard to any amendment to a planning scheme which has been adopted by the planning authority but not —

yet —

… determined, approved by the Minister ….

So it is on exhibition, if you like. Furthermore, the tribunal will no longer need to take into account:

(j) … any amendment to the approved strategy plan under Part 3C —

or part 3D. That is VCAT. That is actually a minister through instrument. We know how quickly you can approve a planning scheme amendment for a class of applications. You can not only strip away people's appeal rights and decision-makers' rights to request further information from their opponents, but in the end it would considerably further weaken a person's case if they were to take the matter to VCAT.

I appreciate what the minister is trying to do here. He is trying to make it easier for people to get permits for fences and so forth. I had an instance where a fire in a jewellery shop opposite where I lived burnt out the front part of that store. I was a City of Yarra councillor at the time. The fire woke me up because I lived opposite. That application went to the City of Yarra because there was a heritage overlay. It took the applicants six months to get their permit applications through the council. A large part of that six months — from the day of the fire until the day they got their permit — was taken up by the council's administration of the permit. I have personal experience of this, and I think it would be fairly devastating for someone running a retail business to find that because of a trigger in the planning scheme they could be out of business for a very long time while they tried to get a permit.

I totally understand the rationale and the need to get what should be simple planning permit applications out of the system. However, the way the minister has done it — and I am being asked to vote for this — is such that any class of application for permit, from the smallest to the very biggest, can be completely exempted from some extraordinarily important sections of the scheme. It can already be done through a number of the other sections. The minister has made the point in relation to the capital city zone. I will keep making it in relation to the capital city zone. The minister is now adding more things on top, including the very important appeal to VCAT. Soon there will be very few sections of the planning scheme that will have to be taken into account should any minister at any time decide to add a class of application to this particular new section 6(2)(kca).

Hon. M. J. GUY (Minister for Planning) — Deputy President, it is very clear that applications that require detailed assessment are not part of the VicSmart planning permit application process. The coalmine, or whatever has been mentioned before, is not going to be part of the VicSmart application process. VicSmart is very simple: if you meet the criteria, the answer is yes. If you do not, you are rejected. A coalmine, for instance, has a range of planning controls, environmental controls and minerals act controls, so to suggest that VicSmart could apply to a coalmine is not correct.

Mr BARBER (Northern Metropolitan) — I never suggested that VicSmart would apply to a coalmine. I said that this provision of this bill that the minister has put before us today could be used to apply to a coalmine, a wind farm or any class of application. That was the simple answer I was looking for. I followed up with all that elaboration simply to try to prove my point.

Mr TEE (Eastern Metropolitan) — Minister, just on clause 3 and in particular its new provision (2)(kca) which provides for the classes of applications for permits being exempted from the requirements of section 54 of the Planning and Environment Act 1987, section 54 provides a capacity for the responsible authority, in this case the CEO of the council, to ask for more information. I just want to be clear that if in considering a VicSmart application a CEO notices there is a detail missing or not correct or would like further information to meet the codified requirements, the

removal of section 54 does not prevent the CEO from picking up the phone and getting that additional information or otherwise obtaining it. I do not want to be flippant about picking up the phone.

Hon. M. J. GUY (Minister for Planning) — It is a very simple process. If the information that is missing means that the permit applicant cannot meet the code regime then it does not get a permit.

Mr TEE (Eastern Metropolitan) — If it is a simple omission, where the proponent forgot to sign or date it or forgot to specify a particular detail, even for a technical fault, the permit application process will fall over?

Hon. M. J. GUY (Minister for Planning) — The applicant needs to get all their material right; otherwise the application will fail.

Mr BARBER (Northern Metropolitan) — It would be more accurate, I think, to say that the application 'could' fail. If the decision-maker decides that that lack of information means it is not meeting the code then the decision-maker has a perfect excuse, if you like, to refuse the application. Is that not a more accurate way of describing it?

The DEPUTY PRESIDENT — Order! Is that now a question?

Mr BARBER (Northern Metropolitan) — Yes.

Hon. M. J. GUY (Minister for Planning) — No. The code will be very clear — that is, there are elements that need to be met. If the elements put forward in the planning scheme amendment that detail what comprises the VicSmart code for a municipality are not met, then a permit will not be able to be issued.

Mr TEE (Eastern Metropolitan) — If there is a disagreement, then, between the CEO of the council and the applicant as to whether the code requirements have been met, how is that resolved, in view of your earlier statement that VCAT (Victorian Civil and Administrative Tribunal) gets involved only if a decision is not made within 10 days?

Hon. M. J. GUY (Minister for Planning) — In exactly the same way as it is resolved now under the current pre-application process.

Mr TEE (Eastern Metropolitan) — There is the capacity for those issues to be resolved by the independent umpire, VCAT. I am just wondering what is the capacity to resolve that dispute once you have removed VCAT from the equation?

Hon. M. J. GUY (Minister for Planning) — There is no capacity under the current regime to resolve a permit that has not been put forward or considered, if it is not even considered by a council in the current system.

Mr BARBER (Northern Metropolitan) — It depends how these codes are written, and we have not seen any of them yet. If the codes are written as a series of musts and the application either fails the code or does not provide the right information to show that it passes the code, then the decision-maker has a perfect right to refuse the application and the applicant has very little to go on at VCAT. But there is nothing in this bill that requires a council to fail an application if it does not meet the code. Is that not correct, Minister?

Hon. M. J. GUY (Minister for Planning) — The bill is a head of power. I think that has been stated a number of times. It is a head of power to establish a codified regime and the detail for its implementation will follow, if and when the bill passes the Parliament.

Mr BARBER (Northern Metropolitan) — It is important, though, because one of the main objectives — and the minister articulated it again just in this dialogue — is to give certainty. If a code is well drafted, then a neighbour — someone with an interest, but not the applicant — would look at the code and say, 'That's good, because as long as the applicant doesn't meet this code I can be confident that the application will not go ahead. Therefore I am not so worried that I do not have appeal rights because it is such a strict code that it must fail'. However, it would be possible for a weak or ambiguous code to be drafted. The minister may not want to approve that, but a weak or ambiguous code could then leave it very open to all sorts of applications to meet the code.

ResCode is a classic example; it is an almost-anything-goes code. The applicant would have latitude but the decision-maker would have huge latitude and we would have a big problem. We would not have certainty. It is going to depend entirely on the writing of the code, but whether the code is written tightly or loosely there is nothing in the bill that requires a decision-maker to fail an application because it does not fully meet the code or has not provided the necessary information. It is more in the hands of the decision-maker as to whether they do that.

Hon. M. J. GUY (Minister for Planning) — These issues go towards implementation; they do not go towards the establishment of the head of power, which is what we are doing tonight. As Mr Barber says quite rightly, the implementation of the code will be

important. That is why it is important we get its implementation right. Indeed, providing a level of certainty — very clear, strict certainty — around a VicSmart regime is the intention of the government. It has been the intention of a number of communities and councils and indeed the development industry, although you would have to be a small developer to be erecting a fence. That has been the intention of a lot of people — to get a degree of clarity back into the planning system.

Mr Barber says quite rightly that the implementation will be important, and absolutely and precisely it will be. I say it again: the classes of application that the government wants to put forward for a VicSmart regime are minor, and they will still require a level of detailed implementation. That will follow should this bill pass.

The DEPUTY PRESIDENT — Order! I want to advise the committee of some procedural things, and then I want to deal with where we are at with clause 3. I am advised that there has been some discussion between the whips, and certainly the view of the President is that we will continue the committee stage, but if it is still continuing at 7.30 p.m., we will break for 1 hour for dinner. Dinner will not be available in the Parliament, so people will need to make their own arrangements down the street.

In relation to the points that are being raised on clause 3 and that Mr Barber is pursuing, I think we are starting to get to the point where we have been going over the same ground for a very long time. The minister has answered quite clearly in relation to these things. Mr Barber might have a different view of how it should be, but the issues he has raised have been responded to by the minister, and I think we should start to draw those things to a conclusion.

Mr BARBER (Northern Metropolitan) — This is a new piece of ground inspired by the minister's last answer. He said there has been a lot of public consultation. When these codes are created or drafted, will they be exhibited as planning scheme amendments before being incorporated?

Hon. M. J. GUY (Minister for Planning) — They will follow a planning scheme amendment process.

Mr BARBER (Northern Metropolitan) — Yes, and one of the options in the planning scheme amendment process is exhibition. I am asking the minister whether they will be exhibited, given he has formed the intentions he has just told us about.

Hon. M. J. GUY (Minister for Planning) — It is very clear what the kinds of applications being considered are. If the purpose of exhibition is to clarify the purpose of the applications being considered, as I said, it has already been outlined very clearly what the government wants to implement planning scheme amendments to apply the VicSmart process for. As I said, it will be a matter for the implementation that will follow. It is my view that the point Mr Barber raises is one that will require discussion between state and local governments at a later stage.

Mr BARBER (Northern Metropolitan) — If the minister's intention is simply to take the classes of application that are in his fact sheet and designate them under the sections and make them exempt, that is one thing. But what I want to know is where the code will be written. For example, the minister has mooted that a service station in an industrial area would be picked up by this, presumably after that service station had met a code. This is what we have been talking about all day. When the minister creates that code, the code for how a service station in an industrial area is to be considered and approved, will that code be put on exhibition along with all the other classes of planning permit he intends to add to these new provisions?

Hon. M. J. GUY (Minister for Planning) — Without repeating myself, I think for the fourth time now, that would be a matter for implementation should this bill pass this Parliament tonight.

Mr BARBER (Northern Metropolitan) — I accept the minister's answer that it will be in regard to implementation, it is just that we have been talking about how everybody wants certainty, and the minister has just reiterated that even the development industry wants certainty. However, I have my suspicions that when it comes time to draft these codes, there may be people arguing that less certainty is better for them, because now the ability to object, as in this section we are dealing with, is weighted in a different way. People may think that by having less certainty in the code, they will have a better chance with the council and more chance to appeal, and since neighbours or those with an interest now have no chance to appeal, who cares if the code is wide open, because it can only be a one-way benefit. We will see, I suppose. However, we were looking at section 6, and I just wanted to be clear about what that section does.

The DEPUTY PRESIDENT — Order! Mr Barber, we are still on clause 3. Are you referring to clause 3(2)?

Mr BARBER (Northern Metropolitan) — No, I was referring to section 54, which is discussed in clause 3, and then at clause 6 there is further discussion of

section 54, so I might just wait until we move on to clause 6.

Mr TEE (Eastern Metropolitan) — On clause 3, one of the exemptions provided for by new paragraph (kcb) is in relation to referral authorities. Paragraph (kcb) says that if you are in the class of permits, you are wholly exempted from section 60(1)(b) to (e), and in that grouping (d) is a referral authority, which may include, of course, a water authority. In a media release of 7 June the minister said that the new process will apply to a range of different applications, such as development in a flood-risk area. I am wondering if views on the decision or the comments of a referral authority are no longer to be considered, and whether the community would be at risk of development in a flood-risk area?

Hon. M. J. GUY (Minister for Planning) — They would not, because they would be part of setting the code, as opposed to being involved in each application, which would be put forward within the code.

Mr TEE (Eastern Metropolitan) — I thank the minister for that. It is helpful. Is there a requirement in the setting of the code for the views of a referral authority to be considered?

Hon. M. J. GUY (Minister for Planning) — Through the current process in relation to a planning scheme amendment there is a requirement to engage a referral authority. That is where the code will be set, and that is where their views will be taken into account.

Clause agreed to; clauses 4 and 5 agreed to.

Clause 6

Mr BARBER (Northern Metropolitan) — Section 54 of the principal act says:

> A responsible authority may require the applicant to provide it or a referral authority with more information …

It then says that it has to be done by giving notice. Subsection (1B) says that it has to be done within a prescribed time and that the application will lapse if the information is not given within the required time. That can only be 30 days. Then at subsection (2) it says this does not affect the time after which an application for review can be made. Clause 6 adds a new subsection that says if an application for a permit:

> … is of a class that is exempted by a planning scheme …

that is one of these examples that the minister says will be fences and I say one day, theoretically, it could be almost anything, then —

> … the responsible authority must not require the applicant to provide it or the referral authority with more information … before it deals with the application.

This cuts both ways. The request for further information during the decision on a planning permit is important. The minister would know that; he has done a whole bunch of these now. If you want to give the applicant a piece of your mind, you tell them to give you all this extra information, which you need. On the other hand, you have the option to say, 'Mate, if we don't get further information, if this is your application, then it is going to be a refusal'. You do not even need to say that much; you can just say, 'Well, at a certain point we are not going to keep going back and forth with requests for further information. I am about to make a decision on this, and you may not like the decision'. This is an important section, and it will play out, I think.

Given that the decision-maker is no longer really allowed to do that, both the applicant and the decision-maker are forced into a situation where there is not a lot of opportunity for back and forth. That might be a good thing with simple applications and very simple codes — as I am sure they will be simple and strict. There should not be a lot of need for this, but it does reduce any flexibility on either side. Probably, though, by the time the applicant gets to the VCAT, if that is what they end up doing, they will be wanting to add more information to their application. I just thought I would tease out the importance of this section.

Hon. M. J. GUY (Minister for Planning) — The whole purpose of the VicSmart application process is so that the proponent, unlike under the current process, is encouraged to bring forward all the detail of their application at the front end. There is not a view that if you hold off and tease it out, you might get a little bit more and a little bit more and a little bit more, which is what frustrates many people in terms of dealing with the planning system, as Mr Barber would know. Being a former councillor, he would definitely know that. The intention of VicSmart is to draw that information out very early on.

The intention of a codified regime, which would be through a planning scheme amendment process, is also to make it very clear how the process would work and what needs to be satisfied to get a permit. That then means that the delegate of the council, presumably the CEO, would have in front of them a very clear set of circumstances in which a permit can or cannot be accepted. It puts a very clear process in front of all parties involved about what is needed to obtain a permit. It makes it all very clear to all the parties involved and indeed to the proponent, the person putting in the application. That is the intention of the

VicSmart process. That is where we believe a great level of certainty will come in, simply because encouraging all details of a permit to come through at the initial stage is absolute. If you do not put that detail forward, you will not be able to get the permit.

Of course, as Mr Barber says, the ability to ask for further information is comparing it with a permit under a current regime. This is a different square; this is a different regime. This is a regime that encourages people to be transparent, because it means that if you are not, you will not get the permit. This government believes that if you provide that level of prescription in a planning system, you will get a better result, because people — neighbours, councils and proponents — will know exactly what they will need to provide to get that permit.

Mr BARBER (Northern Metropolitan) — That is only if it is codified, though. That is only if the way it is brought into the planning scheme is in the form of a code. In fact it can be brought in — this is the earlier argument — in any form. It does not need to be in the form of a code. It could simply be a wind energy facility being designated as a class of application, in which case the implications are, firstly, it is not those pesky councillors deciding it anymore, it is the CEO — —

Hon. M. J. Guy — They have delegated it.

Mr BARBER — So it will be council officers. You will have taken local councillors out of the exercise. It will now be council officers making decisions. I have seen many instances where wind energy facilities have been recommended for approval by the council officers and then refused by the councillors. So you have taken councillors out and decisions will be made by council officers.

Secondly, you do not need to do any of the things you would normally do with a planning permit application. Thirdly — and this is where this clause comes in — the applicant or the decision-maker has no choice around the timing of requests for further information. It is just a case of, 'Bang, you're done', and that could very well suit the applicant in this circumstance. Where there is no code, it could very well suit the applicant that the decision-maker has no ability to continue asking for further information. In fact the applicant could then use that as a trigger to bypass the decision-maker and get themselves straight to the Victorian Civil and Administrative Tribunal. That is all I have to say. Thank you very much.

Hon. M. J. GUY (Minister for Planning) — Again, VCAT cannot consider an application that is outside what is a codified regime.

Clause agreed to; clauses 7 to 11 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

The PRESIDENT — Order! The question is:

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

House divided on question:

Ayes, 20

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

Noes, 18

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

Pairs

Dalla-Riva, Mr	Darveniza, Ms

Question agreed to.

Read third time.

ADJOURNMENT

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

That the house do now adjourn.

Southern Peninsula Aquatic Centre: ministerial approval

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the attention of the Minister for Environment and Climate Change and concerns his consent to the proposed use of the Rosebud foreshore

reserve for the location of the Southern Peninsula Aquatic Centre. I know Mr Scheffer has raised this issue with the minister on three occasions, and I was present in the chamber on one of the occasions when he did so.

On 25 July I met with Dr Alan Nelsen, president of the Mornington Peninsula Ratepayers and Residents Association, on the Rosebud foreshore at the site of the proposed aquatic centre. I also looked at several alternative sites.

The PRESIDENT — Order! The minister is having difficulty in hearing the member.

Hon. W. A. Lovell — There are conversations going on in between Ms Pennicuik and me.

The PRESIDENT — Order! I think Ms Pennicuik should take it from the top.

Ms PENNICUIK — My adjournment matter is for the attention of the Minister for Environment and Climate Change and concerns his consent to the proposed use of the Rosebud foreshore reserve for the location of the Southern Peninsula Aquatic Centre. I know Mr Scheffer has raised this issue with the minister on three occasions, and I was present in the chamber on one of the occasions when he did so.

On 25 July I met with Dr Alan Nelsen, president of the Mornington Peninsula Ratepayers and Residents Association, on the Rosebud foreshore at the site of the proposed aquatic centre. I also looked at several alternative sites.

By way of background, the issue of the aquatic centre is a longstanding one, and the Department of Sustainability and Environment has consistently advised that the proposed use of the Crown land is inconsistent with the Victorian coastal strategy (VCS), which states the criteria for use and development on coastal Crown land must be that it:

> Has demonstrated need to be sited on the coast and requires a coastal location to function.
>
> Fulfils an identifiable need or demand which cannot be met elsewhere.
>
> Enhances public access to the coast and will not result in a reduction of open space.

Furthermore, the VCS says development should:

> Avoid developments within primary sand dunes and in low-lying coastal areas …
>
> …
>
> Ensure that new development is located and designed so that it can be appropriately protected from climate change's risks and impacts and coastal hazards …

and —

> Ensure that all plans prepared under the Coastal Management Act … 1995 … consider the most recent scientific information on the impacts of climate change.

It is also unclear whether the minister followed the correct procedure in issuing his consent to Mornington Peninsula Shire Council to use the foreshore for the proposed aquatic centre. The minister stated in his consent letter that there needs to be evidence of broadbased community support for the location of the aquatic centre on the foreshore. The foreshore at Rosebud is an integral part of the entire foreshore and coastline of Port Phillip Bay, all of which need protection from inappropriate and non-coastal-dependent development. It is not clear that the broader Victorian community would support the proposed use of the Rosebud foreshore.

Given all of the above, I ask the minister to publicly explain the basis for his consent to use the Rosebud foreshore for the proposed aquatic centre and if he cannot properly explain it to immediately withdraw it.

Department of Primary Industries: staffing levels

Mr LENDERS (Southern Metropolitan) — The matter I raise on the adjournment tonight is for the attention of the Minister for Energy and Resources, Michael O'Brien. Earlier this week the Minerals Council of Australia issued a report comparing various jurisdictions and how conducive they are to new mining investment. Victoria gets a big thumbs down in that report, which lists 18 criteria, including policy and mineral potential. It ranks Victoria well below Tasmania, New South Wales and even New Zealand. As you would expect, Michael O'Brien got straight into it, and his spokeswoman — —

Mr Finn interjected.

Mr LENDERS — Yes, the outstanding minister's spokeswoman instantly announced that it was the previous Labor government's fault. The minerals council report notes that there are difficult policy decisions involved — I am not pretending there are not, but if you look at the sector under the previous Labor government's watch, mineral sands became a new resource in Victoria. In David O'Brien's and Simon Ramsay's western Victorian electorate, for example, there are 100 jobs at the Hamilton processing plant, and there are other jobs around the traps. We hear a lot from

Minister O'Brien about the potential of brown coal in the Latrobe Valley, but we have seen the same plans announced and reannounced for something that might happen in 10 or 15 years, but there are no actual jobs.

The minerals council report concludes that one of the reasons companies put Victoria below New Zealand is that there is no grunt in the Department of Primary Industries. I am using my own words, but essentially what the report says is that the Department of Primary Industries is slow in responding because the resources and personnel are not there.

Hon. W. A. Lovell interjected.

Mr LENDERS — I am criticising the Baillieu government's efficiency initiative which has gutted the Department of Primary Industries. We often focus on DPI and what it is doing in the farming sector and with its inspectors. I suggest Ms Lovell go and visit a few mines in the state. If she asks people what the single biggest issue is when they send things to DPI for approval or opinion or information, they will tell her that they get the same person acting in someone else's job, and they never get an answer. That is not a reflection on the people working in DPI; it is a reflection on the government initiative which has gutted DPI in the name of efficiency, which means that one person is doing the work of two, three or four people.

If the Baillieu government wants to get more mining in this state, it should perhaps look into the Department of Primary Industries. The action I seek from the minister is that he read the report from the Minerals Council of Australia and that he report to the Parliament, particularly on the consequences of the government's efficiency initiative on the generation of mining jobs in the state of Victoria.

Vocational education and training: reforms

Mr RAMSAY (Western Victoria) — My adjournment matter tonight is for the Minister responsible for the Teaching Profession and the Minister for Higher Education and Skills, the Honourable Peter Hall. It is in relation to the Baillieu government's reforms of the VET (vocational education and training) sector and the response from the minister's office on how different campuses are dealing with the necessary reforms.

I think all members in this chamber recognise that the uncapped contestable model introduced by the previous government was always going to be open to abuse, particularly where taxpayers money was up for grabs. All of us in this chamber recognise that a model that was running over its projected budget by $400 million per year and subsidising courses that provided little hope for aspirant job seekers should be reworked in a sustainable way. Both public and private providers along with teachers, unions and even the students recognise this.

In my own region it is gratifying to see the TAFEs leading the charge to transition from past entrenched bureaucracy to a better governance model. They are reviewing programs to meet industry need, providing students with quality programs and doing so through a business model of partnerships with other providers, employers and businesses within their catchment area, which provides competitiveness with the private providers.

My discussions with Grant Sutherland at Gordon Institute of TAFE in Geelong, Joe Piper at South West TAFE and David Battersby at Ballarat University have all led me to believe there is an acceptance that the sector needs an overhaul and that there are opportunities for the sector to provide quality courses to students on a needs basis, using new structures and new partnerships that will enhance job opportunities and preserve regional access to vocational training for rural students. The sector is entering an exciting time in which the methods of old are under scrutiny and new options and arrangements are being drawn up, whether it be a new skill centre in Ballarat, an alliance with regional TAFEs or partnerships for employers in the Geelong region.

It seems that it is only the unions that do not want change. They want to cling on to their power base. Members like Geoff Howard, the member for Ballarat East in the other house, who use their electorate officers to moonlight in office-bearer positions in Trades Hall or who are politically active in Save TAFE rallies that want to stop the learning opportunities of our young, dismiss the extra billion dollars put into the sector by the Baillieu government and the increase in subsidies to many courses.

Mr Leane — On a point of order, President, if a member wants to make accusations against a member of the other chamber — or in fact this chamber — they need to do it by substantive motion. It seems to me that Mr Ramsay is accusing members of the other chamber of a number of things.

Mr Finn — On the point of order, President, I do not believe Mr Ramsay made any such substantive allegation. He was merely stating a fact that one of Mr Howard's employees is the president of the Trades Hall at Ballarat. Unless Mr Leane regards being

president of a Trades Hall as something to be ashamed of, I do not believe any allegation as such exists.

The PRESIDENT — Order! What Mr Finn has said is debate; it is not a point of order.

Hon. M. P. Pakula — On the point of order, President, I was listening carefully to Mr Ramsay's dissertation, and he clearly suggested that Mr Howard was misusing his electorate office.

Mr Ramsay — Well, he is.

Hon. M. P. Pakula — There you go! We need a substantive motion.

Mr Ramsay — It is not what I said, though.

The PRESIDENT — Order! Mr Ramsay's interjection was an unfortunate one, because I think it has hoisted him with his own petard. My position on the point of order was that I was going to give Mr Ramsay the benefit of the doubt on the basis that there was the word 'office' and I did not think the accusation related to the member but rather that someone in the office was doing this work. In that sense I was prepared to show some leniency, but I also hoped that Mr Ramsay would move on and that it was not the substance of the matter. Mr Ramsay certainly put forward a lot of other information or views, if you like, on the TAFE sector. I saw the comments that he made as not being the substantive part of his contribution, notwithstanding that they were fairly fierce.

The problem is that Mr Ramsay then went on to interject and indicate it was his view that the office was being improperly used. I acknowledge that he then said that was not what he said in his substantive contribution, but the point is the two statements rolled together lead me to a position where I have to accept that this matter would require a substantive motion against the member because of the way in which Mr Ramsay couched that part of his contribution.

I invite Mr Ramsay to continue, but without reference to the member. In other words, I think Mr Ramsay has put a case about TAFE that this is a bold new frontier — I am paraphrasing. He then made some remarks that have caused this concern, but I understand that he is probably about to make some request of the minister, and I would certainly invite him to do that.

Mr RAMSAY — Thank you, President. Given that the unions will not acknowledge the reforms that the VET sector is accepting and willing to undertake and that they continue to run a campaign of lies and scaremongering, I ask the minister if he will continue to engage with providers to ensure that training outcomes for the people in my electorate of Western Victoria are maximised.

Magistrates Court of Victoria: staff complaints

Hon. M. P. PAKULA (Western Metropolitan) — The matter I wish to raise is for the Attorney-General. This is a somewhat delicate matter. Over the course of a number of weeks I have had various items of correspondence arrive in my office, both by mail and email, from three employees of the Department of Justice who work primarily, it seems, in the Magistrates Court. Two of them, Ms Jo Beckett and Ms Debbie-Lee Wilkinson-Reed, are happy for their names and their correspondence to be conveyed to the Attorney-General. A third correspondent is not prepared to have either her name or her correspondence conveyed.

The correspondence that I have received contains numerous allegations and complaints against officers of the Magistrates Court — not judicial officers, I should say. Suggestions have been made against senior employees of the Magistrates Court that revolve around a number of matters. The matters include staff members being abused in front of other staff, staff members being improperly removed from their roles, bullying, the improper circulation of information, breaches of privacy, breaches of the enterprise agreement and a number of other matters. From the look of the correspondence I have, it seems that there have been some attempts to investigate and deal with this from inside the Department of Justice. It appears that the individuals who have contacted my office by both email and telephone are not satisfied with the situation as it currently abides.

Obviously as the shadow Attorney-General it is difficult for me to investigate and/or ascertain the veracity of any of these claims; that is something that is more open to the Attorney-General and his office. I indicate that, with the consent of those employees, I am happy to hand over to the Minister for Housing, who is at the table, the various items of correspondence that have been provided to my office. I would ask that upon receipt of these items the Attorney-General and his office investigate the matters that have been raised by those persons who have contacted my office to try to find a resolution of a matter that is clearly aggrieving at least three employees of the Magistrates Court.

Edenhope Airport: expansion

Mr O'BRIEN (Western Victoria) — My adjournment matter is for the Minister responsible for

the Aviation Industry, the Honourable Gordon Rich-Phillips. I would like to invite the minister to visit the Edenhope Airport to discuss with the West Wimmera Shire Council its potential to act as a regional aviation hub. With an existing 1000-metre good-quality runway at the Edenhope Airport there is a demonstrated potential for expansion. The current airstrip is critical for community access, particularly for emergency services. For example, in March of this year a jockey was airlifted to Melbourne after suffering a serious race fall at the Edenhope track. Other users of the airport include the Country Fire Authority and aerial agricultural services such as crop spraying, in addition to commuters.

Edenhope is a wonderful part of my region but also the most distant from Melbourne, at approximately 395 kilometres. The Edenhope and District Memorial Hospital, which incorporates the Lakes Hostel, the nursing home and other facilities, including the Elsie Bennett Community Centre and the men's shed, is in fact 287 kilometres from Ballarat, which has the nearest tertiary health-care facility. Horsham, which has the nearest subregional base hospital, is 100 kilometres away. Nevertheless, there is a great demand for access to Edenhope. In fact the Minister for Regional and Rural Development, Mr Peter Ryan, has identified West Wimmera as one of the shires that has suffered a 15 per cent fall in population over the past 15 years.

What we would like to see, as Mr Ryan has said, is each of these communities starting to reverse the trend and flourish again in relation to their great potential. Minister Ryan said:

> Each of these communities, I think, has a much sharper focus on the fact that they can do things in which the way their future is going to pan out, and that they can look to the government — particularly through the Regional Growth Fund — to be able to support them in that.

Members may also know that Stawell Airport recently underwent a $2.9 million upgrade, which was officially opened by Minister Ryan in conjunction with the federal member for Mallee, John Forrest, and The Nationals federal leader and shadow Minister for Infrastructure and Transport, the Honourable Warren Truss, on 7 August. It will pave the way for larger aircraft and significantly increased capacity at the airport. Although a similar investment would be required in Edenhope, I feel that this warrants investigation.

Currently there are no aircraft permanently on site, and this may change in the medium term. The community of Edenhope is a strong one, with enviable health care for a small regional centre. I commend the mayor, Eveline Van Breugel, the CEO, Mark Crouch, and all the board members of the Edenhope and District Memorial Hospital, which I visited last Friday, where I received more extensive representations in favour of the provision of additional assistance to Edenhope Airport. I thank the hospital's CEO, Emma Kealy, and the general services manager, Andrew Saunders, for their hospitality and wish them all the best over the coming year.

Ambulance Victoria: employee dispute

Mr JENNINGS (South Eastern Metropolitan) — My matter for the adjournment tonight is for the attention of the Minister for Health, and it relates to the discontent and concern of two employees of Ambulance Victoria, Darren Short and Steven Jubb. I am raising this matter with their consent and knowledge following the representations they made to me to present these matters to the Minister for Health. They both live in Gippsland, and I will furnish the minister with some documentation that they have provided to me which indicates that the minister has corresponded through his office with Mr Short and has also provided communications through the member for Gippsland East in the Assembly, who is familiar with this matter and has previously taken representations on behalf of Mr Short and Mr Jubb to the minister.

The reason these two employees continue to be distressed and concerned with the unresolved nature of their dispute with Ambulance Victoria is that they believe natural justice has not been afforded them. Indeed they have taken action on a number of occasions through Fair Work Australia, WorkSafe, the Ombudsman and the scrutiny of the State Services Authority, which has examined the processes and procedures that have been undertaken by Ambulance Victoria.

At the end of 2011 the public sector standards commissioner, Mr Allen, made a determination about those processes and made recommendations to Ambulance Victoria about ways in which it could reform its procedures to get a better outcome for matters such as this. I am informed that until this point in time Ambulance Victoria has not responded to those recommendations that the public sector standards commissioner made at the end of 2011 to find better forms of remedy for circumstances similar to this. In recent correspondence from the Minister for Health to the member for Gippsland East the minister said he thought the remedy for these problems may be found through the Ombudsman's office, yet the Ombudsman is not of that view.

The two employees in question, Mr Short and Mr Jubb, believe they are on an administrative merry-go-round that has not been resolved satisfactorily. They draw attention to consideration in the Federal Court of Australia, and particularly in relation to *Quinn v. Overland*, which they believe might form the basis of remedies by the Ombudsman or the state services commissioner. I encourage the Minister for Health to take independent advice on these matters, because these are not vexatious litigants; they are people who are pursuing their personal interests and would like some remedy from the Minister for Health.

Government: vehicle procurement

Mr SOMYUREK (South Eastern Metropolitan) — I raise a matter for the attention of the Assistant Treasurer, Gordon Rich-Phillips, concerning figures for the purchase of locally manufactured vehicles by the Victorian state government. During my contribution to the debate on motion 343 yesterday I stated that 63 per cent of the vehicles purchased by the Victorian state government were built in Australia — and I did stress in my contribution that I was using a broad definition of Victorian state government that included government departments, statutory bodies and agencies. A government member subsequently disputed that figure, and I assume he did so on the advice of the Assistant Treasurer.

Given that the figures I quoted were disputed yesterday, I request that the Assistant Treasurer inform the house what percentage of vehicles purchased by the Victorian state government, including Victorian state government departments, Victorian state government statutory bodies and Victorian state government agencies, were manufactured in Australia.

Children: Take a Break program

Ms MIKAKOS (Northern Metropolitan) — My matter is for the Minister for Children and Early Childhood Development. I am pleased that the minister is in the chamber and will be able to respond to my matter. I raise my concerns about the continued fallout from the minister's decision last year to axe funding for the Take a Break occasional child-care program in Victoria. I have been informed that the Cottage in Synnot Street, Werribee, which is run by the Wyndham Community and Education Centre, is the latest centre to announce it will close its doors at the end of the year as a result of the Baillieu government's cuts to this program. The Cottage has been operating in the local area since 1974 and has been offering occasional child care to families for over 25 years. However, the loss of its Take a Break funding has been the catalyst that will see it close on 14 December this year, leaving up to 60 families and 75 children without child care.

Wyndham Community and Education Centre CEO, Jenny Barrera, is quoted in the *Wyndham Leader* of 13 August as describing the loss of Take a Break funding as a 'fatal blow'. The centre had been forced into a vicious cycle of increasing its child-care fees as a result of the loss of state government funding, resulting in fewer enrolments and ultimately leading to its unviability. This increased financial pressure has also led to it closing its three-year-old kindergarten program and various activity groups.

The latest census data shows that the local government area of Wyndham is the fastest growing in Victoria. A report presented to Wyndham City Council recently showed that children under five account for 10 per cent of Wyndham's population, with forecasts predicting this age group will continue to be the most populous until 2021. The birth rate has increased 32 per cent since 2008. It is therefore important that services that provide flexible child-care options be retained in Wyndham. They should be retained not only in Wyndham but across Victoria. I am concerned that many more centres will be forced into a similar situation as that of the Cottage as a result of the minister's decision to cut Take a Break funding in Victoria. I notice that Mr Elsbury is taking an interest in this matter. I hope he will be advocating on behalf at the centre, given that it is in his electorate. I call on the minister to take action to prevent the Cottage and other centres like it from closing by reversing her government's cruel decision to axe the Take a Break occasional child-care program.

The PRESIDENT — Order! I wish to come back to Mr Ramsay's adjournment item. I think I have had the courtesy of receiving his notes from him, or were they just retrieved from the Hansard box? At any rate, I have got the notes. Had it not been for the interjection, substantially this adjournment matter might have stood and I would not have ruled it out as an attack on a member. Nevertheless, an issue has been raised that I have discussed on a previous occasion, and I will do so again. The issue is that in the context of this adjournment debate at any rate — in the actual matter that was raised — there is no suggestion that Mr Howard, the member for Ballarat East in the Assembly, has done anything wrong. However, in this matter there is a suggestion that Mr Howard has used his electorate officers to moonlight in office-bearer positions in the Trades Hall Council.

The concern that I have with that — and I will maintain this concern at all times — is that I believe members

need to be very judicious in linking the activities of staff with those of members. Indeed it is quite possible that Mr Howard has no interest in having his staff act as office-bearers within Trades Hall Council. That may well be their own decision, and as individuals they are perfectly entitled to take up positions in any organisation that they wish, and there should be no reflection on them for taking up those positions even though they may also have a job in an electorate office. The two things are quite separate, and there is not necessarily any link between the two positions or anything untoward in that.

I am concerned to make sure at all times that staff are not unfairly criticised, because staff do not have a right of reply in the same way in the processes of our Parliament. I am concerned about that matter, but I think my concern is more about the way the matter is worded rather than even the intent of what was said, or I would hope so. From that point of view, the matter probably would have got by, but that is not a caution that I would make.

The other thing is that I think Mr Ramsay departed slightly from his script at the end. I thought the way he worded his matter was in the form of a question. There is no doubt that in terms of the standing orders the adjournment debate is not a second bite at question time, so it is not a matter of asking a question. The interesting thing is that the matter is perfectly put in the notes. In other words, there is no question associated with it; the matter is a call for action from the minister, which is appropriate. I hope that I heard it wrong at the end and that the text here might be what was used by Mr Ramsay on that occasion.

Hon. W. A. Lovell interjected.

The PRESIDENT — It was never out.

Mr Ramsay — Thank you, President. In fact during my adjournment contribution there were a number of interjections. As has been said, I did deviate from the script. Certainly my adjournment matter was not a reflection on the member. In fact the substance of it was talking about the participation of the unions, particularly in the Ballarat region in respect of the recent announcement — —

Mr Leane — Is this a point of order?

The PRESIDENT — Order! It is an explanation. It is in order given the circumstances.

Mr Ramsay — I am happy to take your advice and have the record as per the script.

The PRESIDENT — Order! I cannot change the words, but the explanation from Mr Ramsay satisfies me.

Mr Ramsay — If the record can state that. It was certainly not a reflection on the member.

The PRESIDENT — Order! Mr Ramsay has provided something important to the house and I appreciate that. This is not by way of criticism, either. There is a suggestion that one of the member's staff has been involved in rallies and organising activities. Hey, we are in politics. That is what happens. We all do that. There are members on all sides of the house, including the Greens, who are involved in supporting campaigns and advising activity groups on things. In that context I did not see the adjournment matter as being an attack on the member, and that is one of the reasons I would have left it in and given the member the benefit of the doubt originally. Certainly having read his notes now, that has confirmed my position.

Responses

Hon. W. A. LOVELL (Minister for Housing) — There were eight matters raised on the adjournment tonight. Ms Pennicuik raised a matter for the Minister for Environment and Climate Change regarding the Rosebud foreshore reserve and a proposed aquatic centre, and I will pass that on to the minister.

Mr Lenders raised a matter for the Minister for Energy and Resources regarding a Minerals Council of Australia report. I have to say I was disappointed to hear Mr Lenders casting aspersions on the public service and the quality of its work. It seems to be becoming a pattern from the Labor Party. Yesterday the member for Ivanhoe in the Assembly, Anthony Carbines — —

Mr Lenders — President, I draw your attention to the state of the house.

Quorum formed.

Hon. W. A. LOVELL — As I was saying, I was disappointed to hear Mr Lenders casting aspersions on the public service, particularly about the quality of its work. I said that that is becoming a pattern from the Labor Party. Yesterday during the grievance debate the member for Ivanhoe in the Assembly, Anthony Carbines, called my housing bureaucrats a 'miserable bunch'.

Hon. M. P. Pakula — On a point of order, President, how can it possibly be relevant in a response to a matter raised on the adjournment for the minister to

be referring to comments made yesterday by the member for Ivanhoe in the other place?

The PRESIDENT — Order! It certainly does stretch matters somewhat in that a specific issue was raised about the Department of Primary Industries and the impact of certain policies on staffing levels and therefore service to the industry and what the implications might be for employment levels in that industry going forward. I note that in his remarks Mr Lenders did not criticise the public service but was actually saying it was the government policy and the implementation of that policy that was having an impact on the staffing levels — —

Hon. D. M. Davis — Allegedly.

The PRESIDENT — Order! Allegedly, and therefore potentially on the service level. The member did not refer in any negative way to the public servants. I am not aware of what Mr Carbines said. The minister is entitled to answer the adjournment item in a responsive way. Basically the response to an adjournment item should be apposite to the question raised and also should not be in the form of a debate. It should be a specific answer to the question. My concern in taking up the point of order is that bringing in other members and talking about a pattern of commentary on the public service might well be starting to enter into the area of debate, and particularly given the way the Leader of the Opposition couched his remarks, I do not think that is actually fair territory to go into.

Hon. W. A. LOVELL — Mr Ramsay raised an issue for the Minister for Higher Education and Skills regarding TAFE's transition to a better governance model and asked the minister to maximise training outcomes in his electorate.

Mr Pakula raised a matter for the Attorney-General regarding correspondence from employees in the Magistrates Court, and I will pass that correspondence and the adjournment matter on to the Attorney-General.

Mr O'Brien raised a matter for the Minister responsible for the Aviation Industry, inviting him to visit Edenhope airport to discuss the potential for expansion.

Mr Jennings raised a matter for the Minister for Health around issues raised with him by two employees at Ambulance Victoria, and I will pass his correspondence and his adjournment matter on to the minister.

Mr Somyurek raised a matter for the Assistant Treasurer regarding the percentage of state government fleet vehicles purchased locally — and I remind Mr Somyurek that the former government purchased a hell of a lot of Prius vehicles from Japan which were not made locally.

Ms Mikakos raised a matter for me, but it actually is a matter that is outside the jurisdiction of the state; it is a matter for the federal government. She raised a matter about the removal of the federal government's funding of the Take a Break program, which led to the end of that program. The federal government has the responsibility for child-care funding, and I note that in October last year, due to my lobbying of the federal government, the federal Minister for Early Childhood Education, Child Care and Youth, Kate Ellis, announced some additional occasional-care places. She gave details of those in January and said that those places would be allocated by June. It is now August and those places have not been allocated. Services are contacting us to ask, 'What's going on with the federal government; why hasn't it allocated those places?'. I suggest to Ms Mikakos that if she wants funding for occasional care, she should lobby her federal colleagues and ask them to fulfil their promises of last year.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 7.57 p.m. until Tuesday, 28 Aug