PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Tuesday, 28 February 2012

(Extract from book 4)

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

By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

Premier and Minister for the Arts	The Hon. E. N. Baillieu, MP
Deputy Premier, Minister for Police and Emergency Services, Minister for Bushfire Response, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
Treasurer	The Hon. K. A. Wells, MP
Minister for Innovation, Services and Small Business, and Minister for Tourism and Major Events	The Hon. Louise Asher, MP
Attorney-General and Minister for Finance	The Hon. R. W. Clark, MP
Minister for Employment and Industrial Relations, and Minister for Manufacturing, Exports and Trade	The Hon. R. A. G. Dalla-Riva, MLC
Minister for Health and Minister for Ageing	The Hon. D. M. Davis, MLC
Minister for Sport and Recreation, and Minister for Veterans' Affairs	The Hon. H. F. Delahunty, MP
Minister for Education	The Hon. M. F. Dixon, MP
Minister for Planning	The Hon. M. J. Guy, MLC
Minister for Higher Education and Skills, and Minister responsible for the Teaching Profession	The Hon. P. R. Hall, MLC
Minister for Multicultural Affairs and Citizenship	The Hon. N. Kotsiras, MP
Minister for Housing, and Minister for Children and Early Childhood Development	The Hon. W. A. Lovell, MLC
Minister for Corrections, Minister for Crime Prevention and Minister responsible for the establishment of an anti-corruption commission	The Hon. A. J. McIntosh, MP
Minister for Public Transport and Minister for Roads	The Hon. T. W. Mulder, MP
Minister for Ports, Minister for Major Projects, Minister for Regional Cities and Minister for Racing	The Hon. D. V. Napthine, MP
Minister for Gaming, Minister for Consumer Affairs, and Minister for Energy and Resources	The Hon. M. A. O'Brien, MP
Minister for Local Government and Minister for Aboriginal Affairs	The Hon. E. J. Powell, MP
Assistant Treasurer, Minister for Technology and Minister responsible for the Aviation Industry	The Hon. G. K. Rich-Phillips, MLC
Minister for Environment and Climate Change, and Minister for Youth Affairs	The Hon. R. Smith, MP
Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Mental Health, Minister for Women's Affairs and Minister for Community Services	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mr D. J. Hodgett, MP

Legislative Council committees

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

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

Legislative Council standing committees

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

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

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

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

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

 # Participating member

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

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

Scrutiny of Acts and Regulations Committee — (*Council*): Mr O'Brien and Mr O'Donohue. (*Assembly*): 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

Leader of the Government:
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

CONTENTS

TUESDAY, 28 FEBRUARY 2012

ROYAL ASSENT 923

QUESTIONS WITHOUT NOTICE
- *Planning: Phillip Island rezoning* 923
- *Nurses: enterprise bargaining* 924
- *Manufacturing: government policy* 924, 925, 926, 927
- *India: trade delegation* 925
- *Wodonga: urban renewal* 927
- *Manufacturing: job losses* 928, 929
- *Housing: Delacombe* 929
- *Manufacturing: productivity* 930, 931
- *Kangan Institute: automotive centre of excellence* 931
- *Answers* 932

QUESTIONS ON NOTICE
- *Answers* 932, 962

PETITIONS
- *Puffing Billy: funding* 932
- *Kindergartens: funding* 932

PROTECTING VICTORIA'S VULNERABLE CHILDREN INQUIRY
- *Report* 933

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
- *Alert Digest No. 2* 933

PAPERS 933

NOTICES OF MOTION 934

BUSINESS OF THE HOUSE
- *General business* 934

MEMBERS STATEMENTS
- *Ovarian Cancer Awareness Month* 934
- *Mark Arbib* 935
- *Brauerander Park, Warrnambool: aquifer storage and recovery scheme* 935
- *Nurses and midwives: hardship fund* 935
- *Australia Day: Northern Metropolitan Region* 935
- *Carnegie Caulfield Cycling Club* 936
- *Police: Geelong and Surf Coast regions* 936
- *Geelong: Davis Cup* 936
- *Victorian Indigenous Honour Roll: establishment* 937
- *Carbon tax: economic impact* 937
- *Mildura Base Hospital: future* 937
- *Bendigo Health: pathology services* 938
- *Swan Hill Region Food and Wine Festival* 938
- *Peter Bilston* 938
- *Our Lady of Lebanon Church: feast day* 938
- *Greek-Australian festival, Northcote* 938
- *Lalor: book launch* 939

ECONOMY AND INFRASTRUCTURE REFERENCES COMMITTEE
- *Reference* 939

PORT MANAGEMENT AMENDMENT (PORT OF MELBOURNE CORPORATION LICENCE FEE) BILL 2011
- *Second reading* 939
- *Referral to committee* 954
- *Committee* 957
- *Third reading* 961

EVIDENCE (MISCELLANEOUS PROVISIONS) AMENDMENT (AFFIDAVITS) BILL 2012
- *Introduction and first reading* 962
- *Statement of compatibility* 962
- *Second reading* 962

FREEDOM OF INFORMATION AMENDMENT (FREEDOM OF INFORMATION COMMISSIONER) BILL 2011
- *Second reading* 964
- *Instruction to committee* 984
- *Committee* 984
- *Third reading* 1002

ADJOURNMENT
- *Employment: regional and rural Victoria* 1002
- *Regional Rail Link Authority: West Footscray footbridges* 1003
- *Respite care: Southern Metropolitan Region* 1003
- *Housing: Horsham North community house* 1003
- *Respite care: Western Metropolitan Region* 1004
- *Schools: Modern Greek language programs* 1004
- *Gas: Terang supply* 1005
- *Water: northern Victoria supply* 1006
- *Dental services: city of Maroondah* 1006
- *Responses* 1006

Tuesday, 28 February 2012

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

ROYAL ASSENT

Message read advising royal assent on 14 February to:

City of Greater Geelong Amendment Act 2012
Planning and Environment Amendment (Schools) Act 2012
Public Prosecutions Amendment Act 2012.

QUESTIONS WITHOUT NOTICE

Planning: Phillip Island rezoning

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. I ask: has the minister spoken to the Premier and briefed him on the minister's initial decision to rezone farmland at Ventnor or his subsequent reversal of that decision?

Hon. M. J. GUY (Minister for Planning) — I think I have stated in the house before that there is a legal matter in process on this, and I will be making comment on that when it is over. Until then I will not be making any comment.

Mr Lenders — On a point of order, President, the minister said it was a legal matter and that therefore he could not comment on it. I seek your guidance. He is correct as to criminal matters, but as to civil matters — and in particular civil matters for which no date has been set for trial — there is a clear precedent in this place that ministers do respond. Several Presidents have made that ruling. I seek your advice on the minister's response because, as I understand it, it is a civil matter, it has not been listed and therefore there is no precedent for a minister claiming sub judice when he has been invited to answer a question on transparency in government.

Mr Tee — On the point of order, President, the other issue is that the legal proceedings do not in any way relate to the Premier or any discussions between the minister and the Premier, so any answers in relation to that question could not prejudice the outcome of those proceedings.

The PRESIDENT — Order! I ask the minister whether a date has been set for these proceedings.

Hon. M. J. GUY — I could not tell you.

Mr Tee — My office contacted the Supreme Court this morning, and we have been advised that no date has been set.

The PRESIDENT — Order! In respect of the point of order, the Legislative Council has certainly taken a more lenient position, if you like, in terms of court proceedings in more recent years. To some extent that is because of the nature of those proceedings in that some do not actually eventuate. Litigants withdraw proceedings, or there are other things that might impinge upon the proceedings outside of this place. I would certainly be more concerned if a date had been set and the matter was therefore imminent. I am also mindful that they are civil proceedings rather than criminal proceedings, and in that sense I do not believe sub judice is a problem for the Council in terms of the minister's response to this question.

I am also mindful of Mr Tee's extension to the point of order, and I concur with him in that I do not think the question he framed was a matter that was likely to go directly to the proceedings that might be before the court at a future time. I uphold the point of order on both those points, and I ask the minister if he might make some comment in respect of the question. Would the minister like to hear the question again?

Hon. M. J. GUY — No, thank you, President. I will take the question on notice and give the member a written answer.

Supplementary question

Mr TEE (Eastern Metropolitan) — These are very serious issues. Why will the minister not take this opportunity today to assure the community and the Parliament that he has spoken to and briefed the Premier?

The PRESIDENT — Order! That is not really a question; it is commentary.

Mr TEE — The minister obviously knows whether or not he has spoken to the Premier. My question is: why does the minister not want to answer that question today?

Hon. M. J. GUY (Minister for Planning) — Mr Tee just got up and advised us that his substantive question was not in relation to a court case, and now he gets up and says these are very serious matters. I am not sure I know what Mr Tee is asking. I have said I will take the substantive question on notice, and I will.

Nurses: enterprise bargaining

Mrs PEULICH (South Eastern Metropolitan) — My question without notice is directed to the Minister for Health, who is also the Minister for Ageing, and I ask: will the minister update the house on the current EBA (enterprise bargaining agreement) negotiations with the Australian Nursing Federation union and the ANF union's threats to patient safety?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question and her concern. As I have said before, whilst I will not answer questions about every minute detail of negotiations that may have gone on through an EBA process, I am prepared to update the house and the community on a number of aspects about the current EBA negotiations between the ANF union and the Victorian Hospital Industrial Association, which is acting for 86 health services in that process. Most people in this chamber would be concerned about the decision of the ANF on Friday to persist with unprotected action that was declared under a section 418 statement to be illegal action if it continued.

The Fair Work Act 2009, an act introduced by the Labor-Greens government in Canberra, lays out a system for industrial arrangements in our country, and we operate under that act. The Fair Work Australia hearing held on Friday ordered the ANF to desist from its unprotected action. My concern is — —

Hon. M. P. Pakula interjected.

The PRESIDENT — Order! Mr Pakula!

Hon. D. M. DAVIS — This is a very serious matter. A union that has been ordered to return to work and desist from unprotected action is directly thumbing its nose at the lawful tribunals responsible for managing this issue, and it is doing so in a way that is harming patients and is putting patients at risk. I can inform the house that 65 elective surgeries were cancelled due to ANF industrial action, with 14 of them being category 1 surgeries, and that is quite concerning. Two of those category 1 surgeries were at Dandenong Hospital and 12 were at Royal Melbourne Hospital. I want the chamber and the community to understand the targeted action undertaken by the ANF union, which is designed to put pressure on patients and to impact most severely on the most vulnerable patients.

I will put on the record some examples. Professor Trevor Jones from Western Health spoke publicly yesterday in response to ANF claims. He made clear points about the impact on patients at Footscray hospital and how patients were made to suffer, how patients were disadvantaged and how patients were put at risk. Some on the opposition side might not think it is serious, but yesterday in Bendigo a man suffering from a serious cancer had been prepped for a 3½ hour operation, only to have that operation cancelled at the last minute with no notice. That was the direct fault of the ANF. The ANF union decided to pull staff out at the last minute in a cruel and heartless action designed to impact most severely on patients. I think the community is very angry with them.

Honourable members interjecting.

The PRESIDENT — Order! This is a very serious issue. The protracted negotiations between the government and the ANF are a matter of concern to all members of this house. However, it is a process that deserves the respect of members of this house and not a shouting match. The minister to continue.

Hon. D. M. DAVIS — In 2007, when similar illegal action was being undertaken by the ANF union, the then Victorian Minister for Health, Daniel Andrews, said that you cannot have a situation where the decisions that go your way are fine and proper, but that you thumb your nose at the decisions that do not go your way. This is why I am very concerned — —

The PRESIDENT — Time!

Manufacturing: government policy

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Manufacturing, Exports and Trade, the Honourable Richard Dalla-Riva. I refer the minister to his decision to scrap local content targets from state government procurement tenders and instead focus on maximising — and I quote from the minister's manufacturing statement — 'local content through greater access and awareness of local suppliers', and I ask the minister: just how will the notion of access and awareness alone assist Victorian manufacturers to compete with overseas companies?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. Obviously I am very pleased that he raised the issue about our manufacturing strategy, because in fact we were the only state in Australia that undertook a rigorous review of where manufacturing should be in the future. While federal government members continually argue and fight with each other, we are actually doing the hard yards; we are actually doing what is necessary to support the manufacturing sector.

If you look at where manufacturing was under the previous government, you see it was a mishmash of policy announcements, confusion and 32 programs that were all over the place. In our policy announcement we said that we would have five clear policy directions. Those five clear policy directions related to ensuring that we were supporting the medium size manufacturers through our world-class specialist manufacturing service — and that is on page 15. We are looking at productivity and innovation networks — and that is on page 16.

If Mr Somyurek went to the next page, page 17, he would find that we are looking at transformative changes and investing in technology. If he went to the next page, Mr Somyurek would find that we are talking about support for small manufacturers, which his government ignored. Then we went to looking after niche and specialist skills, again an area which his government let down.

We also made a policy commitment about ensuring that we supported local content. Throughout the policy document before the election, during the election, after the election and in this statement that I am reading from today, we said that we would be providing more opportunities for local small and medium enterprises to compete for government contracts and a strengthened Victorian industry participation program. We have already started in terms of piloting options for a simplified and streamlined e-procurement process.

Through the new business engagement model, as I just said, we are about supporting small to medium size enterprises to be more closely aligned to major projects so that they have a greater opportunity of being engaged in the procurement process. Mr Somyurek's government's process for procurement was to import trains from Poland. That was its procurement policy. Our procurement policy is to ensure, in black and white, that we will be providing opportunities for local manufacturers. We will not stand away from that, and we will be supporting local manufacturers into the future.

Supplementary question

Mr SOMYUREK (South Eastern Metropolitan) — Mr Dalla-Riva during his answer talked about his pre-election policy document. Now, that is stretching it a bit, but anyway let us call it a policy document. It set a local content target of more than 50 per cent for the purchase of new trains. Can the minister assure the house that he will uphold his pre-election commitment of providing a target of more than 50 per cent local content in the purchase of new trains?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I again thank the member for his question. Unlike the former government, we have made a commitment to procurement of local content.

I will give an example of a government not being focused on local procurement. In relation to Thales in Bendigo, we on this side of the house fought hard for the retention of the Bushmaster, but we saw the federal government allow 2700 vehicles to be purchased overseas. What did we hear from those opposite? Nothing!

Mr Somyurek — On a point of order, President — and I was very generous in not raising a point of order when Mr Dalla-Riva was answering my first question — this question is clearly about whether Mr Dalla-Riva will stick to his commitment of 50-plus per cent of local content in relation to the purchase of new trains. My point of order is clearly about relevance.

The PRESIDENT — Order! I concur. The minister gave an example involving Bushmaster, but I am not aware of Bushmaster making trains. Therefore I ask the minister to come back to the question.

Hon. R. A. DALLA-RIVA — On the point of order, President, the issue in the substantive question related to local content. I answered on that basis. I was responding to the issue about local content and giving a comparison about a strong Victorian company which missed out because local content was not a consideration.

The PRESIDENT — Order! What is Mr Dalla-Riva's point of order?

Hon. R. A. DALLA-RIVA — The issue is about local content and not about trains.

The PRESIDENT — Order! The supplementary question was quite specific. In Mr Dalla-Riva's original answer he referred to the policy documents he took to the election as well as other documents. Therefore the supplementary question is responsive to his answer. Mr Dalla-Riva is to respond to the question.

Hon. R. A. DALLA-RIVA — Yes.

India: trade delegation

Mr DRUM (Northern Victoria) — My question without notice is to the Minister for Manufacturing, Exports and Trade, Richard Dalla-Riva. I ask the minister to outline to the house what initiatives the Baillieu government has taken to strengthen ties with

India and to build enduring partnerships in trade and investment?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question, because I was very pleased to join the Premier and my ministerial colleagues Ms Asher, the Minister for Innovation, Services and Small Business, and Mr Rich-Phillips, the Assistant Treasurer, on Victoria's largest ever trade mission to India. We believe this was not only the largest trade mission to India by any Australian state government but the second largest trade delegation to arrive on Indian shores, behind only the delegation from China.

This mission was a chance for the Victorian government and the businesses and education community to create new opportunities in high-growth markets such as India. As the Premier has said, this super trade mission is key to the coalition government's economic strategy, which has a strong focus on trade engagement and expansion into new markets to generate future jobs and investment growth. This trade mission showcased Victorian capabilities in cutting-edge innovation and technology to a range of potential partners across 10 key sectors of strategic importance. Importantly, more than 220 companies attended.

What we witnessed in terms of India's economic transformation was truly breathtaking. I will put that into context. India 20 years ago had a backward economy on the verge of bankruptcy. That would sound familiar to the members on the other side of the chamber, the previous Labor government. That shock to the system forced a fundamental reappraisal, and India opened up much more of its economy to the world. What a spectacular outcome! Today, according to the International Monetary Fund, India's foreign reserves are at or near $300 billion, which is about double that of the United States.

It is not only in IT that it is growing. India is building enormous capabilities in the automotive, aerospace and energy industries — in fact, you name it. In terms of its growth trajectory, only China is comparable, which is why we see India and China referred to as the emerging global powerhouses of Asia.

In Victoria we recognise that if our state's industries are to continue to compete well globally, then we need to build strategic links with high-growth economies like India through joint ventures, research and development cooperation and creating synergies between our two economies. The Victorian government recognises that the most productive investments in trade relationships are advanced by strong personal connections. We know that in Victoria we have a large Indian community, with more than 200 000 people of Indian descent or birth now calling Victoria home. As an example, in New Delhi we had a long discussion with Vaaman Sehgal, the very youthful CEO of Motherson Sumi, one of the world's most accomplished and fastest growing tier 1 automotive component suppliers. In fact Mr Sehgal finished his secondary schooling here at Wesley College in Glen Waverley and then went on to complete a master of business administration at Columbia. He remains passionate about the skills and talents on offer in Victoria. It is his sort of connection on which successful relationships can be built.

I am confident that the goodwill generated by this mission will generate further activity, providing new and exciting opportunities for Victorian companies as well as increasing the flow of two-way investment between Victoria and India. This mission lays the framework for building enduring relationships between business leaders in Victoria and India. This government recognises the great importance of stronger commercial and cultural ties between India and Victoria and that the time to take relations to a new level is long overdue.

Ordered that answer be considered next day on motion of Mr VINEY (Eastern Victoria).

Manufacturing: government policy

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Manufacturing, Exports and Trade, Mr Dalla-Riva. I refer the minister to his decision to cull the 32 manufacturing support programs that were in place when the Brumby government left office. Can the minister name the industries and enterprises that will lose their manufacturing support programs?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — At the risk of saying it again, Mr Somyurek's ears must be painted on. As I have said before, there were 32 programs that were an unwieldy maze that not even the business community understood. This is what I find fascinating. If you actually went out and listened to them, you would hear them say that there were so many programs created by this dysfunctional former government that they actually did not know what they meant. There were names going everywhere. There were funds going everywhere. Nothing was coordinated. There was no coherent strategy.

As I have said before, what we did — and we were the only government to do it — was to undertake the most

rigorous and comprehensive review of manufacturing anywhere in Australia. As a result of that, we found that one of the areas of high criticism — and it was expressed in the press release, expressed in the Victorian Competition and Efficiency Commission (VCEC) inquiry and expressed in our policy document — was that there was an overwhelming number of programs that were confusing, that did not make sense and that did not interrelate.

As I said in my previous answer to Mr Somyurek, we created five separate, clear and distinct policy objectives in terms of where we are going. I will remind members opposite of these. The first was to look after the medium size manufacturers in terms of how we engage with them, so that they understand. For example, if you go to page 15, you see things like 'systematic continuous improvement' or 'strategic planning' or 'management and workforce'. I will tell you what, it would be worthwhile for the Prime Minister and the former Prime Minister to actually read through this, because then they would understand that what is important for the future of business and direction is getting the facts right and getting your strategy right rather than worrying about internal factional gains. That is what we were focused on. We were focused on medium size manufacturers.

Another thing that was mentioned was the productivity and innovation networks. This was clearly outlined by VCEC. The former government had very pillared approaches to the way sectors ran and there were no cross-sector relationships. There was no understanding in the automotive industry of what was happening in, say — and dare I say it — the rail industry or an understanding of the automotive industry in, let us say, the defence sector. There was this lack of understanding of how that would work. Our policy document makes it clear that we see the innovation networks to be an important part of that program. That is the second one. We are very clear about what we are doing. When businesses pick this up they will say, 'We know what the government is on about.'

The third one is about investing in technology. The former government's approach was that if you needed new plant and equipment, you just replaced it. What we are saying is that if you want to replace plant and equipment, it has to be transformational. It needs to actually improve productivity — that word those opposite do not understand. They do not understand productivity.

The programs of those opposite, the previous programs, were not about productivity improvements for the manufacturing sector. If anything, they were about not supporting productivity. If members turn to page 17 they will see that in terms of manufacturing, capital expenditure per worker had fallen miserably under the former government and indeed nationally.

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

Supplementary question

Mr SOMYUREK (South Eastern Metropolitan) — Will the minister guarantee that these five nebulous new policy initiatives will be funded to the same level as the previous government's manufacturing support programs? And would Mr Dalla-Riva please answer the question this time?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. He fails to understand that this government had a very clear policy commitment to manufacturing. We had a very clear commitment to ensuring we would deliver on our election commitment. We have delivered on our election commitment, and we will be ensuring that there will be suitable allocation of funds to the right areas as directed and as needed, unlike before, when money was thrown left, right and centre, and when, in relation to outcomes, we had no idea what was being achieved. In fact we know the outcomes were not being achieved, because businesses themselves were saying that. This new strategy is about ensuring we have a relevant, forward-looking strategy into the future that meets the needs of manufacturers, not the needs of the Labor Party.

Wodonga: urban renewal

Mrs PETROVICH (Northern Victoria) — My question is for the Minister for Planning. I ask: can the minister inform the house what action the Baillieu government has taken to advance inner city urban renewal for central Wodonga?

Hon. M. J. GUY (Minister for Planning) — I thank my colleague Mrs Petrovich for her important question about inner city urban renewal and urban renewal in regional Victoria. This government supports regional Victoria. It puts effort into regional Victoria. In relation to Australia's largest regional urban development opportunity — in central Wodonga — we are doing the work to ensure that the opportunities are not missed and that the people of Wodonga and north-eastern Victoria get a great urban renewal outcome that will see the redevelopment of that part of the city and that will be a lasting lifelong legacy for north-eastern Victoria.

I was recently in Wodonga — in fact on Friday — and I have the pleasure to inform the house how the member for Benambra in the Assembly and I, together with the Wodonga council, its mayor, Mark Byatt, and Places Victoria staff, launched two phases. One is bringing people back to the urban renewal precinct in central Wodonga. That is actually bringing people through. There will be new pop-up cinemas on the site until construction begins. We also announced the commencement of tenders for the removal of rail infrastructure from that site.

Victoria is not alone. In the last month or so even the South Australian Labor government has followed the lead of the Victorian government in establishing an urban development authority. Even across the border, other governments around Australia are seeing the importance of urban renewal and the importance of ensuring that regional cities as well as metropolitan areas grow and grow sustainably and with a new heart to them. That is what the Baillieu government is doing for central Wodonga.

It is a shame that other people in this chamber treat urban renewal with such disdain. It is astounding that other people in this chamber sought to talk down Places Victoria, talk down growth in Fishermans Bend, talk down growth like they do the manufacturing sector, talk down the success of Victoria and talk down the success of Wodonga — and why would they not when all they are focused on is the magical number of 102? Why would members opposite not be focused on that, when they focus on their own internal spats? We are focused on urban renewal for Wodonga. We are focused on getting this state going, on manufacturing policy and on building Wodonga going forward. The people opposite are focused on looking in the mirror. These narcissistic Labor members have nothing to do but compare themselves to Superman — or General Zod, if you are Mr Lenders — and they do not realise that the real game is about getting jobs in regional Victoria, which is what the Baillieu government is doing.

Manufacturing: job losses

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Manufacturing, Exports and Trade, Richard Dalla-Riva. I refer the minister to the loss of 350 jobs at Toyota earlier this year and ask: what steps has the minister taken to ensure that component manufacturers supplying Toyota throughout the state will not close or sack employees as a result of Toyota's actions?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. Of course this was a devastating announcement by Toyota. We have said many times before that the automotive sector is under enormous pressure from the high dollar and tough overseas competition. We note in terms of Toyota — I will get to the other part of the question — that the CEO, Mr Max Yasuda, on 2 February said to the *Australian Financial Review* that the Gillard federal government's Fair Work Act 2009 did not give him the flexibility to respond to changing business conditions. Then he said that the current industrial relations system impeded his ability to create a globally competitive manufacturing operation. Clearly this major employer in Victoria is stating its concerns about poor and inefficient workplace practices that are hampering the ability of its Australian operations to compete successfully and profitably in a very tough global automotive market.

As we know, the horrific earthquake and tsunami in Japan last year had a severe impact on Toyota's operations globally. It also resulted in a cut in production at the Altona plant due to a shortage of parts. This is important in the response to Mr Somyurek's question, because even during that tragic event, Toyota Australia did not lay off staff. It was disappointing in that context to see this disaster followed soon after by a costly and damaging industrial dispute at Altona, which caused significant disruption to Toyota's local production.

Despite Toyota reporting that it was losing $8 million a day, Fair Work Australia determined that under federal Labor's legislation this dispute did not constitute significant economic harm. That is why we called for, and have finally received, the capacity to have the Fair Work Act 2009 reviewed. We called for greater productivity and greater flexibility. At the time of a high dollar and intense global competition Mr Yasuda was right to stress the vital importance of flexible work practices to ensure the manufacturing sector remains strong and successful.

What I am saying to Mr Somyurek is that he should be getting on the phone to his federal colleagues saying, 'At this particular point in time, you need to bring in flexibility and the ability to be more productive so manufacturing can compete'. It might be a revelation to Mr Somyurek, but if you have a strong OEM (original equipment manufacturer), you then generate a strong tier 1 and tier 2 supplier base.

Mr Somyurek has asked me what we are doing about the suppliers at tier 1 and tier 2. I have just given him the answer. If you have a strong OEM, if you have a strong Ford, if you have a strong Holden and if you

have a strong Toyota, you by default have a strong tier 1 or tier 2 supplier. Mr Somyurek does not understand that. He wants to put everything into a box and see how it works without seeing it in its entirety. The entirety relates to not only being competitive on the world market but also having flexibility and the opportunity to have at a difficult time an act and an industrial relations system that meets the needs of the future.

Supplementary question

Mr SOMYUREK (South Eastern Metropolitan) — Will the government formulate a plan for the car industry or will it continue to act in an ad hoc manner in its dealings with the industry?

The PRESIDENT — Order! I am a little concerned about that question because I think as a supplementary question it goes a lot further than the original question. The minister might take that into account.

Hon. R. A. Dalla-Riva — Can he repeat the question?

The PRESIDENT — Order! Mr Somyurek can repeat the question. Apparently the minister did not hear it.

Mr SOMYUREK — I will repeat the question as I asked it. Will the government formulate a plan for the car industry or will it continue to act in an ad hoc manner in its dealings with the industry?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — The opposition wants to continually talk down the industry. It wants to see the industry collapse. We are trying to talk the economy up. I will give the house an example. I will talk about the outlook for jobs in this state. Melbourne University's Professor Mark Wooden was quoted in the *Australian* as having said:

> The talking down of the economy isn't helping … But at the end of the day, we have … good reason to be pretty happy about where we are.
>
> …
>
> In Australia, there is this view that you protect employment and jobs by putting a wall around it … I wonder about how many jobs would be created by a bit more flexibility and a bit more (of) a market-focused approach.

Guess what? It is a market-based approach. The opposition does not understand it. The opposition does not get it.

Housing: Delacombe

Mr RAMSAY (Western Victoria) — My question is to the Minister for Housing, who is also the Minister for Children and Early Childhood Development, the Honourable Wendy Lovell. I ask: can the minister inform the house of recent funding to enhance public housing infrastructure and improve youth engagement in the Delacombe community in Ballarat?

Hon. W. A. LOVELL (Minister for Housing) — I was delighted to be down in Delacombe last week to announce $380 000 funding for new initiatives that will improve youth engagement in the Delacombe community and also provide employment opportunities and possibilities for people to train for employment. I thank Mr Ramsay for his question and his ongoing interest in the Delacombe community and in Ballarat.

I was very happy to make the announcement of $380 000 funding for three projects. The first of those projects is $140 000 for a children's play space at Doug Dean Reserve. This is a unique play space that includes two areas: an all-abilities play space for 3-year-olds to 12-year-olds; and a youth activities space, which will have a hard court for basketball and other ball games as well as seating areas. The children from the two local primary schools who were involved in the planning showed me the plans for their play space. They had been given a budget and had chosen the play equipment they wanted to have in that space. It truly will be their playground when it is built, and I look forward to going back when it is opened to see them play on that playground.

The local council has a master plan for the Doug Dean Reserve and has put in $620 000 to develop a wetland area, plant mature trees and construct walking paths, seating, a new barbecue and picnic areas. Doug Dean Reserve will get a complete overhaul and will be a fantastic facility for the Delacombe community.

I was also pleased to announce funding of $220 000 for the Finding Futures initiative, which will improve the amenity of 35 public housing properties. This initiative will employ local residents in the Delacombe community to improve the amenity of the public housing properties, including new fences. I went out and met with a group of residents who were working on the initiative and installing the new fences, and I also met with some of the people who were getting the new fences. It was a great opportunity to meet with those people. The local residents who were employed on this project spoke very highly of it. Through this initiative they will gain skills that will enable them to go on and get full-time employment.

We also announced $20 000 funding for the Verbal Mojo project, which is being delivered in conjunction with Mojo Consulting and Recruitment and Enterprising Communities. This will support 16 at-risk young people to gain the confidence and skills they need to engage with employers and find employment.

These are wonderful projects that are fundamental to the government's focus on economic participation and assisting communities to overcome disadvantage.

Manufacturing: productivity

Mr SOMYUREK (South Eastern Metropolitan) — My question is directed to the Minister for Manufacturing, Exports and Trade. The minister today indicated that the answer to everything in manufacturing is productivity, and he gave us a lecture on productivity. The word is mentioned 50 times throughout the manufacturing statement. What is the minister's definition of the word 'productivity'? Is it about comparing quantities or values?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing and Exports and Trade) — Throughout the time I have been Minister for Employment and Industrial Relations and Minister for Manufacturing, Exports and Trade I have tried to explain the importance of productivity. I will go to employment and industrial relations, for example. I have spoken about the need for flexibility in the workplace and improving productivity output so that we have capacity for improvements.

An honourable member — Define it. What's your definition of it?

Hon. R. A. DALLA-RIVA — Remember I said before that what we have is an opposition that wants to put government into boxes. It wants to say, 'We've got a box that says "productivity", and therefore that's what it means'.

Hon. M. P. Pakula — So what does it mean?

Hon. R. A. DALLA-RIVA — They do not understand what flexibility in the workplace is. They fail to understand it. What we have is an inflexible workplace. What we have in manufacturing is productivity lower than the national average. What we have — —

Hon. M. P. Pakula — But what does it mean? Define it.

Hon. R. A. DALLA-RIVA — This is what they want: they want to have something defined so they can sit there and say, 'Got you!'.

Mr Somyurek — Are you comparing quantities? Are you comparing values, prices? What is it?

Hon. R. A. DALLA-RIVA — No, productivity is a broad spectrum, as you would know if you understood it, but you do not, because the pedigree you come from is not about productivity. The pedigree members opposite come from is not about productivity improvements.

An honourable member — The dictionary is just down there.

Hon. R. A. DALLA-RIVA — It is about saying, 'Let us create, say, 32 inane programs that mean nothing, go nowhere and deliver little'. What we are doing is establishing a clear, coherent strategy in manufacturing. What we are doing is establishing a clear position in employment and industrial relations. And here we have Mr Pakula, who wants to bring the books out. I do not think I need to be subjected — —

The PRESIDENT — Order! I trust that Mr Pakula obtained that book for his own use and not as a prop to try to ridicule the minister. Because if that were the case, I would take a very dim view of it. I trust that I will see the member exploring that book in the next few minutes, as Mr Dalla-Riva completes his answer. Open your book, Mr Pakula.

Hon. R. A. DALLA-RIVA — Thank you, President. If I can just remind members again, the VCEC (Victorian Competition and Efficiency Commission) inquiry, the most comprehensive inquiry into manufacturing, recognised that there needed to be a stronger focus on productivity.

The definition of productivity by this government can be a whole range of things, and I have given the house two examples in terms of where my portfolio is. In terms of employment and industrial relations, it is about flexibility in the workplace. Flexibility in the workplace is about productivity improvements. It is about small and medium size manufacturers having the capacity to improve their productivity through systems changes, by bringing in Kaizen and by bringing in other forms of lean manufacturing. It is about productivity improvements.

Those opposite do not get it. They just do not understand that productivity is a measurement that is not defined, given the circumstances that may occur. There is a whole range of areas where productivity

improvements can be made; we have done that through the manufacturing strategy. VCEC said there was a need for productivity improvement. It said productivity improvement needs to be delivered by establishing this strategy. And that is what it is about — our productivity plan is about this document, which sets out clearly the agenda of the government's forward thinking — —

Mr Somyurek — On a point of order, President, I am actually trying to help Mr Dalla-Riva now. Apart from 'productivity means productivity', I really have not had the question answered. I repeat the question to Mr Dalla-Riva. It is a matter of relevance. Would Mr Richard Dalla-Riva please give his definition of the word 'productivity'?

The PRESIDENT — Order! That was a cute way of doing it. There is no point of order. I am at a bit of a loss myself as to the meaning of productivity; perhaps Mr Pakula will inform me later from his readings. Does Mr Dalla-Riva wish to continue?

Hon. R. A. DALLA-RIVA — I need to continue, because those opposite fail to understand what the definition of productivity is in the context of this government's agenda — its economic agenda and its forward-looking agenda. The problem is they do not get it, and I understand that.

Supplementary question

Mr SOMYUREK (South Eastern Metropolitan) — Can the Minister for Manufacturing, Exports and Trade inform the house what tangible steps the government is taking to assist the drivers of productivity growth in Victorian manufacturing?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — Obviously removing the red tape that the former government created is a start.

I will give you one example of productivity, Mr Somyurek, so you can understand it. Let us say a medium size manufacturer said, 'I want to see what government programs are available. There are 32. I am now going to have to spend five days looking through 32 incoherent, disjointed programs from the government'. Then we come to our government. He finds it only takes one day — in fact half a day — to go through the five programs that this government has. All of a sudden we have a productivity improvement of four and a half days.

Honourable members interjecting.

Hon. R. A. DALLA-RIVA — Members opposite just do not get it!

Kangan Institute: automotive centre of excellence

Mr ONDARCHIE (Northern Metropolitan) — My question is for the Minister responsible for the Teaching Profession, the Honourable Peter Hall. Can the minister explain to the house how the Baillieu government is assisting in meeting the demand for vocational education services in Melbourne's north?

Hon. P. R. HALL (Minister responsible for Higher Education and Skills) — I thank Mr Ondarchie for his question, which I might add I will answer in my capacity as the Minister for Higher Education and Skills rather than as Minister responsible for the Teaching Profession. It is also an answer that I think Mr Somyurek might be very interested in, given the range of his questions today, which have covered the automotive industry. Indeed that is the nature and subject of the question asked of me by Mr Ondarchie.

It was last Thursday, 22 February, that I had the opportunity to visit the Kangan Institute's campus at Docklands here in Melbourne for the official opening of stage 2 of the automotive centre of excellence. If any members have not been to that facility, then they should make it their business to visit it, because the automotive centre of excellence is a project of which Victoria stands absolutely proud.

Ms Mikakos interjected.

Hon. P. R. HALL — Stage 1 was completed under the previous government, yes; I am happy to admit that. Stage 2 has been completed now and opened this year. It is a state-of-the-art automotive training centre, the biggest and the best in the Southern Hemisphere. We will see over 500 students per day walk through that door for training in an automotive-related trade. We will see over 3500 apprentices each year training in that excellent facility. By all accounts this stands the automotive industry in Victoria in good stead for the future.

My colleague Mr Dalla-Riva has been speaking about the manufacturing strategy today in his answers to the questions put to him. One of the key planks was to identify skills development and training opportunities in this industry. The Kangan facility down there at Docklands provides exactly that. I am really pleased that the government is able to support that. It is an $84 million facility down there, the biggest TAFE capital project in Victoria, and the Victorian government has contributed $64 million to it.

The automotive industry has come a long, long way since my dad started his automotive apprenticeship the

best part of 70 years ago. It is a highly sophisticated and skilled industry today. A look at the research facilities that are part of that centre of excellence simply strengthens the argument that this is a highly skilled industry where we need state-of-the-art facilities to train people to meet the needs of Victorians in the future. We have 4.2 million motor vehicles registered in Victoria, and we will be reliant on a very skilled industry to maintain and enhance those vehicles in terms of technological ability.

This centre is a great step forward. I want to congratulate the Kangan Institute of TAFE on its development at Docklands, but I also congratulate the automotive industry generally, because it is the industry that is supporting training and the links between the two. That integration between industry needs and training providers is absolutely vital to get a fit-for-purpose training system that delivers people with the relevant skills for the industry. We have a wonderful example of that with the automotive centre of excellence at Kangan Institute of TAFE's campus at Docklands. I congratulate the institute on it and encourage members to visit it.

QUESTIONS ON NOTICE

Answers

Hon. D. M. DAVIS (Minister for Health) — I have answers to the following questions on notice: 222, 674, 731, 733, 2777, 4062, 4582, 5496–591, 7032–127, 7320–415, 7800–95, 8089, 8140, 8208.

QUESTIONS WITHOUT NOTICE

Answers

Hon. M. P. PAKULA (Western Metropolitan) — President, I seek your guidance as to whether I am able to raise this in debate, but last sitting week I asked the Minister for Planning, Mr Guy, a question without notice which he took on notice and to which he undertook to provide a written response. I am wondering whether I am able to raise that today, and if I am, I would seek the minister's response as to whether that answer is to be provided today.

The PRESIDENT — Order! Is Mr Guy able to provide any assistance with that question?

Hon. M. J. GUY (Minister for Planning) — I will go back and have a look at it again to make sure it is on its way to Mr Pakula. But I suspect that with the answer he is seeking the case is no different from what it was on the seven other occasions when Labor ministers were in the same situation.

PETITIONS

Following petitions presented to house:

Puffing Billy: funding

To the Legislative Council of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the need for an additional $15 million funding to support the Puffing Billy historic rail line.

In particular, we note:

1. It is a popular and iconic tourist attraction, carrying more than 250 000 people each year.

2. The rail line enjoys huge community support with hundreds of volunteers offering their time to support the rail line.

3. Puffing Billy supports hundreds of local jobs, many local businesses and delivers a regional economic benefit of $23 million per year.

The petitioners therefore request that the state government immediately commit the $15 million needed to ensure the rail line's survival.

By Mr SCHEFFER (Eastern Victoria) (1491 signatures).

Laid on table.

Kindergartens: funding

To the Legislative Council of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council:

1. Victoria's current baby boom and the COAG agreement to increase kinder hours for all four-year-olds from 10 to 15 hours will mean that many more kindergarten places will be required; and

2. the Baillieu government's commitment of only $15 million over four years will be unable to provide the necessary expansion of kindergarten facilities.

The petitioners therefore request that the Legislative Council of Victoria urgently call on the Baillieu government to address this funding shortfall and significantly increase the level of funding available to expand Victoria's kindergartens.

By Ms MIKAKOS (Northern Metropolitan) (26 signatures).

Laid on table.

PROTECTING VICTORIA'S VULNERABLE CHILDREN INQUIRY

Report

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development), by leave, presented report.

Laid on table.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Alert Digest No. 2

Mr O'DONOHUE (Eastern Victoria) presented *Alert Digest* No. 2 of 2012, including appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Education and Care Services National Law Act 2010 — Education and Care Services National Regulations pursuant to section 303.

Falls Creek Alpine Resort Management Board — Report for the year ended 31 October 2011.

Interpretation of Legislation Act 1984 — Notice pursuant to section 32(3)(a)(iii) in relation to Statutory Rule Nos. 146, 153 and 154/2011.

Lake Mountain Alpine Resort Management Board — Minister's report of receipt of report for year ended 31 October 2011.

Mount Buller and Mount Stirling Alpine Resort Management Board — Report for the year ended 31 October 2011.

Mount Hotham Alpine Resort Management Board — Report for the year ended 31 October 2011.

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

Ballarat Planning Scheme — Amendment C147.

Banyule Planning Scheme — Amendment C76.

Bass Coast Planning Scheme — Amendment C78 Part 1.

Baw Baw Planning Scheme — Amendment C87.

Boroondara Planning Scheme — Amendments C132, C136 and C144.

Campaspe Planning Scheme — Amendment C89.

Cardinia Planning Scheme — Amendment C153.

Casey Planning Scheme — Amendment C117.

Colac Otway Planning Scheme — Amendments C54 and C58.

Frankston Planning Scheme — Amendments C55 and C75.

Greater Dandenong Planning Scheme — Amendments C116 and C142.

Greater Geelong Planning Scheme — Amendments C216, C230 and C252.

Kingston Planning Scheme — Amendment C114.

Knox Planning Scheme — Amendment C62.

Latrobe Planning Scheme — Amendment C39 (Part 2).

Maribyrnong Planning Scheme — Amendment C110.

Mildura Planning Scheme — Amendment C72.

Mitchell Planning Scheme — Amendment C84.

Moira Planning Scheme — Amendment C64.

Moonee Valley Planning Scheme — Amendment C113.

Moorabool Planning Scheme — Amendments C6 Part 1 and C39.

Moreland Planning Scheme — Amendment C140.

Nillumbik Planning Scheme — Amendments C72 and C74.

Port Phillip Planning Scheme — Amendment C92.

Pyrenees Planning Scheme — Amendment C26.

Stonnington Planning Scheme — Amendments C143 and C147.

Surf Coast Planning Scheme — Amendments C71 (Part 1) and C77.

Wodonga Planning Scheme — Amendments C91 and C92.

Yarra Ranges Planning Scheme — Amendment C99.

Yarriambiack Planning Scheme — Amendment C17.

Statutory Rules under the following Acts of Parliament:

Infringements Act 2006 — No. 3/2012.

Liquor Control Reform Act 1998 — No. 5/2012.

Local Government Act 1989 — No. 4/2012.

Pollution of Waters by Oil and Noxious Substances Act 1986 — No. 7/2012.

Subdivision Act 1988 — No. 111/2011.

Victorian Energy Efficiency Target Act 2007 — No. 6/2012.

Subordinate Legislation Act 1994 —

Documents under section 15 in respect of Statutory Rule Nos. 152, 161 and 162/2011, 3, 4, 6, 7 and 9/2012.

Legislative Instruments and related documents under section 16B in respect of —

Ministerial Order made under the Docklands Act 1991.

Victorian Central Monitoring and Control System Requirements under Gambling Regulation Act 2003.

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

Liquor Control Reform Further Amendment Act 2011 — remaining provisions — 20 February 2012 (*Gazette No. S26, 7 February 2012*).

Serious Sex Offenders (Detention and Supervision) Amendment Act 2011 — 1 March 2012 (*Gazette No. S45, 21 February 2012*).

NOTICES OF MOTION

Notice of motion given.

Mr TEE having given notice of motion:

The PRESIDENT — Order! I will endeavour to establish for my own benefit the substance of the civil proceedings involved with this matter. I will give consideration to that in respect of whether or not there would be an impingement upon those proceedings by this select committee. Based on my advice I will make my opinion available to the chamber tomorrow. I think it will be okay. I understand the member has probably talked to the clerks in drafting this motion.

Mr TEE — I have spoken to them, yes.

The PRESIDENT — Order! Were they aware of the proceedings?

Mr TEE — I am not sure. I would not be able to vouch for that.

The PRESIDENT — Order! I suspect that the matters contained in the motion will not have a material effect on those proceedings, but nevertheless I would like to be confident of that.

Further notices of motion given.

Mr BARBER having given notice of motion:

The PRESIDENT — Order! For the edification of the house, the motion proposed by Mr Barber seeks to extend a bill that will come before the house in a second-reading debate. The process to be adopted is that we will vote on the second reading of that bill and then put Mr Barber's proposition to the test before going into committee.

BUSINESS OF THE HOUSE

General business

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

That precedence be given to the following general business on Wednesday, 29 February 2012:

(1) notice of motion given this day by Mr Tee to revoke amendment C140 to the Moreland planning scheme;

(2) order of the day 21, resumption of debate on the second reading of the Road Safety Amendment (Car Doors) Bill 2012;

(3) notice of motion given this day by Mr Tee relating to the establishment of a select committee into planning decisions in relation to the rezoning of farming land in Ventnor;

(4) notice of motion given this day by Mr Barber relating to the referral of a matter to the Privileges Committee;

(5) order of the day 20, resumption of debate on motion relating to government maladministration; and

(6) notice of motion 254, standing in the name of Ms Pennicuik, to take note of documents relating to the Australian Grand Prix Corporation.

Motion agreed to.

MEMBERS STATEMENTS

Ovarian Cancer Awareness Month

Ms PULFORD (Western Victoria) — Ovarian Cancer Awareness Month is a fantastic initiative of Ovarian Cancer Australia to help inform Australian women about the symptoms and risks of ovarian cancer. In Victoria each year around 340 women are diagnosed and 230 women will lose their lives to ovarian cancer. Ovarian cancer is undetectable using normal diagnostic procedures. This makes the awareness campaign critically important for those women who may not otherwise be aware of the difficulty of detecting the disease. If ovarian cancer is detected in its early stages, then the likelihood of a full recovery is quite high. Every 11 hours a life is lost to

ovarian cancer. Three women are diagnosed every day. I encourage all members to wear a teal ribbon on Teal Ribbon Day tomorrow in support of the campaign to tackle ovarian cancer.

Mark Arbib

Ms PULFORD — On another matter, I would like to pay tribute to Senator Mark Arbib, the federal Minister for Small Business, Minister for Sport and Assistant Treasurer in the Gillard government, on the announcement of his retirement from politics. Senator Arbib is to be commended for two decades of tireless service to the Labor Party and his three and a half years in the commonwealth Parliament. His achievements in homelessness, indigenous employment, promoting apprenticeships and in sport are many. Mark is passionate about overcoming disadvantage and through his work changed many lives for the better. As Australia braced for the impact of the global financial crisis Mark worked with colleagues, travelling the length and breadth of the country, in his own words, 'to turn every school in the country into a building site' to keep Australians in jobs. I wish Mark and his family the very best in their post-politics life.

Brauerander Park, Warrnambool: aquifer storage and recovery scheme

Mr RAMSAY (Western Victoria) — It was with great pleasure that last Friday I accompanied the Minister for Ports, Denis Napthine, the member for South-West Coast in the Assembly, to Brauerander Park in Warrnambool to witness the commissioning of the Brauerander Park Aquifer Storage and Recovery scheme. This scheme is simple in concept but uses challenging technology, and congratulations must go to the Victorian Water Trust and Warrnambool City Council, which were the principal investors in this project.

It is a simple and exciting project which collects stormwater from the roofs and paved areas of Brauer Secondary College to provide for irrigation in the park. The outstanding characteristic of this scheme is the ability to store up to 15 million litres of stormwater annually in underground aquifers below the park and then recover the water as needed to provide for year-round watering of the park. As well as the recycling concept, the carbon footprint is five times lower than using mains water, and it uses a sophisticated pollutant trap and filtering device that holds water in storage tanks before it is fed into the aquifer.

The Minister for Ports and the Minister for Water, Peter Walsh, have both been extremely supportive of many stormwater recycling projects in Western Victoria Region. Rather ironically, the south coast, considered by many to have well-secured water supplies, is leading the charge in water recycling technologies. What is special about this project is that it has been conducted in the schoolgrounds of the college and the students of Brauer Secondary College have been involved in the success of the project.

Nurses and midwives: hardship fund

Ms HARTLAND (Western Metropolitan) — Today I am going to ask members of Parliament who support nurses to put their money where their mouths are. Nurses are having their pay docked and are putting their job security on the line to try to prevent patients' lives being put at risk by the actions of this reckless government. Today I made a donation to the Victorian nurses and midwives hardship fund. I urge all members of Parliament who care about nurses to join me. All donations will go towards the urgent financial needs of nurses and midwives in their hour of need. There is a link where people may make a donation at the top right-hand corner of the Australian Nursing Federation Victorian branch website. Right in the middle of the web page are shown the number of hospital beds this government has closed, the number of beds it promised and the number it will have to deliver to keep its election promises. As always, the nurses are putting patients front and centre.

My colleague Adam Bandt, federal member for Melbourne, has introduced a private members bill which, if passed, will help the nurses. It will give Fair Work Australia the power to help resolve the nurses' dispute and prevent the Victorian government from using this dispute as a tool to alter nurse-patient ratios, which would put patients' lives at risk.

Australia Day: Northern Metropolitan Region

Ms MIKAKOS (Northern Metropolitan) — On 26 January I was pleased to attend a number of Australia Day citizenship ceremonies in the cities of Hume, Darebin and Whittlesea. As part of the ceremony each council honoured local residents and community groups for their outstanding contributions, and I was particularly pleased to see many familiar faces. Darebin resident Brian Cox received a special commendation for his work in the Darebin community. As a recovering alcoholic himself, Brian has made his home available as a shelter for recovering alcoholics for the past 17 years, and I commend his efforts.

The Greek Women's Elderly and Friendly Club was also recognised as Darebin 2012 Community Group of the Year for its longstanding commitment assisting elderly women to be independent and organising social activities. I take this opportunity to congratulate the committee and in particular its president, Penny Zacharias. I also congratulate John Nicolaou, president of the Reservoir Greek Elderly Citizens Group, on his nomination. Ann Anderson was made Darebin citizen of the year for her 15 years of service as a volunteer for the Love in the Name of Christ Church in the northern suburbs. Joint winners Holly Pereira and Alex Smart were awarded Darebin young citizen of the year for their participation and commitment to helping organise drug and alcohol-free music events for all ages in the City of Darebin's FReeZA program.

A number of people involved in the Labor movement were awarded Order of Australia medals, including Mr Joe Caputo for his outstanding contribution to multiculturalism in serving the Italian community, the Victorian Multicultural Commission, local government and the Ethnic Communities Council of Victoria, which he currently chairs. Former Labor minister Caroline Hogg was honoured with a Public Service Medal for her outstanding service to the public. I congratulate all award recipients on their wonderful efforts and continual advocacy in our community.

Carnegie Caulfield Cycling Club

Ms CROZIER (Southern Metropolitan) — The Carnegie Caulfield Cycling Club has a proud history of being the home of world, Olympic, national and state champions. Yesterday I had the great pleasure of attending the Packer Park Velodrome in Carnegie, together with the member for Bentleigh in the other place, Elizabeth Miller, and the mayor of Glen Eira, Jamie Hyams, to hear the Minister for Sport and Recreation, Hugh Delahunty, make a funding announcement of $80 000 that is to be made available through the community facility funding program to assist with funding new lights for the facility, which will enable cyclists to train both day and night. A number of cycling enthusiasts were also present to hear the announcement.

The Carnegie Caulfield Cycling Club has close to 700 members who range from the ages of 8 to 80. The club boasts amongst its members Olympic champion Michael Gallagher and current world champions Shane Perkins and Jack Cummings. Jack, an 18-year-old who has been riding since the age of 13, and his father were in attendance, demonstrating the enthusiasm and pride they have for their sport. The Packer Park Velodrome enables people of all ages and all abilities from the surrounding areas of Oakleigh, Bentleigh, Caulfield and indeed other parts of Melbourne to participate in this ever increasingly popular sport. The Baillieu government recognises the value of local sports facilities, the participation in sport by people of all ages and the enormous benefits such sports facilities bring to their local and surrounding communities.

On a final note, I would like to wish Jack Cummings well in his international endeavours over the coming months, and I look forward to many more cycling champions calling the Carnegie Caulfield Cycling Club their home club.

Police: Geelong and Surf Coast regions

Ms TIERNEY (Western Victoria) — Police in the Geelong region do a marvellous job, but they can do only so much. In 2011 just over half of all offences committed in Geelong and the Surf Coast were committed by young members of our community. More than 80 per cent of thefts from motor cars in Geelong were committed by young members of our community, which is a figure significantly higher than the state average. More than 60 per cent of residential burglaries were committed by people under 24, again well above the state average. These statistics are very much out of kilter with the rest of the state, where the percentage of youth offences is a little over 40 per cent, compared to 50 per cent in the Geelong and Surf Coast regions. These statistics speak for themselves.

The City of Greater Geelong council recently passed a motion to lobby the government on police numbers, and the *Geelong Advertiser*, through articles and editorials, constantly seeks an explanation from the government on this issue. Earlier this month the people of Geelong spoke loud and clear in a *Geelong Advertiser* reader survey, indicating that 27.6 per cent of locals feel less safe than they did 12 months ago and 92.5 per cent firmly believe that we need more police. Yet this government continues to remain silent and has not come in any way close to its election commitment of 70 new police for our region. The people of Geelong and the Surf Coast need to know what needs to be done to get this government to listen and act on police numbers and community policing.

Geelong: Davis Cup

Mr KOCH (Western Victoria) — Along with more than 10 000 supporters, I enjoyed being present at Geelong's recent successful hosting of the Davis Cup tie between Australia and China. It is the first time Tennis Australia has awarded this three-day international tennis tournament to Geelong, and it was a

great tourism winner for the region, directly injecting well over $1 million into the local economy. The rights to host major sporting events like the Davis Cup are keenly sought by cities around Australia. The Geelong Lawn Tennis Club won the right to be the host venue after edging out bids from capital cities Perth and Adelaide and regional Victorian centres Albury-Wodonga and Shepparton. Australia's Davis Cup captain, Pat Rafter, led the winning teams featuring Lleyton Hewitt and Bernard Tomic along with Chris Guccione and Matthew Ebden.

Geelong's success at hosting world-class sport such as the UCI Road World Championships in 2010 played a major part in the city winning the right to host this leg of the most prestigious team event for world tennis. Major support from the Baillieu government and the City of Greater Geelong's major events committee meant that the Davis Cup tie was a big economic boost to the Geelong region, with local businesses benefiting from visitors using accommodation and restaurants and enjoying all that the region has to offer. Congratulations to club president Bob Spurling, all those involved at the Geelong Lawn Tennis Club and the many volunteers who contributed to making this such a successful event for Geelong and Tennis Australia.

Victorian Indigenous Honour Roll: establishment

Mr SCHEFFER (Eastern Victoria) — I commend the publication of the first Victorian Indigenous Honour Roll, which contains tributes to 20 Aboriginal Victorians who have made outstanding contributions to their own communities as well as to Victoria as a whole. It is always important and enriching for a community to take time to recognise and celebrate the achievements and struggles, the sufferings and successes of community leaders past and present. Victorians have a responsibility to more completely understand the role that non-indigenous settlers played in the conquest of Aboriginal people in Victoria since 1835 and the effect this has on Aboriginal people today.

The SBS TV documentary series *First Australians*, as well as the book and the website, has for the first time made the images and voices of Aboriginal Australians past and present available to many people right across the country and has lifted our general understanding. The facts that we, as settlers and settler descendants, need to confront are disturbing. In his recent book *1835*, historian James Boyce says that within 30 years of the founding of Melbourne only about 200 Aboriginal people of the Kulin nation remained and the Aboriginal population across the state fell by at least 80 per cent. For those of us whose prosperity ultimately derives from this injustice, everything should be done to atone for this. Remembering and honouring William Barak, William Cooper, Doug Nicholls, Geraldine Briggs and Archie Roach, for example, is an essential part of this atonement for settler communities and hopefully is a source of pride and celebration for all of us, Aboriginal and settler alike. I think the establishment of the honour roll is a good initiative.

Carbon tax: economic impact

Mr FINN (Western Metropolitan) — After recent blood-letting in the Labor carcass in Canberra, we have been assured that the interests of Australians will now be put before those of the Australian Labor Party. We can only say, 'About time, too'. If the Prime Minister is serious about promoting what is best for Australians, she will introduce into the commonwealth Parliament legislation to repeal her carbon tax. The Gillard-Brown carbon tax does not begin until July but already we are seeing signs of what is to come. Already jobs are being lost as business prepares for this big new tax on everything that will achieve absolutely nothing. Already the working families of Melbourne's west, once so loved by our Prime Minister, are becoming unemployed families. They are already feeling the impact of a tax they did not even know about until after the last election.

If the Prime Minister wants to show the new Julia — or is that mark 2 or perhaps even mark 3? — she should take into consideration the human misery that her government is about to spread across this nation with her carbon dioxide tax. The Prime Minister has been given a second chance. She should now do the same for Australia and scrap this despicable carbon tax. The last thing that Australia needs is another disaster from an already disastrous Labor government. This carbon tax should be turfed in the same direction as Mark Arbib.

Mildura Base Hospital: future

Ms BROAD (Northern Victoria) — The Premier and members of his Liberal-Nationals government need to come clean with the people of Mildura and surrounding districts about the government's intentions for the future of Mildura Base Hospital. Uncertainty surrounding the future of the hospital is causing a great deal of concern for staff and patients and the hospital operator, and the community is fast losing faith in the hospital and the services it provides. The people of Mildura deserve straight answers about how they will be provided with public health services into the future, as is their right.

Mildura Base Hospital is unique in Victoria because when the former Liberal-National coalition government, led by Mr Kennett, established the contracts for the new hospital in 1999 it contracted with the Motor Trades Association of Australia's super fund, which holds a 99-year lease over the site, to build, own and operate the hospital. As a result public health services are provided to the people of Mildura only via a service agreement between the government and the owner, and this agreement is soon to expire, putting a question mark over the private operator and the provision of quality public health services to Mildura and surrounding districts.

Bendigo Health: pathology services

Mr DRUM (Northern Victoria) — I want to make the house aware that yesterday there was an announcement by the Bendigo Health that for the next five years pathology services for the new hospital will be privately sourced through the Healthscope group. This is something that has been on the books since the Labor Party was in government. A review of pathology services started under the previous government's watch.

The first stage of the review took place under the previous government; the last two review stages have taken place under our government. Over the last few months, and prior to the announcement being made, the Labor Party ran a heavy campaign. Jacinta Allan, the member for Bendigo East in the Assembly, started it, and then Maree Edwards, the member for Bendigo West in the Assembly, came along. They said they knew nothing about the review process that took place when the Labor Party was in government. However, they said that the process had to be stopped. We could not afford the job losses, we could not afford the loss of services and we could not afford the diminished services that were to be provided to the people of Bendigo with pathology services being outsourced to private providers.

However, we now have a system that will simply save tens of millions of dollars. We are going to see a system that will have quality assurances that will mean no job losses in Bendigo. Maree Edwards is still complaining. An opposition member is still complaining for the sake of complaining. I think it is time she realised that we in the coalition cannot simply throw money away.

The ACTING PRESIDENT (**Mr Ramsay**) — Time!

Swan Hill Region Food and Wine Festival

Ms DARVENIZA (Northern Victoria) — I alert members to the Swan Hill Region Food and Wine Festival that will be held over the weekend from Friday, 2 March, to Sunday, 4 March. We will be celebrating its second year. It is scheduled to coincide with the Melbourne Food and Wine Festival.

The Swan Hill festival is designed to showcase fine local food and wine products from some 20 exhibitors. It is three days of events, festivities, tastings and food and wine focused happenings all over the town of Swan Hill. The 2012 program includes the official opening of the festival on Friday with a Murray River evening cruise. On Saturday visitors can enjoy food and wine stalls along with music and entertainment at the historical Pioneer Settlement. They can finish up the weekend at the local farmers market on Sunday. I encourage all members to go to Swan Hill for that weekend.

Peter Bilston

Ms DARVENIZA — On another matter, I acknowledge Peter Bilston for initiating the second chance appeal with the support of Numurkah Lions Club. The appeal raised money to purchase portable defibrillator machines which will save lives. Since November 2011, when the appeal was launched, they have raised $20 000 through donations from local businesses, clubs and community members. That was enough to purchase 10 of those machines. The aim is to have the machines at sporting clubs and around town so they can be accessible if there is an emergency. I congratulate Peter Bilston and the Numurkah Lions Club.

The ACTING PRESIDENT (**Mr Ramsay**) — Time!

Our Lady of Lebanon Church: feast day

Mr ELASMAR (Northern Metropolitan) — I rise to speak about a special event I and other parliamentary colleagues attended on 11 February this year. I was proud to be part of a celebration to commemorate the feast day of St Maron, a Maronite Christian, who was born about 1600 years ago. This annual event was organised by the Monsignor Joe Takchi, OAM, under the auspices of Our Lady of Lebanon parish church.

Greek-Australian festival, Northcote

Mr ELASMAR — On another matter, I attended the Greek-Australian festival held in Northcote on Sunday, 12 February. The event was very well

attended, and thankfully the rain held off for the folk dancers who provided the entertainment on the day. The ladies of the Australian and Greek community prepared authentic Greek dishes for everyone to enjoy. I congratulate the organisers on their efforts in bringing together all their families to celebrate their unique festival.

Lalor: book launch

Mr ELASMAR — On another matter, on Monday, 13 February, I attended the launch of *Lalor — the Peter Lalor Home Building Co-operative — 1946–2012* written by Moira Scollay, and hosted by the mayor and councillors of the City of Whittlesea. The launch was accompanied by an exhibition of Peter Lalor memorabilia and photographs of the making of the suburb of Lalor.

ECONOMY AND INFRASTRUCTURE REFERENCES COMMITTEE

Reference

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

That this house —

(1) notes that Australia experiences one of the highest mismatches of expenditure responsibilities and revenue raising capacity (vertical fiscal imbalance) of any federation in the world, which means the states are heavily reliant on commonwealth financial transfers; and

(2) requires the Economy and Infrastructure References Committee to inquire into, consider and report by 30 November 2012 on the level and nature of the following commonwealth recurrent funding —

(i) national partnership payments — time-limited funding that is provided for a specific project, program or reform;

(ii) financial assistance grants to local government — provided through the state to local governments as general purpose revenue;

(iii) commonwealth own-purpose expenditure — payments made by the Australian government in the conduct of its own general government sector activities, including expenses for the purchase of goods and services and associated transfer payments;

(iv) direct outlays — the commonwealth's operations or activities undertaken in Victoria;

and in respect of each —

(a) whether the current share of funding Victoria is receiving is satisfactory relative to its population share and its contribution to the Australian economy, and the extent and nature of changes in that share over time;

(b) whether the adequacy of Victoria's share varies across each of the different areas of government service delivery and economic activity;

(c) if the requirements imposed on funding are reducing the scope for innovation and service delivery efficiencies;

(d) whether the costs of administration and associated reporting under funding agreements are appropriate; and

(e) the future of programs at the expiry of funding agreements.

This is a reference to the Economy and Infrastructure References Committee to inquire into matters related to the level, adequacy and durability of commonwealth funding flowing into Victoria. I commend the motion to the house.

Motion agreed to.

PORT MANAGEMENT AMENDMENT (PORT OF MELBOURNE CORPORATION LICENCE FEE) BILL 2011

Second reading

Debate resumed from 9 February; motion of Hon. D. M. DAVIS (Minister for Health).

Ms PULFORD (Western Victoria) — In making a contribution to the debate on the Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011, I indicate that Labor will be opposing this bill. Mr Pallas, the member for Tarneit in the Assembly, who is the shadow Minister for Ports — —

Mr Lenders — He is a very good spokesman.

Ms PULFORD — He is a very good spokesman. Mr Pallas canvassed these issues in some detail during the debate on the bill in the Legislative Assembly and indicated that the opposition would oppose the bill but would reserve the right to propose an amendment to this bill when considering it in this house.

I will come to the amendment the opposition will propose in a few moments, but this is a bill that seeks to impose a great big new tax, to quote the federal Leader of the Opposition, Tony Abbott. The government has no mandate — —

Mr Lenders interjected.

Ms PULFORD — A great big new tax. The government has no mandate for a new tax, and it is a new tax that this bill seeks to introduce. The government says that this bill replaces Labor's freight infrastructure charge, but the freight infrastructure charge has yet to be enacted, so this is a great big new tax that purports to replace something that is not currently being levied. The charge that the Legislative Council is considering today proposes to levy the Port of Melbourne Corporation $75 million per annum, starting on 1 July this year. The bill also provides for indexation and arrangements around the way this payment will be made, and indeed it does so into perpetuity. Significantly the port licence fee is in addition to the normal dividends paid by the Port of Melbourne Corporation to the state. The port is not obliged to specify what charges will be adjusted and to what extent, and the charges may be regulated by the Essential Services Commission but only on the minister's referral or by an own-motion investigation by the ESC.

Members will recall that in 2009 Labor announced a Victorian transport plan, which was a $38 billion infrastructure plan over 12 years for transport infrastructure. As part of that Labor introduced the notion of a freight infrastructure charge. Around half of the $38 billion investment that was proposed in the Victorian transport plan over that 12-year period was to provide improvements of direct benefit to the freight and logistics industry. It was envisaged that the freight infrastructure charge would raise around $1 billion towards the $38 billion infrastructure program, and much more specifically the freight infrastructure charge was expected to raise $250 million over the four-year forward estimates period. This is relevant, because it is the cover that the government is using to introduce its new tax.

The Liberal Party and The Nationals never liked the freight infrastructure charge, but they never indicated before the election that it was their intention to abandon it. Indeed in September 2011 Minister Napthine, the Minister for Ports, said in answer to a question from Mrs Victoria, the member for Bayswater in the Legislative Assembly:

> Fortunately this government —

referring to the Baillieu-Ryan government —

> got rid of the freight infrastructure charge. We abolished the charge, which would have damaged our port, damaged our reputation and damaged our importers and exporters.

Minister Napthine has got some form in terms of opposing charges for freight movements through our port, even in reasonably recent times. Not very long at all before the state election on 15 November, the now Premier, Mr Baillieu, said that the Baillieu-Ryan government would not introduce any new taxes — he said that there would be no new taxes. Yet here we are only 15 months later and the legislation that we are debating today in this place, which has been proposed by the government, seeks to do just that — to introduce a new tax. I expect government members will tell us that this is a simpler, fairer and more efficient tax, but if they were being consistent with what they were saying before the election, they would simply abandon the freight infrastructure charge and not seek to replace that proposed charge with a new charge.

This is a tax that will impact on every freight movement in and out of the port of Melbourne. The port of Melbourne is a very significant asset for all Victorians. It is of course Australia's largest port, and it has been experiencing significant growth year on year. The port is Australia's largest container port. It accounts for around 36 per cent of Australia's container trade, which is 72 per cent of all the trade through the port. In the statement of compatibility for this bill the minister refers to anticipated significant growth in freight activity over the next 10 to 20 years and an anticipated quadrupling from 2.2 million containers a year to around 8 million in the relatively short period to 2030. I think we would certainly all be in agreement about the importance of the port of Melbourne. Labor developed the channel deepening project to enable our port's continued efficiency, and our Victorian transport plan was certainly very conscious of the importance of productive and efficient freight movements in and out of the port and the role that that infrastructure, together with the port, plays in supporting economic activity throughout the state.

The purpose of this tax stands in stark contrast to the freight infrastructure charge, which was directly related to infrastructure projects. The minister's second-reading speech indicates that this bill is consistent with the government's clear vision to fulfil its long-term objectives. The minister says total revenue raised by the fee will be used to support the delivery of the government's objectives over the first three years, but like all Victorians, members of the opposition are pretty unclear on what the government's objectives are. Indeed there is nothing to be learnt from the minister's second-reading speech about which particular government objectives will be funded with this tax.

This is a tax with no purpose other than to buffer the coffers of the Victorian government. It is a tax on

freight movement, it is a tax on our exporters and our manufacturers, and it is a tax on everybody who buys anything that has been imported. Last time I checked, that was pretty much everyone. This is a significant new charge that will impose a burden without providing any benefits. There is no commensurate infrastructure that will be funded by this money. This is money just to help Mr Wells, the Treasurer, with his budget bottom line.

You may ask who pays.

Mr Lenders — It is a big tax.

Ms PULFORD — Yes, it is a big tax. That is right, and who pays the big tax? The Port of Melbourne Corporation has indicated that it intends to spread the load across the broadest customer base possible and that the charge will be applied to all prices and charges levied by the Port of Melbourne Corporation across all trade sectors. This does sound rather like it is everyone. The Port of Melbourne Corporation has produced a number of papers to assist its stakeholders to understand what the impact of the port licence fee will be on port users. There are a number of information papers for different trade sectors — containers, channel fees, automotive and break-bulk, liquid bulk, dry bulk and cruise shipping.

I will take a moment to provide the house with some information about the fee, and indeed I would urge members who are concerned about this issue to familiarise themselves with the Port of Melbourne Corporation's information sheets about the fee. There are charts and tables that estimate every respect of the impact of the introduction of the port licence fee on channel fees, and those fees are of course only going up.

A preliminary estimate concerning dry bulk goods — and obviously these are estimates — is that the tariff for inward goods of $1.94 per tonne, current as at 1 July 2011, will increase to $2.91 per tonne. The estimated increase for outward goods is from $1.40 to $2.10. The case study provided gives an example of imported cement and estimates that the additional cost would equate to approximately 97 cents per tonne. With respect to exported bulk wheat the increase would be approximately 70 cents per tonne. All our exporters are of course faced on a day-to-day basis with the challenge of the continuing high Australian dollar, and this change is going to be of no assistance to them at all.

The port licence fee information sheet relating to containerised trade also indicates increased charges across the board of around 50 per cent. Again there is a case study: it is estimated that a flat-screen television imported from China — and I am sure many members would have a television in their house that came in through the port from China or elsewhere — would incur an additional cost of approximately — —

Mr Koch interjected.

Ms PULFORD — Yes, Mr Koch; perhaps that would be a greater challenge for us — to find someone who does not have a flat-screen TV on their wall that has been through the port. The additional cost on each and every one of those will be 13 cents. In relation to exported milk powder the increase will be approximately $1.18 per tonne, while the impact on exported containerised wheat will be approximately 84 cents per tonne.

Very tangible examples have been provided for our assistance. I am not sure whose cup of tea cruise shipping is, but I am sure those who cruise out have a lovely time in the South Pacific and other places. In terms of inbound cruise ships there is a great economic benefit for any city that receives a boatload of people cashed up and ready to have a good time. What is again a preliminary estimate from the Port of Melbourne Corporation on the impact on cruise shipping is that there will be an increase of $3500 for an average ship with a capacity of up to 950 passengers. It is estimated that tariff fees for berth hire will increase from $9269 to approximately $13 900 for the first 24 hours, and the charges for additional hours thereafter will increase similarly. Security costs, water supply, gangway hire, traffic management, waste removal and other charges will all increase as well. We certainly want those cashed-up tourists here rather than in other places. It is important that the port be competitive in any number of ways. As a result of my preparation for the debate on this bill I now have a whole new awareness of the costs of running a cruise-shipping operation — the things you learn!

In the area of the liquid bulk trade an example is provided of the impact of the port licence fee on imported solvents. The estimate is that there will be an increase of about $1.03 per kilolitre.

Mr Lenders — Why does Denis Napthine hate business?

Ms PULFORD — I had wondered. Dr Napthine, the Minister for Ports, had so much to say about the freight infrastructure charge, which at least provided significant benefits for the freight industry. This charge will be imposed on all manner of activities and will impact on all manner of businesses, industries and

individuals in Victoria, and all we will get for it is a slightly better-looking bottom line for Mr Wells, the Treasurer. It is all just going into the pot.

Mr Lenders — And a hit to jobs.

Ms PULFORD — It would be nice if that money could be used to promote the kinds of infrastructure that businesses need to make their activities more productive and to support job creation in Victoria through any number of practical means. It would make a nice change from the hands-off approach the Baillieu government has taken to date on job creation.

I will just refer to one more of the Port of Melbourne Corporation information papers on the port licence fee. This relates to the automotive and break-bulk trade. Examples of the impact of this new tax on tariffs relating to motor vehicles and general non-containerised goods are provided in a table. The case study provides the example of an imported medium size motor vehicle, which it is estimated would incur an additional cost of around $11.83. It is estimated that medium size tractors would incur an increase of around $43.70 each. Our understanding of the extent to which this tax will impact on Victoria is limited only by our imaginations; it is going to be everywhere.

The government has said industry and stakeholders support this tax, but I am not sure that is completely true. The Tasmanian government has threatened a constitutional challenge. Its members are concerned about the impact of this tax on jobs and about the constraint on trade between states. Their concern is that that may be contrary to the Australian constitution. The Baillieu government — —

Mr Drum interjected.

Ms PULFORD — Are you rubbishing the Tasmanian government, Mr Drum? I hope not! That does not sound very nice.

The Baillieu government tells a good story about the support from industry for this tax. However, Shipping Australia's Ken Fitzpatrick was quoted in the *Australian Financial Review* earlier this month as saying the fee was a 'severe imposition' that could be the 'nail in the coffin' for the struggling industry and that 'everyone along the supply chain will suffer'. That does not sound to me much like an endorsement from industry. The chief executive of Shipping Australia, Llew Russell, told the *Weekly Times*:

> Melbourne is now likely to become the highest cost port in Australia, which will rank it among the dearest in the world …

He went on to say:

> What is worse, with this tax there is no incentive to increase productivity. Farmers will be among the hardest hit.

Ann Sherry, from cruise operator Carnival Australia — there you go, more for me to learn about the cruise shipping industry — indicates, as members will appreciate, that any increase in port charges will have an impact on cruise operators. That is of course a deterrent for those visiting Melbourne, which we know has a great deal to offer visitors. Government members will probably jump up shortly to tell us how this tax is supported by stakeholders and supported by industry, but do not believe it.

The government is asking the Parliament this week to impose this tax without a number of important things having occurred. The government has not made clear the impact of this tax on employment. The government has not made clear the impact of this new charge on rail freight at a time when the government needs to be supporting rail freight both to reduce congestion in and around Melbourne and also for the obvious environmental benefits in having increased freight movements on rail. The government has again rushed in here, ill prepared, with this cash-grab proposal. What we know is that everything is going to have an additional cost, yet the government has nothing to say about the benefits of this tax. It is reminiscent of that scene in *The Castle* where they talk about the vibe. It is really about the vibe of the government's agenda — that is, the $75 million a year that would be good for the government's plans, whatever they are.

Labor's freight infrastructure charge was denigrated by the Liberals and The Nationals as an imposition on exporters, transport operators, jobs and the wider economy. The best we have heard about this new tax — which is completely contradictory to the government's promise made not 10 days before the 2010 state election that there would be no new tax — and the best that Dr Napthine can come up with is that this tax is consistent with the long-term objectives of the government. Like all other Victorians, we wonder what those objectives are.

I take a moment to indicate to the house that I will be moving an amendment. We would like to constructively suggest that there are a number of ways in which this bill could be made more workable. Our amendment is consistent with our desire to create greater transparency around this charge, to have clearer

arrangements for over-recovery, to establish a better mechanism for review by the Essential Services Commission and, in keeping with the government's concern about the need to replace the freight infrastructure charge for the forward estimates period, to sunset this bill in 2016 so that this is not a tax on all Victorians for all time. I ask that the amendment standing in my name be circulated.

Opposition amendment circulated by Ms PULFORD (Western Victoria) pursuant to standing orders.

Ms PULFORD — I will formally move the amendment at a later stage, but I will briefly speak to its purpose while I am on my feet. One of the opposition's concerns is around the lack of transparency and direction in relation to the way the Port of Melbourne Corporation is to raise the money to pay the licence fee. We are concerned about the lack of oversight of the impact of the bill and suggest that there be an express requirement in the legislation that the Essential Services Commission review the Port of Melbourne Corporation's charging schedule with reference to the licence fee each financial year. We believe this review should verify that the port has raised charging levels only to the extent required to cover the cost of the licence fee and no further. The Essential Services Commission has a discretionary power to perform this review, but we seek that it be a statutory requirement.

Our amendment also proposes the addition of an obligation on the port or the minister to gazette all charges on an annual basis for the port licence fee and to identify the amounts of the charges. This amendment improves the transparency around the raising of the fee.

The third purpose of our amendment is to deal with concerns we have about over recovery of the charge. This is based on the way the port has outlined it will be raising this revenue. Our concerns are about windfall revenue raising and certainty for those who have to pay. We believe a mechanism to deal with over recovery will provide for greater planning capacity and certainty, because without some improvements to the operation of the legislation in this respect we believe there will be considerable variation year on year with this charge and that is an unfair imposition in addition to the great big new tax. We are proposing that the port must identify any level of over recovery that occurs and return the same to port users who have been overcharged or that the port should be required to under recover in the following year to balance it.

Finally, as I indicated earlier, our amendment seeks to sunset this tax after four years. The government has indicated that it is necessary to replace the revenue that was anticipated in the forward estimates for the freight infrastructure charge in order for the government to meet its objectives, woolly as they are. The freight infrastructure charge was projected only into the financial year 2015–16, and by contrast this port licence fee is a tax for all time. We believe a sunset clause needs to be inserted so that it is consistent with the government's own stated objective to recover the revenue it had anticipated in spite of its longstanding objections to the freight infrastructure charge.

The final item dealt with by our amendment is that the Port of Melbourne Corporation should be required to include a review note in its annual report to identify port licence fees. This single amendment, as members may have seen now that it has been circulated, seeks to add new clauses that follow clause 5. This is a very short bill, as members would be aware, but we believe our amendment, if supported, would create greater transparency around the amounts, around how to deal with over-recovery — which we are concerned is a very real risk — around the way in which the Essential Services Commission review would occur and around a sunset that is consistent with the government's own rhetoric about the need to fill the gap left by its objections to the freight infrastructure charge. I urge all government members to accept our amendment to this legislation, and I look forward to making further comments in the committee of the whole.

Mr DRUM (Northern Victoria) — It gives me great pleasure to stand to contribute to the debate on the Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011. It is certainly a great credit to the Minister for Ports, Dr Napthine, that he has been able to bring about these changes to the management of the port. It is something that was high on his agenda when he became the minister, because we all know how unpopular the previous government's freight infrastructure charge was and how it was received by the various stakeholders and users of the port. It is a number of years since the previous government announced it was going to start imposing that new fee, which would in effect have been a trucking tax.

We saw the system by which the previous government would have put the freight infrastructure charge in place. The charge was factored into the previous government's budget forecasts, starting from this year through to 2015. The amount of money the previous government had factored in is the same as the amount we have factored in under the new licence fee agreement we have orchestrated with the Port of Melbourne Corporation.

Jaala Pulford had the job of leading the batting for the opposition. She started by talking about how the previous government had a $38 billion transport plan, which all of a sudden led to a link that the money the previous government was going to pick up from the freight infrastructure charge was somehow or other going to fund the transport plan. That was not the case. There was never going to be any hypothecation of funds from the freight infrastructure charge for the transport plan.

Ms Pulford — Yes, there was.

Mr DRUM — No, there was not. If Ms Pulford can produce evidence of that, we would like to see it. Ms Pulford is telling me that is the case, so maybe she can produce for the house where under the previous government's arrangement money was going to be hypothecated and spent on the great transport plan.

The transport plan was simply a plan devised over a couple too many bottles of red wine at someone's place one night. It was never funded. It was always just this great plan in which the previous government threw every idea it could possibly think of into the melting pot. Whenever anybody came up with a good idea about transport movements around Melbourne the Labor Party would say, 'Yes, that is in the plan, and we will fund it whenever we can'. Ms Pulford has said that the previous government's freight infrastructure charge, which was a trucking tax, was somehow or other going to be hypothecated to the transport plan, but that is certainly not how it was sold to the Victorian public.

Another one of the previous government's ideas about the freight infrastructure charge was that it was going to impact on trucking behaviour — in effect it was going to take trucking out of the peak hours and put it into the evening. If Ms Pulford had done the homework that she says she has, she would realise that the vast majority of the heavy transports around the port at the moment are already working in those hours. Of the other movements which could be classified as discretionary, only a very small proportion of operators are going to have the ability to alter their demand timetables. If there is a demand for certain goods to be delivered to a warehouse in Melbourne or to rural and regional Victoria and those goods have to be delivered at a certain time, then the trucking companies and the transport operators are going to have no option other than to pick up that container and deliver it to where the demand is at the time that the client wants that container delivered. The idea of discretionary options where the old freight infrastructure charge was going to be able to impact on trucking movements and put more freight onto rail does not stack up when the infrastructure for those movements simply does not exist.

The previous government's charge was simply going to be a freight infrastructure charge, not a freight loading charge. We must be careful with that. It was shown that the opportunity the previous government hoped to engender would not have been able to be realised. The freight infrastructure charge was going to put more pressure on already stressed and fatigued drivers, put more financial pressure on many family-owned small transport operators and create real pressure on jobs. The government's changes will alleviate that pressure. Minister Napthine's changes are going to be welcomed; they are a gigantic shift.

In her contribution Ms Pulford said government members are going to get up and say that they think they have come up with a simpler, fairer and more efficient model. The reason we are going to say that is everyone else is saying it as well. If all the stakeholders — whether they be the Victorian Employers Chamber of Commerce and Industry, the Port of Melbourne Corporation, the Victorian Farmers Federation or the Victorian Transport Association — are telling us we have it right and we have come up with a simpler, fairer and more efficient model, then it is only right that we as members of Parliament who have to live and die by the decisions we make also get up and acknowledge that it looks like the minister and his team have put together a simpler, fairer and more efficient model.

Ms Pulford said we might also say that we have broad stakeholder support. We would say that, because we have had glowing endorsements from the main stakeholders who use the port on a regular basis — whether that be the transport operators, the main dairy industry or the Victorian Farmers Federation. We know that the port is the biggest container port in Australia and that it is experiencing 6 per cent growth per annum, and we know that dairy products, which are important to rural and regional Victoria, make up more than 70 per cent of what goes out through the port. We know the wealth that is created by the dairy industry goes back into rural and regional Victoria and enables that part of our state to prosper in reasonable years — and the last couple of years have been reasonable years. It is phenomenal to see farmers in those regions generating incomes of $300 000, $400 000 and $500 000 from that industry, and we need to support them. This bill will make these improvements by providing for the charges to create the infrastructure we need to further support industries like our dairy industry. It will be absolutely crucial, and that is what we have to acknowledge.

The bill is primarily about protecting, saving and creating new jobs around Victoria. Sometimes we do not look far enough down the supply chain to see where the impacts of the changes and decisions that we make are felt. If you look at how this plan is coming together and at the endorsements we have received from the Victorian Farmers Federation, the Victorian Transport Association, the Victorian Employers Chamber of Commerce and Industry and the port, you can see that maybe the Victorian government has got this one about right. No-one likes to see new charges. However, we have in effect taken a very unfair and complicated system, a system that would have simply targeted trucking container movements and not spread the cost across the entire sector, and created a system that will be considerably more broad in the way it reaches port users.

In relation to the amendment Ms Pulford proposes, which in effect would mean that we need to involve the Essential Services Commission in the oversight of the collection, I say that the ESC is already involved. The moneys that will be raised from the port and paid to the Victorian government will be published in the annual report of the Port of Melbourne Corporation each year, and that fee will be published by the Minister for Ports in the *Government Gazette* each year. What those fees are and whether or not they will exceed cost recovery, operational costs, or whatever, will be very clear. It needs to be acknowledged, and Ms Pulford may have simply forgotten this, that the Essential Services Commission will retain the power to investigate industry complaints about unreasonable pricing. If the industry reasonably believes that pricing in relation to the new licence fee is excessive, the ESC will have the power to investigate.

As to the main aspects of openness and accountability and ensuring that everybody knows exactly how much money is being charged, if there is any overcharging, that will be there for everybody to see. If, all of a sudden, growth means that substantially more than what was budgeted for will be collected without substantial additional costs being incurred, the mechanism is already there for such queries to be investigated.

I support the minister for introducing these changes about which the major players in the port of Melbourne have stepped forward and been so glowing in their endorsements. This is a tough area. No-one likes to see any charges levied against our primary producers, transport industry or those people who rely heavily on imports and exports and trade and traffic movements through the port. However, we all understand that to keep our ports up to a certain standard there needs to be investment in infrastructure and the appropriate mechanisms put in place.

Another thing that needs to be mentioned about the ports in this city and around this nation is that we have expensive ports. The port movements around all Australian ports are expensive by world standards, but no-one wants to understand why.

Ms Pennicuik — Compared with where?

Mr DRUM — Compared with America, South America, China, Asia and all the developed countries and the underdeveloped countries, our ports are expensive to operate. That is something we have to understand. Is Ms Pennicuik asking the people who work on the wharves to work for lesser wages?

Ms Pennicuik — I am absolutely not.

Mr DRUM — No, you would not want to do that, would you?

Ms Pennicuik — You are implying that.

Mr DRUM — We need to understand that, yes, Australian ports are operating at an expensive level and at the high end of all the ports around the world, and considerably higher than our American counterparts. That impacts on our ability to land our produce in overseas ports as we fight exceptionally hard for market share.

Again I congratulate Minister Napthine on bringing this change into the Parliament. It will have a sustained benefit for all Victoria. Hopefully the bill will get broad support from opposition quarters and will have a speedy passage through the house.

Ms PENNICUIK (Southern Metropolitan) — I am pleased to make some remarks today on the Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011. This is a small bill which essentially sets up a fee that is to be charged by the government to the Port of Melbourne Corporation. It will be set at $75 million in the next financial year and will be increased annually according to the consumer price index. The formula for that is included in new section 44J which is inserted by the bill.

From thinking about and researching this bill, the question I ask is: what is the purpose of the bill and is it fair — in particular, is it fair and reasonable in comparison to, for example, what happens in other comparable Australian ports? I agree with Mr Drum: you need money to upgrade ports and the infrastructure surrounding ports. In order to keep the ports going, all

the ports around Australia collect charges — wharfage charges, pilotage charges, stevedoring charges and other charges, which I will outline shortly. Everybody who uses a port is charged in a certain way for that usage. That money keeps the ports going and provides for improvements to port infrastructure and safety.

The question is: is this a fair and reasonable way to go? Before I compare what happens in other Australian ports it is worth saying that the government is fairly vague, to say the least, about what will be done with the port infrastructure charge. Basically it says in the second-reading speech that it will be 'available for infrastructure projects which improve Victoria's productivity'. We have already had discussions today about what productivity may or may not be. That is a vague claim because it does not list the infrastructure charges that the licence fee will be applied to. The second-reading speech goes on to say:

> This bill is consistent with the government's clear vision to fulfil its long-term objectives.

I do not know what its long-term objectives are with regard to this particular licence fee. It goes on to say:

> … the port licence fee will make a significant contribution to the government's commitment to deliver on this vision.

The phrase 'this vision' implies that a vision has been spoken of beforehand. But no vision is actually mentioned anywhere in this second-reading speech — or anywhere else that I can find — with regard to the government's long-term objectives regarding port infrastructure. What we do hear is that the government has plans, as did the previous government, to develop the port of Hastings, which certainly the Greens are concerned about, and we have put that on record. We do not want to see the port of Hastings developed; we certainly have not seen any evidence that that is needed.

But even if that were the case, there would be two simple objections. The port of Hastings has its own development authority. You would think that charges on the Port of Melbourne Corporation should not have anything to do with any development at the port of Hastings and that any charge on the Port of Melbourne Corporation should be used for infrastructure at the port of Melbourne or to do with the port of Melbourne, in particular the movement of freight to and from the port of Melbourne.

My colleague Ms Hartland will be talking later in the debate on this bill about that very issue, but let me foreshadow that by saying that the biggest issue surrounding the port of Melbourne at the moment is the movement of freight on trucks to and from the port of Melbourne. I do not think there is anybody in this place who does not understand that that is a huge issue. In some ways you could say that the freight infrastructure charge that was proposed by the previous government would have been a good use of the money if it had been directed towards getting freight onto rail, off trucks and out of people's suburban streets, which is the problem at the moment — notwithstanding that there was some criticism about the implementation of that charge and the amount of capital investment that was going to be required to actually implement it.

In some ways you could say that all ports raise money and governments raise money from their ports in different ways. Interestingly, this is a $75 million charge, or licence fee, on the port of Melbourne every year, increasing by the CPI — a small percentage — every year. It is interesting to note that if the charge, which is around $75 million, were to go up a little over each of the next 10 years, at the end of that 10 years we would have $800 million. That is not a huge amount of money to invest in infrastructure that time — and it certainly would not go anywhere near what is required to develop a port from scratch, say, at Hastings — but it would be a very significant contribution to relieving the problem of truck freight through the suburbs surrounding the port of Melbourne and moving freight onto rail, which has been talked about a lot. Under the previous government the amount of freight on rail went backwards, and there is no indication that that situation is changing under this government.

I was very interested to find out what happens in Australia's other main ports, so I asked the parliamentary library to have a look at that issue for me. I thank Adam Delacorn and Kristin Richardson for the brief they put together for me, and I am happy to make it available to other members if they would like to look at it. It is only seven pages long, and it is very interesting reading. It says that it is important to recognise that port authorities across jurisdictions do not use a common classification for port charges, thus it is difficult to ascertain whether a charge in one jurisdiction exists in another jurisdiction by an alternative name.

The three ports I asked the library to look at were the ports of Sydney, Brisbane and Fremantle, which are the other major capital city ports in Australia, and I will go through those in a moment.

In addition the library brief tells me that there are direct infrastructure charges and indirect revenue streams which may be used to fund infrastructure or other government programs. These are similar across all ports and the terms used include wharfage, port access

charges, conservancy, port dues and other items. Some charges are payable to the port authority, while others are payable to the minister or some other relevant authority. Again it varies between each jurisdiction. There are also commonwealth charges that apply across jurisdictions for navigational and infrastructure maintenance, and for shipping safety.

This bill requires the Port of Melbourne Corporation to pay an annual fee to the state, starting at $75 million. According to the minister the port will be able to recover the fee through its normal system of fees and charges, which the industry already works with. Revenue from the fee will support the delivery of the government's objectives over the first three years. The minister also says that it will be a similar amount to the proposed freight infrastructure charge. You could say that we are talking about one charge that could have been imposed, the freight infrastructure charge, and another, different, way for the government to collect money, the licence fee, which is before the house now.

Interestingly the information on the port of Sydney says that section 14(1) of the Ports and Maritime Administration Act 1995 states:

> An operating licence is to make provision for the payment to the Minister by the Port Corporation of a periodic licence fee.

The licence fee, paid annually, is a nominal amount, which is not specified in the legislation but rather determined by the minister. The fee is not specifically infrastructure related.

The schedule of port charges for Sydney harbour and Botany Bay include a navigation service charge, a pilotage services charge and a combined wharfage charge and PCAC (port cargo access charge). Importantly this charge applies to imports and exports and is remitted to the New South Wales government. There is also a site occupation charge. The combined wharfage and PCAC charge is remitted directly to the government, so it could be seen as similar to a licence fee. The port of Sydney also pays a licence fee.

In Queensland there is no legislative provision that requires the port of Brisbane to pay a licence fee to the state government. However, when the port was privatised the contract of sale specified that the port was to pay an annual fee of $10 000 to the state. That fee is not specifically infrastructure related. You would have to say that $10 000 would not get you very far in terms of infrastructure.

However, the port of Brisbane also attracts a range of charges — for example, a wharfage charge, harbour dues, a port security charge and conservancy dues — which are payable to the Queensland state government. Maritime Safety Queensland, a division of the Department of Transport and Main Roads, administers the allocation of capital funds from conservancy to assist primarily in the management of commercial trading ships. According to Maritime Safety Queensland the source of this funding is the application of conservancy dues on commercial vessels in Queensland ports, which is then channelled into specific and appropriate projects. We did have conservancy dues in Victoria, but they were abolished. Queensland pilotage fees are also payable to the Queensland state government for arrival, departure and removal of ships.

In 2011 the port of Brisbane introduced a port access charge (PAC) to assist in the recovery of costs associated with the maintenance and upgrade of the Port of Brisbane Motorway for the next 30 years. The PAC is a commodity-based charge levied per unit of cargo for cargoes that are imported or exported over Fisherman Island wharves. This means that the levy applies to customers using the port's road infrastructure rather than cargo that is, for example, distributed from the port by rail. In some ways you could say this is similar to the port infrastructure charge that the previous government had in mind.

Interestingly in Western Australia section 82 of the Port Authorities Act 1999 provides that a port authority is to pay the Treasurer the sum of all local government rates and charges that the authority is liable for in any financial year, and section 83 provides that the port authority is to pay the Treasurer a dividend each financial year, just as the port of Melbourne pays the Treasurer of the state of Victoria a dividend each financial year. In so far as infrastructure charges are concerned, port authorities in Western Australia fund their infrastructure projects through borrowing. Port authority ports in Western Australia operate as government trading enterprises with the power to determine which charges are applicable. The only fees that are legislated for are licences and pilotage fees.

Having looked at those three main capital cities and their ports, it is obvious that one way or another, whether it is called a licence fee, a dividend or other fees and duties, each of those ports pays some money to the state government, or the state governments extract money out of those ports. These funds are used for various projects across those states. For example, the government may impose an infrastructure levy to cover the cost of road and supply line infrastructure or charge conservancy dues when a ship enters a state port. Conservancy dues may be used by the state government to pay for services such as the provision of lights,

beacons and other navigational facilities. Conservancy dues have been abolished in Victoria but remain in Brisbane. Government charges are generally covered by the relevant port authorities through their existing fee regimes, which is the case with this particular bill. The port of Melbourne has highlighted in several papers how the new licence fee will be absorbed and distributed through its existing fees. As I mentioned, in Queensland the port access charge is applied to recover costs for infrastructure.

In summary, several revenue streams are used by port authorities to cover costs and government charges. When you look into that, it is really a matter of one way of the port collecting money for the government versus another. As Ms Pulford said, the licence fee will be in addition to the dividend the Port of Melbourne Corporation pays to the government every year. Last financial year it was $13.37 million. In the previous financial year it was about $67 million. That, as I can ascertain, is because the port was still paying off part of the channel deepening bill — probably the cost of the dreaded dredger, the *Queen of the Netherlands*.

I digress to mention that dredging has again commenced in Port Phillip Bay. It is only a couple of years since dredging was finished and we were told that we would not need any more than 'maintenance dredging'. We have had so much shoaling in the south of the bay — that is, sand being moved into the channel, making the channel shallow — that a significant amount of new dredging has had to commence in the bay. I presume this will be at extra cost to the port that has not been foreseen.

Also the dredger in the bay, the *Brisbane*, has been involved in the controversial dredging of the port of Gladstone, which caused the dredging up of toxic materials. One of the other concerns was with regard to marine pests. I am hoping the particular ship was hosed down and any toxic or marine pest residues were removed before it was allowed into Port Phillip Bay. That is an issue that I will be following up.

In summary you would have to say, in terms of a government getting some money out of a port, there is nothing very spectacular about this port licence fee, particularly if you look at it in comparison to the other major capital city ports. What is interesting, as I said, is that the government has not said what it is going to do with the revenue. It does not talk about the main issues — getting trucks off the road to reduce traffic and getting freight onto rail. It does not mention anything about its plans for Webb Dock either.

Interestingly the Tasmanian government has foreshadowed a possible legal challenge over the port licence fee based on the fact that — and I am referring to an article in the *Age* of 20 February regarding this issue — it has no choice but to use the port of Melbourne. The Tasmanian government maintains that this is discriminatory. It is an interesting issue that is going to play out. Mr Rich-Phillips is rolling his eyes, and I know Mr Drum indicated in his comments that somehow the opposition had urged the Tasmanian government to make this complaint.

Mr Scheffer — Orchestrated it!

Ms PENNICUIK — Yes, orchestrated it. Thank you, Mr Scheffer. I think the Tasmanian government has made these claims and its concerns widely known of its own volition. It will be interesting to see what happens with regard to that particular issue.

Obviously some ship owners and other people are not in favour of the tax — I should not call it a tax but rather a licence fee — and they were not necessarily in favour of the former proposed fee either. But the fact remains that the charging of fees is a fairly common occurrence across ports in Australia. It is also interesting that the licence fee may impact on the ability of the Port of Melbourne Corporation to recoup the money it is supposed to be recouping through the channel deepening project charge that it has imposed on all shipping.

At the same time that the government is dealing with moving freight onto rail it could be looking at investigating the closing down of the Office of the Environmental Monitor, which is supposedly monitoring any environmental damage done to Port Phillip Bay by the channel deepening project. We know there has certainly been significant change to the direction and strength of currents and to the tidal surges in the southern part of the bay. I have been several times to look at Portsea beach, for example. If people have known that beach over the years, as I have, they will have noticed a swell at that beach and some adjoining beaches that you only see at ocean beaches like those on the other side of the Mornington Peninsula, such as Rye and Portsea back beaches. Those swells are now being seen at the Portsea front beach inside Port Phillip Bay.

These are significant changes that have only been seen since the channel deepening project was completed and since 5 metres of rock was removed from Port Phillip Heads. As far as we know, ongoing damage is being done at that entrance by rock being swirled around by the changes in strength and direction of the currents.

This will be going in perpetuity and will cause a lot of damage by way of erosion in the southern part of Port Phillip Bay. There is also the toxic dump off the coast between Mordialloc and Werribee that is not being monitored and contains the toxic sludge that was dredged out of the Yarra River and dumped there years ago. It would be good to see some of this licence fee going towards investigating these issues, which the previous government and the current government seem to have very little, if any, interest in.

The Greens are disposed to support the amendment that were circulated by Ms Pulford. Although there is actually only one amendment, it goes to several issues. Those issues relate to making the collection and use of the licence fee more transparent and to the involvement of the Essential Services Commission. I understand that the Essential Services Commission can get involved, oversee port charges and launch an investigation on its own motion, but I spoke to my colleague Mr Barber about this bill earlier, and he reminded me that clause 5 of the Transport Legislation Amendment (Marine Safety and Other Amendments) Act 2011, which was called the boating bill, took away the ability of the Essential Services Commission to be a mediator with regard to pricing and monitoring. The Essential Services Commission did have a charge-monitoring role prior to that act, and it could have been a mediator of last resort, but under clause 5 of that act that option was removed. I remind the opposition that it supported that clause and the Greens did not; the Greens opposed it. This amendment goes some way to reversing the effects of that clause.

The amendment also imposes a sunset clause. We are generally positively disposed towards sunset clauses in bills, because they mean that a provision, such as a licence fee or new provision in a sentencing regime or other bill, can be reviewed to see whether it is appropriate or needs future amendment. We will be supporting the opposition's amendment.

Lastly, I will be moving at the end of the second-reading debate that this bill be referred to the Economy and Infrastructure Legislation Committee for inquiry, consideration and report by 29 March this year, because the bill raises issues in terms of what some stakeholders have said about its fairness. I have covered that issue because it is fairly comparable with what happens in other ports. However, the legal challenge by the Tasmanian government is an issue this house should be looking at and gathering evidence about before it agrees to pass the bill.

Mr SCHEFFER (Eastern Victoria) — The house has already been advised that the opposition will not be supporting the Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011 on the basis that we believe the government has no mandate to impose a heavy, additional impost on every user of the port of Melbourne. The imposition of a Port of Melbourne Corporation licence fee was not an election commitment made by the Victorian coalition at the 2010 election. Ms Pulford has already gone through the bill in considerable detail. I will briefly underline some of the points the opposition believes underpin its case for not supporting the proposed legislation, and I will review some of the steps that brought us to where we are today.

Back in April last year, a few weeks ahead of the coalition government's first budget, the Premier promised Victorians that they would not be hit by any new taxes. Premier Baillieu said the coalition would honour the commitments his party and his government had made. Labor's shadow Minister for Ports, Tim Pallas, the member for Tarneit in the Assembly, has pointed out that on 17 November 2010 the Premier clearly told the Liberal Party faithful that there would be 'no new taxes, no job losses and no reduction in services'. In introducing this bill, which will require the Port of Melbourne Corporation to pay a licence fee, the government has broken another promise, because clearly it is a new tax, and this is why the opposition will not be supporting it.

Members will remember, and Ms Pulford mentioned this in her contribution as well, that the coalition opposed the then Labor government's freight infrastructure charge (FIC) that was intended to raise about $1 billion over 10 years and contribute to the $38 billion Victorian transport plan — and for the life of me I do not know where Mr Drum gets the idea that that was never a commitment. The fact is there were varying views on the merits of Labor's legislation, but the then coalition opposition enthusiastically supported the Victorian Farmers Federation and the Victorian Employers Chamber of Commerce and Industry in their criticisms of the freight infrastructure charge. Yet after its election to government, around the time of the May budget, it became very clear that the Baillieu government had decided to keep some sort of tax on port of Melbourne shipping container imports and exports. We know this because the Treasurer indicated at the time that the revenue from Labor's freight infrastructure charge had already been factored into the 2011 budget.

At the time, business interests — farmers and transport companies — who opposed Labor's freight infrastructure charge were nervous that the coalition government, struggling with its budget, would not scrap

the tax after all and that its years of lobbying would be fruitless. Around that time of uncertainty Tim Pallas warned those interests opposed to Labor's freight infrastructure charge that the coalition's opposition to the FIC was no guarantee that it would not shamelessly do a backflip and keep the tax. Then in July last year, to the applause and relief of, for example, the Victorian Transport Association (VTA), The Minister for Ports, Minister Napthine, said the FIC would in fact be scrapped.

As I indicated earlier, the Victorian Transport Association lobbied hard over some years to overturn Labor's plan because transport operators, whom the VTA represents, thought the freight infrastructure charge put too much of a burden on truck operators. Of course one of the outcomes of Labor's freight infrastructure charge was a lessening of truck freight congestion. Ms Pennicuik has already made some mention of that, and I think that point will be further picked up by Ms Hartland in this debate. The VTA acknowledged that the coalition government would still need to pick up revenue from port users, because it was needed for port infrastructure investment, but through increased wharfage and other pricing mechanisms levied on containers and cargo interests. The VTA was okay with that because the $140 to $180 levy on trucks would disappear and be replaced with a tax across the board on everybody and anybody who used the port.

Labor, in government and now in opposition, fully recognises the need for serious investment in the port of Melbourne so as to avoid it becoming a bottleneck. The estimated increase in growth at the port of Melbourne is dramatic and has already been referred to in other contributions — with container numbers rising from 1.9 million to 2.71 million by 2015. Contrary to this bill, Labor's freight infrastructure charge was clearly earmarked for investment in upgrading the port to ease congestion.

As we have heard, this bill imposes an annual licence fee on the Port of Melbourne Corporation that for the financial year commencing in July will amount to $75 million and thereafter be on the basis of an indexation formula. This impost adds 50 per cent to the state charges that the port of Melbourne already makes and is projected to raise hundreds of millions of dollars into the future. The impost will be on top of an approximately a wharfage charge of approximately $40 on containers. A $30 charge from the revenue goes to paying for the channel deepening project. Now that the coalition is actually in government it has not jettisoned the tax, as it signalled it would when it was in opposition, but rather it has introduced a bill that will impose an open-ended, unhypothecated levy on all users of the port.

The bill and the minister's second-reading speech do not identify the specific charges that will be imposed, when they are listed or the impact they will have on the shipping industry, the stevedores or the trucking industry. Ms Pennicuik unpacked the detail of that in her contribution. The bill does not even require the Port of Melbourne Corporation to state how the charges will be applied. It simply requires the Port of Melbourne Corporation to provide the state with $75 million in the first financial year that act will operate and hundreds of millions thereafter. The Port of Melbourne Corporation will pass on the entire licence fee to port users; it will in effect act as a tax collector for the Baillieu government.

As I said, it is an extraordinary thing that neither the bill nor the minister's second-reading speech has anything at all to say on the effect this new tax will have on the many industries that participate in the services provided and the functions performed at the port of Melbourne. As far as I can see, in the bill and in the minister's second-reading speech there is no indication whatsoever of the purposes of the new impost or of how the impost will benefit Victoria's freight-handling capacity or the functioning of the industry.

Both the legislation and the second-reading speech are silent on whether the impost in whole or in part will be used to improve infrastructure. Minister Napthine has said, as distinct from including it in the legislation, that the revenue raised through this licence fee or tax will go into consolidated revenue and to unspecified long-term objectives that the government was committed to — for example, the development of the port of Hastings, the implication being that the funds raised will make a contribution to this development, but none of that is in the legislation.

The Victorian Farmers Federation has been very clear in stating that its members expect that the money raised through the licence fee would be allocated to upgrading the port of Melbourne, but the government, notwithstanding Minister Napthine's allusion that I have referred to, has not directly given this commitment. I suspect that this is also simply a revenue raiser to shore up the government's budget problems.

While the impost has been described by the government and some of its fellow travellers as a good thing — I think Mr Drum used the term 'glowing' — the increase in the already existing fees and charges will still come at a cost. As far as I could understand him, Mr Drum in his contribution wanted to say that somehow the licence fee is universally beneficial and

will not harm anyone, but the arithmetic tells us that this will hurt. You do not pull hundreds of millions of dollars out of the port system without someone feeling it.

Plainly, amongst those affected will be Victorian farmers, manufacturers and consumers. The prices of imported cars, tractors and TV sets as well as cruise shipping are set to rise. In her contribution to the debate Ms Pulford set out the details of how the impost will increase the cost of imported items. Wheat exporters will be asked to pay more at a time when they are up against the adverse effects of the high Australian dollar, which is putting a lot of pressures on businesses in Australia.

There were fulsome indications from Mr Drum on behalf of the government that these particular measures are very strongly supported by business. Ms Pulford alluded to the following points, and they are worth repeating. Last week the chair of Shipping Australia, Ken Fitzpatrick, said the 50 per cent fee hike in port wharfage charges might end up being a nail in the coffin of the shipping industry at a time when it is already confronting the high Australian dollar, which I have referred to. As others have also pointed out, we know the Tasmanian government has written to Minister Napthine saying that the licence fee will cost Tasmanian jobs and that the state had no warning of its introduction.

The opposition will be opposing this bill because the government does not have a mandate to introduce this additional tax and because it does not require the Port of Melbourne Corporation to identify charges and how it will apply those charges to those who will be seriously affected by them. With those remarks I conclude my contribution to the debate.

Mrs COOTE (Southern Metropolitan) — I have great pleasure in speaking this afternoon on the Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011. I reiterate that this bill imposes a licence fee on the Port of Melbourne Corporation. It does not just set the fee but also demonstrates the foresight of Minister Napthine in indexing the fee and setting out when it must rise, rather than the legislation having to come to Parliament every year. It is one more example of the Baillieu government reducing the regulatory burden on businesses and making it easier and cheaper for Victorian exporters to move their products to foreign markets, which is the aim of this state.

As members have heard in the contributions made to the debate today, the previous government announced that it would levy a freight infrastructure charge (FIC). Later in my contribution I will come back to that and show how iniquitous it was. This bill replaces that tax with a fairer charge that will be cheaper to implement and simpler to administer. In short, this is a cheaper, simpler and fairer system of collecting the charge.

I want to talk about the freight infrastructure charge, and it is important to get this on the record. There were numerous complaints from stakeholders about the freight infrastructure charge that was proposed by the former Labor government. The complaints made most of all were that the charge was on the trucks going into the port and not on those coming out of the port and that there was no differentiation between B-doubles and single containers. A whole range of inequitable misunderstandings were involved in the collection of that particular tax.

The freight infrastructure charge proposal also involved putting up gantries which would have cost in the vicinity of $100 million. That enormous outlay would have been necessary to collect a tax which, on the former Labor government's account, would have brought in revenue of about $75 million in the first year, so there would have been a shortfall of $25 million — but it did not seem that members of the former Labor government could have cared less. That was alongside a whole range of other things on which they were very happy to waste taxpayers money. I remind the chamber about myki — —

Ms Crozier interjected.

Mrs COOTE — Thank you, Ms Crozier; the desalination plant is a wonderful example. When it was someone else's money, members of the Labor Party did not care. In fact it was Victorian taxpayers money. The $25 million shortfall that was expected between the cost of the gantries and the income from the tax is another example of Labor Party members not caring about the taxpayers of Victoria. The other major issue was that it was to be a tax on exports. This was something that people were incensed about. It was to be a tax on Victorian produce on its way to the rest of the world. It was quite extraordinary.

Various stakeholder groups were scathing about the proposed freight infrastructure charge, but one of the most vocal was the Victorian Farmers Federation. In its United Dairyfarmers of Victoria November 2010 newsletter it says:

> The FIC is estimated to be over $180/truck, will be a tax on Victorian export industries and will hit the rural agricultural economies particularly hard.

It goes on:

> As with other charges we have seen, inevitably all of these costs will be passed back to the producer, adding $90 per container on the freight cost to port.
>
> Murray Goulburn Co-op exports 23 000 containers a year — the single largest container exporter in Victoria. At $90/container that is $2 million directly out of the pockets of farmers.

That is a huge indictment — and all of this at a time when the Australian dollar was making it tough for Australian exporters. The one thing that Australians and Victorians would not have needed was Labor's tax on exports. It is just as well that the people of Victoria saw fit to vote in the Baillieu government. It was a very narrow and lucky escape. Minister Napthine has been out there listening to the complaints and has introduced the bill we are debating today.

This proposal is more efficient. Following the government's announcement on 13 July last year that it would scrap the freight infrastructure charge and implement a port licence fee, the transport sector said the proposed fee process would be simpler and cheaper to implement. It is important to understand that this fee does not require $100 million gantries to be constructed at the port of Melbourne. Therefore it will be a lot cheaper to set up. It will also be easier to administer, because the freight infrastructure charge was complex and inequitable. The freight infrastructure charge was applied to each truck, and the charge did not vary. Regardless of whether a truck was carrying one or two containers the then government anticipated that the Port of Melbourne Corporation would be charged per truck, which was an extraordinarily cumbersome way of looking at what was going to happen.

An interesting point to note about the debate today is the talk about the amount of revenue that would have been collected. It was interesting to hear Ms Pulford say during her contribution that more money was going to be ripped out by the Baillieu government under this bill. However, the Labor government's estimate for the revenue that was going to be collected from the freight and infrastructure charge was in fact $230 million between 2012 and 2015. Labor members have said the coalition's money was going to be — according to John Lenders, who interjected in the chamber — put into the pot.

There was an omission in Ms Pulford's contribution today. She did not outline how the money from the infrastructure charge would have been used and implemented in relation to port infrastructure. She was negligent in that respect; she was silent on that aspect.

It is important to note that a large part of the port of Melbourne is in Southern Metropolitan Region, which Ms Crozier and I represent. I thought Ms Pulford had taken it upon herself to have a good look at the cruise ships that arrive at Station Pier. I agree also that cruise ships have made a huge difference to revenue in this state. We see people on enormous cruise liners visiting the state. Those ships are impressive; they look exciting and exotic when they pull up at Station Pier. We know people pour out of those cruise ships and go into the city of Melbourne. They go to Bay Street in Port Melbourne, and they bring an enormous amount of money to our area.

It is important to understand the coalition's announcement that it is considering the port of Hastings. Webb Dock is also part of Southern Metropolitan Region. It is on a little peninsula near Fishermans Bend. Currently it is used for car distribution. There is going to be a long-term change, and the face of the port of Melbourne will look slightly different. It is also important to understand that during the redevelopment of Fishermans Bend there would have been gantries and all sorts of cumbersome equipment under Labor's proposal.

I was particularly interested to hear Ms Pennicuik's contribution to the debate on the bill. She took the opportunity to talk about channel deepening yet again. Channel deepening was raised time and time again during debates in the former Parliament. The port of Melbourne is a major port for the entire country, and it is important that those very large ships, including very large passenger liners, are able to come into the port of Melbourne.

One thing that has been mentioned in this debate regarding the former process involving gantries, which the Labor Party had intended to implement, was that there was to be some sort of regulation of the number of trucks going in and out of the port and the times of day they were going in and out of the port precinct. As Mr Drum rightly said, most of these trucks are already moving at the times which were suggested as being potentially better times for trucks to go in and out of the ports.

One of the main issues in our electorate has been the huge amount of truck traffic going up and down Williamstown Road. I cannot at all see how the former option involving gantries would have made any difference to the amount of traffic that was going in and out of that particular area.

When we look at the impact of the fee it is important that we think about its impact on the port of Melbourne

because it is the busiest port in Australia. It is interesting to look at some statistics. In the 2010–11 financial year 3376 ships went into the port; 36 per cent of Australia's national container trade is at the port of Melbourne, and that trade has been growing steadily. In 2010–11, 2.39 million 20-foot units, or their equivalent, of containers were dealt with at the port of Melbourne. These are huge numbers.

The Department of Transport has considered the cost of the fee in an impact assessment, and it believes the impact will be small. Unlike Labor's freight infrastructure charge, the fee will be spread across a much wider base. The Essential Services Commission already considers the cost of services provided to Victoria's commercial ports and the monitoring and assessment of this fee to be included in the price monitoring role the commission already performs. This will prevent Melbourne from losing its edge as the most important and busiest container port in the country. I explain this again: 3376 ships visited the port of Melbourne in the 2010–11 financial year, which is an extraordinary number. Compared to Labor's tax on exports this bill will have a lesser impact on Victoria's container exporters such as Murray Goulburn, because the cost will be shared by importers as well. This was a very important point that the minister listened to.

In conclusion, this bill will cut the red tape of Labor's costly and inefficient freight infrastructure charge. It will be cheaper and simpler to implement, it will be fairer to calculate and it will not be a burden on exporters the way that Labor's plan would have been. I repeat that the government will not be supporting the amendment circulated by Ms Pulford, and I commend this bill to the house.

Ms HARTLAND (Western Metropolitan) — My comments will be very brief, because as usual my colleague Ms Pennicuik has done a sterling job of representing the views of the Greens.

The reason I am speaking this afternoon is that I live in a community that is very affected by the port. In listening to this debate, the thing that has concerned me — as Ms Pennicuik has pointed out — is that the bill is very vague about what infrastructure the $75 million is going to be spent on. Is it going to be put towards solving the problems we have in Footscray? I will give a few figures. There are 21 000 truck movements a day in the city of Maribyrnong, and 7000 of those are on Francis Street. All of these streets are residential, and I do not see the government doing anything in its truck action plan to alleviate this problem in the city of Maribyrnong. During the committee stage I would like the minister to address questions about how this bill is connected to the truck movements in the city of Maribyrnong. Is this money going to be used to alleviate some of those problems? I stress that we are talking about residential streets. Francis Street is a residential street. It has 7000 truck movements a day, 24 hours a day. The curfews do not work. VicRoads does not fine people. It is a shambles. They are the questions I would like to have answered during the committee stage.

Ms CROZIER (Southern Metropolitan) — I rise with pleasure to speak on the Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011. Like Mrs Coote and Ms Pennicuik, who have also spoken on the bill, I have a large section of the port in my electorate of Southern Metropolitan Region. Many aspects of this issue impact on our region.

As has been said by government members, this bill will replace Labor's inefficient and unfair freight infrastructure charge (FIC) with a fairer, simpler licence fee. In a number of contributions — in particular Ms Pulford's — it was said that the licence fee is a great big new tax, and there were a number of interjections from the opposition in relation to this being a great big new tax. This amused and bemused me, because I think the only great big new tax that Victorians are concentrating on at the moment is the carbon tax. That is seriously a great big new tax. This is a faster, fairer, simpler licence fee, and this bill is an example of the coalition government getting on with fixing up something that was done by the previous Labor government. The bill will go a long way towards cutting unnecessary regulation and red tape, which would have affected a lot of businesses across Victoria, and introducing a far simpler process in this area.

In Mr Drum's and Mrs Coote's contributions we heard about farming communities' concerns about the previous government's charge known as the truck tax and how it would have impacted upon their businesses. In fact if that tax had gone ahead, it would have added to the list of disastrous decisions Labor made when in government. I refer to the desalination plant; I cannot go without mentioning that, because it is an impost on the Victorian taxpayer of almost $2 million each and every day. We all know about myki and the huge burden that placed on taxpayers.

Ms Pulford interjected.

Ms CROZIER — Ms Pulford called this a great big new tax. I say to her that myki is a burden on Victorian taxpayers.

The bill introduces a port licence fee. It will be a flat annual fee of $75 million paid annually and indexed to CPI. It is far preferable to Labor's FIC, which would have taxed the hundreds of trucks that enter the port of Melbourne every day. It would have created massive costs for the trucking industry, which is already facing challenges with the higher cost of petrol and the soon-to-be-introduced carbon tax.

The cost imposition proposed by Labor was of particular concern to the many small trucking operators and businesses throughout Victoria, who simply could not bear another cost impost on the day-to-day running of their businesses. This is a far simpler and less complex way of getting rid of what was proposed under the previous government. That regulatory burden would have amounted to some $100 million, should it have been put in place. As Mrs Coote pointed out, there was a shortfall of $25 million in relation to its annual cost of $75 million.

The Port of Melbourne Corporation licence fee will avoid the establishment of a large and inefficient bureaucracy in order to collect revenue. It will avoid targeting one particular industry that uses the ports, it will ensure that fees can be more equitably distributed through the passing on of costs and it will avoid another Labor blunder — the impost on Victorian taxpayers of $100 million with the establishment of the FIC.

In his contribution Mr Drum pointed out that there has been support from various parts of industry. The Victorian Employers Chamber of Commerce and Industry congratulated the minister on his consultation. On its blog site VECCI says:

> VECCI has been a long-time advocate for removing the FIC and we're glad the state government consulted with industry and acknowledged our concerns about the red tape burden the FIC would impose on operators using the port.

Phil Lovel, chief executive of the Victorian Transport Association, is reported to have endorsed the new system and said he is pleased the government listened to concerns raised by the trucking industry. He is also reported to have said:

> Scrapping the previous government's tax on trucks using Swanson Dock, is the right decision …
>
> The new licence fee on the Port of Melbourne Corporation is much simpler, more cost effective and does not place an administrative burden on the trucking industry.

That is a fairly significant and overwhelming endorsement in relation to the previous so-called charge that was going to be imposed on that industry.

Mrs Coote made a point about the size of the port of Melbourne. It is the busiest container port in the country. In the second-reading speech the minister said that last year it accounted for approximately 36 per cent of the national container trade and that the movement of containers is expected to quadruple by 2030. To keep our economy strong and competitive, rather than allowing an impost on businesses throughout Victoria, such as the previous government's proposed FIC, we will allow a port to charge a fee. We need to help businesses to flourish.

With that contribution, I conclude by saying I am pleased the minister has taken into consideration many of the issues that were raised by the trucking industry that would have affected many small, and indeed large, businesses across the state. Like other members of the government, I support this bill and commend it to the house, and I will not be supporting Ms Pulford's amendment.

Motion agreed to.

Read second time.

Referral to committee

Ms PENNICUIK (Southern Metropolitan) — I move:

> That the Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011 be referred to the Economy and Infrastructure Legislation Committee for inquiry, consideration and report by 29 March 2012.

I move this motion because, as I have said in this chamber during debate on similar motions many times in the past 12 to 14 months, we have established Legislative Council committees with reference and legislation functions, and they should operate, as they do in the Senate, in relation to bills that have aroused some concern or comment among stakeholders in the community. Such bills should be examined by the appropriate upper house committee, in this case the Economy and Infrastructure Legislation Committee which, under its terms of reference, looks at ports as infrastructure in Victoria.

As I mentioned in my contribution to the second-reading debate, the Tasmanian government has foreshadowed a possible legal challenge over the port licence fee this bill will impose. That government, by way of a letter from Mr David O'Byrne, the Minister for Infrastructure in the Tasmanian Parliament, has indicated that this bill would be a tax that would be met to a large extent by the Tasmanian community because Tasmanian producers and consumers have no choice but to use the port of Melbourne. In foreshadowing a

challenge the Tasmanian government has contended that this charge, which Tasmanian producers and consumers have no way of avoiding, could be a constraint on trade between the states and may be contrary to the Australian constitution. We have had assurances from the Minister for Ports, Dr Napthine, that that is not the case, but we have seen no legal advice as to whether it is the case.

In addition, user groups have raised concerns about the licence fee. When this happens — when stakeholders raise concerns, and particularly when one of those stakeholders is the government of another state — it is incumbent upon us as members of the upper house, which is a house of review, to review the bill as a matter of course. I am also coming very much to the view that when amendments to bills are foreshadowed but, as occurs often, not circulated very much in advance of debate on a bill, that bill should be referred to a legislation committee so the amendments and their effects can be better investigated and examined by the committee and a report can be sent back to the Council. That would save time in the committee of the whole, and it would also provide much more of a chance for the amendments to be looked at in some detail before they are agreed to or not agreed to.

For those reasons I have moved that the bill be referred to the Economy and Infrastructure Legislation Committee. It would be only a couple of weeks before the bill could be back in the house, so it could easily be passed before the end of the financial year, and there would not be a problem in terms of the commencement date.

Ms PULFORD (Western Victoria) — The Labor Party supports Ms Pennicuik's motion to refer this bill to the upper house committee. This is exactly why these committees were established — and they have not been used as much as they were intended to be used at the time of their establishment. There are many questions to be answered about this bill. The period of time Ms Pennicuik proposes is short and sharp and should certainly cause the government no concern.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I advise the house that the government will not be supporting the referral of this bill to a legislation committee for reasons I am prepared to put on the record. First of all, as Ms Pennicuik said after she moved the referral of the bill to the committee, when there are concerns or issues it is appropriate that they be referred to a parliamentary committee for consideration. However, the government has had a long and detailed consultation with industry on the matter this bill relates to. The matter has not existed only for the last few days, weeks or months; this is an issue that has been in existence for some years. The previous government had also tackled the issue. This government has had extensive consultation with industry with respect to the matter, and we therefore believe there has been an opportunity to raise relevant matters and seek resolution. I think this proposal is well accepted by industry here in Victoria.

Ms Pennicuik raised a matter about the Tasmanian government seeming to have an issue with this bill, and she suggested that that government might take the matter up as a legal issue. I do not know if a committee of the upper house of this Parliament is in a position to resolve what is potentially going to be a legal dispute between two state governments. The suggestion was that the existence of an outstanding issue with the Tasmanian government was a prime reason for us to seek to resolve the issue, but I do not think we — the members of this chamber — can do that during the course of the debate on this bill.

Ms Pennicuik also made a valid point about the consideration of amendments that might not have been circulated in a timely fashion to members. That is an issue we all should make some commitment to resolving. If anyone in this house proposes to move amendments to a bill, it would help if those amendments were circulated early so they could be considered. However, that is not always the case and is perhaps not the case this time. I am not fully aware of the timeliness of the circulation of the amendments on this occasion, but it is not unusual for amendments to suddenly appear before a bill is about to go into committee. That is not a good practice, and if we can address that, we should, but that in itself is not a reason why we should delay the passage of this bill and take it to a committee on this occasion. For those reasons, the government does not support this bill being referred to the committee.

Mr VINEY (Eastern Victoria) — I am not quite sure what the government has to hide in preventing any piece of legislation going before a parliamentary committee, but there is now a clear pattern — a clear policy position of the government — to not use the forms of the house, which it helped establish with the clear purpose that legislation be put before parliamentary committees to ensure that the legislation is considered in full.

It may well be true that the government has consulted widely, but the Parliament has not had such an opportunity. It may well be true that the government has heard the views of various stakeholders about this legislation, but the Parliament has not. If the minister is

suggesting that the Parliament should simply accept at face value the assurances of the government of the day that its consultation has been appropriately reflected in the legislation, then I am sorry to tell him that we will not. That is not what the role of this place is about. This place is not about just passing legislation through that the government has prepared on the basis of what it assesses to be appropriate after its consultation processes.

It was a carefully developed plan in the last Parliament to establish a set of parliamentary committees, including a references committee chaired by the non-government parties and a legislation committee chaired by the government party. I am pretty sure Ms Pennicuik's motion proposes that this bill be referred to the legislation committee, because that would be appropriate. The legislation committee is chaired by the government. The government essentially has a majority on that committee because the government chair has the casting vote.

There is nothing to fear from this process other than openness. There is nothing to fear other than that the Parliament — and, through the Parliament, the public — will hear the views of the stakeholders. If the government is to be taken at its word that it has fully consulted with stakeholders and heard their views and reflected them in the legislation, then the government should have nothing to fear from an open process of a parliamentary committee hearing those views as a parliamentary committee.

It is not as though this is just a one-off incident. In this instance I think Ms Pennicuik is asking the committee to report back within a month, so there would be little delay on legislation that does not need to be urgently passed. I do not believe this great big new tax is coming in the next month — I do not know where I have heard those words before, but it seems members opposite do not like them. There is nothing to fear from a process that allows the Parliament, through one of its committees — chaired by a government member and with a government majority — to have a short, sharp set of hearings which can be reported back to this Parliament. There is nothing to fear from that.

I have expressed my concerns about this and indicated that I support Ms Pennicuik's motion, because this is now a pattern of behaviour. This is now a policy position of the government — that is, that nothing will go to committees, that no legislation will go before committees and that there will be no opportunity for the Parliament to have hearings as was intended through this process. This is what is disappointing about the government's position.

We worked together to establish a set of committees to ensure that this house is a proper house of review. The government, by using its numbers of 21:19, has determined that it does not intend to use those committees in that way. That is shameful, because it is an absolute breach of the position that the government took when in opposition. I can say that on the basis that I sat on the Standing Orders Committee for the entirety of the last Parliament when all of this was negotiated and discussed. That was the position of the now Leader of the Government when he was Leader of the Opposition. It was the position of Mr Dalla-Riva as one of the members of the committee. It was the position of Mr Hall, who represented The Nationals on that committee.

Mr Hall, Mr Dalla-Riva and Mr David Davis have now breached the committee processes of the Standing Orders Committee to establish this new committee system, because they do not intend under any circumstances to use those processes of accountability and openness in relation to legislation by properly using those committees. It is incredibly disappointing that the government has taken that position.

Ms PENNICUIK (Southern Metropolitan) — I thank Mr Hall, Mr Viney and Ms Pulford for speaking to the motion, particularly for the support of Ms Pulford and Mr Viney and for Mr Viney's words, which I will not repeat, but he certainly made very good points. I agree that it appears the government is going to oppose every single motion that is put by either the Greens or the ALP to refer bills to one of the legislation committees. I suggest that in the last year we moved to refer only about half a dozen bills to one of those committees, so it is not as if the non-government parties are doing this all the time. I have moved to have a couple of bills referred which I thought raised some serious issues, and I think this is one of them.

I repeat what I said in a motion to refer another bill: if a member of this house feels that a bill needs to be referred — and, as I said, that does not happen very often — then the house should agree. In the Senate it is routine practice that bills go to legislation committees. It happens every day. As I mentioned before, often the outcome is that the government amends its own bills. That is the most common outcome of a bill going to a Senate legislation committee. As Mr Viney said, there is nothing to be feared from it except that it is open and transparent. That is what the government is always talking about: openness and transparency. It is like a mantra.

A couple of members on the other side have been making yawning gestures because they think this is

somehow boring and tedious, but it is about good parliamentary practice. It is regrettable that that was done by some members. It is regrettable that the government will not agree to use the legislation committees to improve legislation in this place.

I would also like to touch on the issue of amendments, which I raised and which Mr Hall said made a valid point. I am one of the people who may circulate amendments only a day or so before a bill is debated in the house, but that is due to the parliamentary process, the amount of time and the resources we have to actually get amendments drawn up by parliamentary counsel and to be in a position to come to a view about amendments, so it does not always give the other parties enough time. It would be really good practice if there were amendments put forward by the non-government parties that make bills routinely go to committees, even if it is only for two weeks — in this case I am suggesting four. I think it is regrettable, and I appreciate the support of the ALP for my motion.

House divided on motion:

Ayes, 19

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

Noes, 21

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

Motion negatived.

Committed.

Committee

Clause 1

Ms PENNICUIK (Southern Metropolitan) — The purpose clause of the bill says:

> The purpose of this act is to amend the Port Management Act 1995 to provide for the imposition of a licence fee on the Port of Melbourne Corporation.

It is a very tight purpose. Usually under the purpose clause of a bill you can ask what the purpose of the bill is. I am asking a question about what the purpose of the licence fee is. In his statement of compatibility and second-reading speech the minister said that the fee would make revenue available for 'infrastructure projects', to fulfil 'long-term objectives' and to 'deliver on this vision' — I am not sure what vision that was. My question is: what particular infrastructure projects does the government have in mind with regard to the revenue to be raised by the $75 million licence fee?

Mr Barber — It is not a Ferris wheel?

Hon. M. J. GUY (Minister for Planning) — I think the Greens might want an environment effects statement for that, Mr Barber, so it might take 15 years to complete.

The port licence fee's lower implementation costs will mean that more money will go to state revenues, and the money may be used to benefit the industry, port users and the general community. As Ms Pennicuik mentioned, the Minister for Ports indicated in his second-reading speech in the Assembly on 7 December that the industry and the community will benefit from revenue being available for infrastructure projects which will improve our productivity and competitiveness. I know 'productivity' is the word of the day, so there it is. The Premier also indicated in an answer to a question without notice in the Parliament on 8 February that the port of Melbourne is critical to the future of the state as it is our busiest container port with more than 35 per cent of the container trade, and we believe this will be enhanced by the passage of this bill.

Ms PENNICUIK (Southern Metropolitan) — I take it from that answer that there is no specific infrastructure earmarked for the use of this licence fee; it is just broadbrush, going into consolidated revenue and to be used for anything that could be vaguely said to benefit port users. So there are no specific projects outlined for the licence fee?

Hon. M. J. GUY (Minister for Planning) — That is correct; there is nothing specifically outlined for the licence fee. Chair, may I seek leave to have Mr Drum accompany me at the table?

Leave granted.

Ms PENNICUIK (Southern Metropolitan) — As my colleague has said, infrastructure is the newest buzzword that is being thrown around. There is one specific project or potential project that I would like to ask the minister about, if he is able to answer the question. What are the government's plans with regard to the truck action plan and the moving of freight from the roads and onto rail?

Hon. M. J. GUY (Minister for Planning) — That is a separate issue, and that question is best directed to the Minister for Public Transport.

Ms PULFORD (Western Victoria) — Mr Drum indicated during the second-reading debate that this charge is better for trucks. Is the minister able to tell us how many more truck movements there will be in the western suburbs with the scrapping of the freight infrastructure charge?

Hon. M. J. GUY (Minister for Planning) — I cannot answer that specifically, but let us be absolutely, fully aware that the freight infrastructure charge would not have done anything to reduce specific truck movements.

Ms PULFORD (Western Victoria) — That is a little contrary to the assertions made in the second-reading debate. So the government has made no assessment of the impact of this charge on truck movements?

Hon. M. J. GUY (Minister for Planning) — The passage of this bill will not have any direct impact upon truck movements.

Ms PULFORD (Western Victoria) — The Tasmanian government has indicated that it has some concerns with the impact of this charge in relation to jobs and about the constitutionality of this charge. Why is it that the ports minister will not meet with his Tasmanian counterpart until after the government's intended passage of this bill — that is, not until Thursday of this week?

Hon. M. J. GUY (Minister for Planning) — This is a unique question, that Minister Napthine's diary is a part of the bill that we are considering. It is worthwhile noting that we have consulted the VFF (Victorian Farmers Federation) — which is supportive — VECCI (Victorian Employers Chamber of Commerce and Industry), the Victorian Transport Association and the port authority itself, and we believe that the passage of this bill will create a fairer and simpler system.

Ms PULFORD (Western Victoria) — The government is intending to pass this bill today in spite of the very serious matters raised by the Tasmanian government, without even having the courtesy of having a discussion with the Tasmanian government about the issues that it raises. Is that correct, Minister?

Hon. M. J. GUY (Minister for Planning) — The government intends to put the second reading and the third reading in this Parliament today in the knowledge that the VFF, VECCI, the Victorian Transport Association and the port authority itself, all in Victoria, believe that this is a positive bill that will be beneficial to ports in Victoria. I think the endorsement of those Victorian organisations tells us that the government is on the right track with this bill.

Ms PENNICUIK (Southern Metropolitan) — Is the minister able to advise the committee what proportion of the freight moving through the port of Melbourne has its origin or destination in Tasmania?

Hon. M. J. GUY (Minister for Planning) — I am advised that 400 000 TEUs, or 20-foot equivalent units, that arrive in the port of Melbourne are generated out of Tasmania, out of 2.5 million.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for that. The Tasmanian government, in its letter, suggested that the licence fee would impose a cost of $10 million on the port users that originate from Tasmania. Does the minister have a view as to whether that is an accurate figure?

Hon. M. J. GUY (Minister for Planning) — It is now being spread across all users, as opposed to just one part, which is different to the previous government's plan, and I do not believe the Tasmanian government's material has been publicly released. I have not seen it to date.

Ms PENNICUIK (Southern Metropolitan) — Certainly that figure has been publicly released. Has the government made any inquiries as to whether that is the impost that will be imposed on the Tasmanian port users? And, following on from what Ms Pulford has asked, has the Victorian government had any conversations with the Tasmanian government about this issue?

Hon. M. J. GUY (Minister for Planning) — I am advised that the port is going to come up with a model for the spreading of any charges, and that would be spread across a whole range of users as opposed to just trucks. I say again that the government is not going to pick up a media report and test it in terms of its validity or cost simply because it might have been in the *Mercury*. Ms Pennicuik may be aware of material that the Tasmanian government has that I have not seen released publicly today.

Ms PENNICUIK (Southern Metropolitan) — My advice to the minister is that there is a letter from the Tasmanian government to the minister which has been made public.

Hon. M. J. GUY (Minister for Planning) — Ms Pennicuik is right; we have received a letter, but there was no data attached to it.

Ms PULFORD (Western Victoria) — Will the government be releasing any regulatory or business impact statement that has been prepared for this bill?

Hon. M. J. GUY (Minister for Planning) — No. That is the current government's practice and was the previous government's practice.

Ms PULFORD (Western Victoria) — Has the government undertaken any evaluation of the impact of this charge on inflation and/or employment?

Hon. M. J. GUY (Minister for Planning) — There is a normal business impact assessment which details a lower impact than was the case under the freight infrastructure charge of the previous government.

Ms PULFORD (Western Victoria) — And the government will not be making that publicly available; is that correct?

Hon. M. J. GUY (Minister for Planning) — That is correct, as per the precedent set by the previous government.

Clause agreed to; clauses 2 to 5 agreed to.

New clauses A and B

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Ms Pulford's amendment proposes to insert new clauses A and B to follow clause 5. As the new clauses are linked, with new clause A testing new clause B, the two can be put together.

Ms PULFORD (Western Victoria) — I move:

Insert the following new clauses to follow clause 5 —

'**A New Division 6 inserted**

After Division 5 of Part 3 of the Principal Act **insert** —

"Division 6 — Port licence fee oversight

63L Definition

In this Division —

regulated fee means any fee or charge payable to the Port of Melbourne Corporation that may be the subject of a price determination by the Commission in accordance with Part 3 of the **Essential Services Commission Act 2001**.

63M Notice of increase in regulated fees

The Port of Melbourne Corporation must cause a notice to be published in the *Government Gazette* before 31 May in each financial year specifying, in relation to the following financial year —

(a) the amount of each regulated fee that is payable; and

(b) the part of the amount referred to in paragraph (a) that is attributable to payment by the Port of Melbourne Corporation of the port licence fee; and

(c) the proportion of anticipated revenue from regulated fees that can be attributed to payment by the Port of Melbourne Corporation of the port licence fee.

63N Over-recovery of port licence fee

If, in a financial year, the proportion of revenue from regulated fees paid to the Port of Melbourne Corporation that is collected for the purpose of payment of the port licence fee is an amount that exceeds the amount of the port licence fee payable in that financial year —

(a) the balance of that proportion of revenue must be applied to the payment of the port licence fee in the following financial year; and

(b) the Port of Melbourne Corporation must make a new determination of those regulated fees to reduce the proportion of the regulated fees collected for the purpose of payment of the port licence fee.

63O Information to be disclosed in annual report

The Port of Melbourne Corporation must include in its annual report of operations under Part 7 of the **Financial Management Act 1994** details of the proportion of revenue from regulated fees paid to the Port of Melbourne Corporation that was collected for the purpose of payment of the port licence fee.

63P Review of determination by Commission

(1) In addition to any other powers the Commission may have under this Act or the **Essential Services Commission Act 2001**, the Commission must, not later than 30 November 2014, conduct and complete a review of a price determination it has made in relation to prescribed services in the port of Melbourne, having regard to —

(a) whether in any financial year the proportion of revenue from regulated fees paid to the Port of Melbourne Corporation that was collected for the purpose of payment of the

port licence fee exceeded the amount of the port licence fee payable in that financial year; and

(b) any other factor which may impact on the amount of revenue from regulated fees paid or payable to the Port of Melbourne Corporation that is attributable to payment of the port licence fee; and

(c) whether an exemption or partial exemption from a regulated fee or an increase in a regulated fee should be granted to any person or class of person liable to pay the regulated fee on the basis that payment of the regulated fee or increase in regulated fee by that person or class of person would be inequitable or against the public interest.

(2) As a result of a determination under subsection (1), the Commission may amend or revoke and remake a price determination in relation to prescribed services in the port of Melbourne.".

B New Part 18 inserted

At the end of Part 17 of the Principal Act **insert** —

"PART 18 — REPEALS

188 Repeal of definitions

In section 3(1), the definitions of ***port licence fee*** and ***quarter*** are **repealed** on 1 July 2016.

189 Repeal of Part 2B

Part 2B is **repealed** on 1 July 2016.

190 Repeal of Division 6 of Part 3

Division 6 of Part 3 is **repealed** on 1 July 2016.

_____".'.

The amendment was circulated earlier in the day, during the second-reading debate, and I spoke to the intent of the amendment at the time. Members will be familiar with the amendment now, I hope.

The amendment proposes a number of changes to the bill: inserting a definition of a regulated fee that would be subject to an Essential Services Commission price determination; placing an obligation concerning publication of the fee charges; establishing a mechanism to deal with over-recovery; placing an obligation on the Port of Melbourne Corporation to include in its annual report details of revenue from the fee; establishing an Essential Services Commission review mechanism by 30 November 2014; and inserting a sunset provision that would have the tax expire by 1 July 2016, which is consistent with the government's statements about needing to recreate the revenue that was forecast in the forward estimates from the freight infrastructure charge. In moving the amendment I commend it to the house.

Ms PENNICUIK (Southern Metropolitan) — The Greens will be supporting the amendment moved by Ms Pulford. As has been mentioned, it is a very long amendment and has two new clauses, A and B. We particularly support new clause B of the amendment, which inserts a sunset clause. Without re-prosecuting the second-reading debate, we certainly think the sunset clause is a good idea. It will enable the pros and cons of the licence fee to be reviewed, so the government at that stage — and it could be a different government — can review whether the fee has been successful or not and either continue or discontinue it.

New clause A inserts a requirement for the Port of Melbourne Corporation to report in the *Government Gazette*, relating the amount of the fee, the amount that has been paid and the sources of that fee. It also inserts a new provision which would require that if there were over-recovery via the various charges that the port will use to raise the fee, there would be an adjustment in the following financial year with regard to that. I would say that the port already imposes the charges that were used to raise the fee on port users.

I do not know that that is such an important part of the amendment, but given that both provisions are part of the one amendment, I am quite happy to support that as well. For all intents and purposes it is also an increase in the information that is available to the public about how the licence fee is raised, although we will not hear about what it is used for. That is an increase in openness and transparency, and we are always in favour of that. With those words, I note the Greens will support the amendment.

Hon. M. J. GUY (Minister for Planning) — I will just point out that the government will not be supporting the amendment. We believe — and I think it is fairly clear — that everything contained in the amendment is simply extra bureaucracy.

It should be noted that the charge put in place by the previous government was for 10 years and was to raise an extra $1 billion, $100 million of which would be for administration charges. It is fairly disingenuous to come to the chamber now and start criticising the government for not having a sunset clause when the previous government had a 10-year plan to raise over $1 billion, 10 per cent of which would actually go to administration.

The safeguards sought in the amendment are addressed in the substantive bill. The port licence fee amount paid by the Port of Melbourne Corporation to the government will be published in the corporation's annual report every year. The indexed fee will be published by the Minister for Ports in the *Victoria Government Gazette* every year. The Essential Services Commission retains the power to investigate industry complaints about unreasonable pricing. If industry believes pricing in relation to the new licence fee is excessive, the ESC retains and has the power to investigate. The safeguards sought exist in the bill that we are putting forward. It is very different to the previous government's highly bureaucratic and exceedingly high freight infrastructure charge. As I said, we believe what is put forward in the amendment would be simply adding extra bureaucracy.

Ms PULFORD (Western Victoria) — Would it therefore be the government's intention to sunset this charge at 10 years?

Hon. M. J. GUY (Minister for Planning) — That is simply quoting what the previous government was going to do.

Ms PULFORD (Western Victoria) — That is right, and my amendment relates to this government's charge, not ours. The sunset provisions are absolutely in keeping with the comments made by the government and indeed by the minister and are a little closer to the Premier's promise a couple of weeks before the 2010 state election that there would be no new taxes. Without wanting to re-prosecute the second-reading debate, is it the government's intention to sunset this charge; and if so, when?

Hon. M. J. GUY (Minister for Planning) — I believe I have already answered the member's question.

Ms PULFORD (Western Victoria) — So is that a no? No sunset?

Hon. M. J. GUY (Minister for Planning) — The reason we are voting against Ms Pulford's amendment is that the answer is no. That would not be the case if it were otherwise.

Committee divided on new clauses:

Ayes, 19

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

Noes, 21

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

New clauses negatived.

Clause 6 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, 24

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

Noes, 16

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

Question agreed to.

Read third time.

QUESTIONS ON NOTICE

Answers

The PRESIDENT — Order! Mr Barber has written to me raising a concern about an answer he received to question 1852 on the notice paper. It was a question directed to the Minister for Higher Education and Skills for the Minister for Energy and Resources in another place. The question was in four parts and sought a range of information, principally with respect to exports of brown coal. Mr Barber was not satisfied that the answer provided met any of the points of his question. I share his view, and I was equally perplexed with the answer that was provided by the minister. I direct that the question in whole be put back onto the notice paper.

EVIDENCE (MISCELLANEOUS PROVISIONS) AMENDMENT (AFFIDAVITS) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) 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 Evidence (Miscellaneous Provisions) Amendment (Affidavits) Bill 2012.

In my opinion, the Evidence (Miscellaneous Provisions) Amendment (Affidavits) 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 purposes of the bill are to:

amend the Evidence (Miscellaneous Provisions) Act 1958 (the act) to deem effective any affidavit made before 12 November 2011 for which certain procedural requirements were not complied with;

deem valid any warrant, summons or other process issued, or order made, in reliance on affidavits deemed to be effective pursuant to the bill; and

create a new offence of making a false or misleading statement as to the circumstances in which an affidavit was sworn or affirmed, in relation to affidavits made after commencement of the bill.

Human rights issues

The effect of the bill is to validate affidavits made before 12 November 2011 that are tainted by certain procedural defects, and any warrant, summons or other process issued, or order made, in reliance on those affidavits. This validation in and of itself does not limit human rights. It does, however, have the result that interferences with human rights that may have otherwise been unlawful (due to being based on affidavits not made lawfully) are now lawful in retrospect.

For example, the execution of a search warrant may engage the rights to privacy and property, and the execution of an arrest warrant will engage the right to liberty. However, interferences with these rights only require justification in circumstances where the relevant interference is 'unlawful' or 'other than in accordance with law'. The rights are not prescriptive as to the content of the laws governing the form of affidavits, or even whether an affidavit, statutory declaration or other document is required. It may be said that the execution of a warrant that was based on a defective affidavit is unlawful or other than in accordance with law. The effect of the bill is to remedy this situation by deeming the affidavit effective and the resultant instruments valid so that no unlawfulness arises.

It should be emphasised that in rendering procedurally defective affidavits and consequential instruments valid, it is not the intention of the bill to validate any corrupt conduct or any affidavit the contents of which are false. Where deponents have given false evidence purportedly on oath or affirmation, those deponents should be subject to the offence of perjury.

It should also be emphasised that such validation is suitably confined to apply only to affidavits made before 12 November 2011. Further, a new offence will attach to the making of false or misleading statement made after the commencement of the bill, which will apply even if the statement concerns an affidavit purportedly made before commencement of the bill. This is to ensure that deponents adhere to procedural requirements in the future.

Conclusion

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

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

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

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

That the bill be now read a second time.

Incorporated speech as follows:

The Evidence (Miscellaneous Provisions) Amendment (Affidavits) Bill 2012 will amend the Evidence (Miscellaneous Provisions) Act 1958 to remedy issues identified in recent County Court proceedings in relation to the failure of members of Victoria Police to properly swear or affirm affidavits in support of search warrants in that case. The defects in the relevant affidavits resulted in the evidence obtained being excluded from the proceedings under section 138 of the Evidence Act 2008.

Affidavit evidence is crucial to the functioning of many parts of the criminal justice system. The potential consequences of the failure of Victoria Police to properly swear or affirm affidavits would be far-reaching if the situation were not rectified. The Chief Commissioner of Victoria Police has now taken specific action to ensure that in future Victoria Police members follow the correct procedure for the preparation of affidavits. This action seeks to ensure that henceforth all appropriate processes are followed so that courts will be able to rely on the proper swearing or affirming of affidavit evidence prepared by Victoria Police members in the issuing of warrants, orders, summons or processes, in accordance with all applicable procedural requirements.

This bill does not purport to excuse nor endorse the failure of many Victoria Police members to follow proper procedural requirements for the making of affidavits. However, the government considers the potential consequences for the legal system of procedurally defective affidavits remaining unremedied to be so grave that legislation is required.

The bill applies where the affidavit states that the maker made the affidavit on oath or affirmation but where certain formalities associated with the making of an oath or affirmation were not performed. The bill will ensure that these procedural defects in an affidavit to which the bill applies supporting an application for a warrant, order, summons or process do not result in the exclusion of evidence from a proceeding.

The requirements for the making of affidavits are provided for in the Evidence (Miscellaneous Provisions) Act 1958 and at common law. The bill will amend the Evidence (Miscellaneous Provisions) Act 1958 in a number of ways.

First, the bill will amend the Evidence (Miscellaneous Provisions) Act 1958 to retrospectively validate otherwise procedurally defective affidavits by deeming them to be properly sworn or affirmed where the affidavit has been signed by the deponent and signed by a person authorised to witness affidavits under section 123C of the Evidence (Miscellaneous Provisions) Act 1958.

The bill makes it clear that these affidavits will be deemed to be validly sworn or affirmed despite any failure to comply with procedures for the making of affidavits such as, but not limited to:

a failure to make an oral oath or affirmation;

a failure to complete the jurat in accordance with section 126 of the Evidence (Miscellaneous Provisions) Act 1958; or

a failure to properly witness the signing of the affidavit.

This will place it beyond doubt that the Parliament intends to cure these procedural defects. The bill will not, however, excuse fraud or forgery. Nothing in this bill will validate corruption or perjury in the making of an affidavit.

Secondly, the bill will provide that where an affidavit or other instrument has been relied on by a court or other person for the issue of a warrant, order, summons or process, that warrant, order, summons or process is not invalid due to a procedural defect in the original affidavit.

Finally, the bill provides that a procedural defect in the preparation of an affidavit is to be disregarded for the purpose of determining whether or not to admit that evidence in a criminal proceeding where the evidence was obtained in reliance, either directly or indirectly, on the procedurally defective affidavit. Subject to that provision, the judicial discretion to exclude evidence or to stay a criminal proceeding in the interests of justice will not be affected.

The bill will apply to all affidavits made before 12 November 2011 and accordingly any subsequent actions undertaken in reliance on those affidavits.

The bill will also create a new offence of making a false or misleading statement as to the circumstances in which an affidavit was sworn or affirmed. This offence will apply to any false or misleading statement made from the day after the bill receives royal assent, even if the statement concerns an affidavit purportedly made before commencement of the bill. This will ensure that anyone who falsely signs or witnesses that an affidavit has been sworn, affirmed or witnessed when it has not been is liable to a penalty of up to 10 penalty units. The government will also give consideration to the desirability of further legislation that would codify the formal and procedural requirements for the making of an affidavit.

The government considers that retrospective legislation is a measure of last resort and brings this bill before the house only after close consideration of the potential consequences of failing to act for victims of crime and the justice system more broadly.

If this legislation is not enacted, there would be an immense potential toll upon victims of crime, community safety and our court system associated with the disruption or abandonment of criminal proceedings as a result of procedural defects in affidavits.

I commend the bill to the house.

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

Debated adjourned until next day.

Sitting suspended 6.23 p.m. until 8.02 p.m.

FREEDOM OF INFORMATION AMENDMENT (FREEDOM OF INFORMATION COMMISSIONER) BILL 2011

Second reading

Debate resumed from 9 February; motion of Hon. D. M. DAVIS (Minister for Health).

Hon. M. P. PAKULA (Western Metropolitan) — It gives me pleasure to rise to speak on the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011, to indicate that the opposition will be seeking to substantially amend the bill and also to indicate that, unless our key amendments are supported in the house, we will not be supporting the bill on the third reading. We have, I suspect, made that clear in the other place. We think the freedom of information commissioner is a valuable addition to the suite of measures in terms of accountability, but an FOI commissioner — a watchdog — that is defanged and debarked and which only adds to delay is not worth having.

The Premier went to the 2010 election lambasting the previous government on freedom of information. He said a lot about it not just in 2010 but basically all through the 56th Parliament. Opposition members at the time, now government members, said a lot about it right through 2010 and before. The Premier, along with Mr McIntosh, the member for Kew in the Assembly and now the Minister for Corrections, released *The Victorian Liberal Nationals Coalition Plan for Freedom of Information*, which I am sure members of the government are all very well acquainted with. It is a document that says governments that put the interests of Victorians ahead of secret deals for mates should have nothing to hide. It is a document that says government without scrutiny is bad government. Importantly it also says that an independent FOI commissioner will take responsibility for all first-stage reviews of FOI requests in Victoria.

It is a pretty clear commitment, and it is not one that was made on the Thursday before the election or made quietly without much fanfare. It is a commitment that was made over and over again by the now government. There were letters sent by Mr McIntosh to various accountability organisations and numerous public statements made by the then Leader of the Opposition, the now Premier. What we now know, having viewed the bill, is that this document is effectively a fraud on the Victorian people. This belief, held by the Labor Party when this document was first put out, has been confirmed.

I want to spend a few minutes talking about the opposition's attempts to be briefed on this bill, because it was an absolute saga, and I think it goes to the very issue of just how paranoid and secretive the government has become.

Mrs Peulich interjected.

Hon. M. P. PAKULA — I will come to it, if Mrs Peulich wants to wait. It goes to the very issue of just how paranoid and secretive the government has become, ironically, about a bill that is supposed to deal with freedom of information. We had a briefing in the diary before Christmas. On 20 December we had an agreement for a briefing in the diary, and it got cancelled because one bureaucrat was off sick.

Mrs Peulich — It might have been a key bureaucrat.

Hon. M. P. PAKULA — Mrs Peulich says it might have been a key bureaucrat. I would believe, and I am sure Mrs Peulich believes in her private moments, that there would probably be more than one bureaucrat who would have knowledge of the detailed workings of this bill. We indicated to the government at the time that if that particular individual was not available, that was fine and somebody else could be sent. But the government postponed the briefing and said it would not go ahead because, apparently, all the knowledge about FOI was held by one individual. The briefing was postponed until 20 January. I did what I commonly do, what all shadow ministers commonly do and what the Liberal Party commonly did when in opposition. When the briefing was announced and a date was set I emailed the Labor caucus and said, 'There's a briefing on. If you're interested, let me know'.

Understandably because of the nature of the bill there was a large degree of interest, and I think 10 members of caucus indicated that they would like to come to the briefing. The government behaves as if this is somehow unusual. I have had other briefings from ministers on other bills with three or four members of caucus. When the Liberal Party was in opposition it would sometimes bring four members of the Liberal Party room along to a briefing on, say, the cemeteries bill. We are not talking about major pieces of legislation. We had numerous members of the Liberal Party along to briefings, and admittedly on this occasion a large number of caucus members were very interested and indicated that they would like to come.

It was always entirely uncontroversial when we did it previously. It was entirely uncontroversial when the Liberal Party sent a number of MPs along previously, but on this occasion it seems that we really set the alarm

bells off. We were then told by Mr McIntosh's staff that the opposition intended to intimidate bureaucrats and put on a media stunt — mind you a media stunt that nobody in the media had been told about — and they cancelled the meeting. In response to that, we did nothing. Then they put out a media release attacking me and the opposition.

It is worth reminding the house what is in this media release, because there is some pretty interesting stuff. It says 13 of my colleagues wanted to attend to help and support me — not because they were interested in the bill, but apparently because I needed the support. The media release went on to say that Mr Andrews's' office — —

Mrs Peulich interjected.

Hon. M. P. PAKULA — Mrs Peulich, it goes on to say:

> … Mr Andrews's office was advised that by convention, bill briefings provided by departmental officers are a courtesy regularly offered to shadow ministers to explain government bills.

No longer is a bill briefing an essential part of the government's responsibility to provide information to members of Parliament; it is a courtesy which is only available to shadow ministers and is described as a 'convention'. It has never been a convention. Members of this opposition over the last 15 months have regularly taken other members of caucus along to bill briefings, as has always been the case. The media release goes on to say:

> The government will not allow departmental officers to be intimidated or used as tools in opposition political stunts.

Let us reflect on that for a moment. What the government is saying is that it is appropriate to accuse members of Parliament of seeking to intimidate bureaucrats because they want to come along and be briefed on a bill which is of enormous interest to not just members of Parliament but the media and the community more generally, although they have through absolutely no action demonstrated that they intend to intimidate anyone. They have merely requested to attend a briefing put on by a government department. It would be an offensive allegation if it were not so silly. It is the silliest allegation to make that somehow opposition MPs are going to come along and intimidate bureaucrats in a briefing on a bill.

Mr Ramsay — Why wouldn't you name them?

Hon. M. P. PAKULA — Mr Ramsay asks why I would not name them. I will name them for him now.

Mr Ramsay — No, why didn't you name them at the time? You refused to name them — 13 of them.

Hon. M. P. PAKULA — Mr Ramsay wants to make an issue of the fact that we would not provide names. We have never been asked to provide names, and when we were in government — —

Mr Ramsay — Yes, you were. You were asked to provide names, and you refused.

The ACTING PRESIDENT (**Mr Elasmar**) — Order!

Mr Ramsay — Speak to the bill.

Hon. M. P. PAKULA — I am speaking to the bill. Mr Ramsay seeks to misunderstand the convention. I know we were asked to provide names on this occasion. My point is: we have never been asked to provide names before, and neither was the Liberal Party ever asked to provide the names of MPs who were going to attend a briefing on a bill. The media release goes on to say this was a political stunt. Ask any member of the media — —

Mr P. Davis interjected.

Hon. M. P. PAKULA — Mr Davis says I have no idea what my people were doing in government. Mr Davis, I was in the government. I remember providing briefings to members of the opposition, routinely. I never asked for names, never asked how many were coming, certainly never cancelled one because of how many were going to attend and did not put out a media release afterwards. I have some regard for Mr Talia, but I am surprised that he was prepared to be involved in such silliness as sending out that release.

The government then goes on to say, 'Clearly the opposition can't manage to understand the bill without a briefing'. Hopefully members of the opposition in the other place and members of the opposition in this place will demonstrate tonight that we can understand the bill perfectly well without the briefing. The briefing would have been useful, but nevertheless the government had its own reasons for not wanting to provide us with that briefing.

In regard to the bill itself, the government makes a big deal about the delivery of its election commitments. In fact about the only promise made in this space that has been kept in this bill is the creation of the commissioner's office itself and perhaps the parliamentary committee designed to provide oversight of it. As I indicated at the outset, we are supportive of the creation of an office of FOI commissioner but not if

the commissioner's office is going to be constructed in such a way that the commissioner is a toothless tiger or a pussycat. The reality is that the number and nature of the restrictions that the government has placed on the FOI commissioner's office in this bill mean that in large part in terms of most of the contentious FOI issues we deal with day to day, the FOI commissioner will have nothing to say about any of them. It is particularly important, Mr Barber's amendments notwithstanding — —

Mrs Peulich — I don't know about that.

Hon. M. P. PAKULA — Mrs Peulich, I will go over the detail in a moment — don't worry. I understand Mr Barber will move some amendments that go to this issue, but assuming those amendments are not carried, the fact is that the creation of the office of FOI commissioner will effectively end any role for the Ombudsman in regard to FOI, so that makes it of even greater concern that the commissioner's powers are as they are in this bill. The election policy of the coalition on FOI was crystal clear on one point. It said:

> … the Liberal-Nationals coalition's independent FOI commissioner will take responsibility for all first stage reviews of FOI in Victoria.

In saying that, I refer to no more eloquent a document than the policy document itself. It is there in black and white, in the middle of the page. It was a key plank in the coalition's election offering. Unfortunately the bill is just as clear as the policy but effectively in the opposite direction.

The bill provides that the FOI commissioner will have no power to deal with an FOI application where the government claims the cabinet-in-confidence exemption, that the FOI commissioner will have no power where the government claims the national security exemption, that the FOI commissioner will have no power if the application is knocked back by a minister or a minister's office and that the FOI commissioner will have no power where an application is knocked back by an agency head — or the principal officer of an agency, as it is described in the bill. In other words, in the majority of cases that have caused controversy since this government came to power — that is, the cabinet-in-confidence exemption and decisions made by ministers' offices — the much-vaunted new FOI commissioner will have absolutely no authority whatsoever.

I know that I have banged on about the Premier's adviser, Mr Coulson, but if you look at all the matters that have been raised by the opposition in regard to decisions being centralised in the Premier's private office and decisions being made by a member of the Premier's staff, Mr Coulson can continue in exactly the way he has carried out his role in the past 15 months, knocking back applications and sucking applications into the Premier's private office — and the FOI commissioner can have nothing at all to say about that.

Mrs Peulich interjected.

Hon. M. P. PAKULA — Mrs Peulich says there is the Victorian Civil and Administrative Tribunal. Yes, VCAT remains, but that is not what the government promised. What it promised was that the FOI commissioner would have responsibility for all FOI applications, not some, not the ones that we do not really mind the FOI commissioner having responsibility for. The coalition said all of them, and there is a huge suite of them that the FOI commissioner will have no power over whatsoever.

There was also the commitment that the FOI commissioner will:

> … set enforceable professional standards which departmental FOI officers will be required by law to meet …

It is interesting to reflect on how that promise has been acquitted in the bill. New section 6L provides that professional standards may, not must, be developed. Who are they to be developed by? The bill provides that will be the minister, so it will be the role of the Minister responsible for the establishment of an anti-corruption commission, Mr McIntosh, to develop professional standards, if he chooses to do so, and not the role of the FOI commissioner.

Mr Ondarchie interjected.

Hon. M. P. PAKULA — Mr Ondarchie says he is a good man. He knows him better than I do, but again the point of the matter is it is not what the coalition promised. What it promised was an FOI commissioner with the power to set professional standards and it made a commitment that the commissioner would do it, not that he may do it.

The bill also has some prescriptive and fairly lopsided reporting commitments for the FOI commissioner — for instance, clause 30 inserts new section 64, which sets out how the commissioner must report on a minister's response to a complaint. It must include comments from the minister fully and accurately. I would have thought that if you were appointing someone as an FOI commissioner — that is, a senior, independent officer of the Parliament — the FOI commissioner can discern for himself or herself what

part of a ministerial or departmental response is worthy of inclusion in a report.

Clause 30 goes on to provide that in the commissioner's annual report the commissioner must report on the staffing and costs associated with FOI. That is again just a transparent attempt to ratchet up public opinion about how costly FOI is for the government to deal with. On the same page the bill provides in new section 64(3) that the commissioner must report on any efforts:

> … by the agency or Minister to administer and implement the spirit and intention of the Act.

It is an interesting requirement that the government puts on the commissioner that the commissioner must praise the minister for any efforts the minister has made to be a good FOI citizen. I suspect it would be a much lengthier report if the commissioner were equally required to report on efforts by ministers or agencies to frustrate or hinder the spirit of the act. There is no requirement to do that, and in fact it is not even clear if the commissioner will be able to do that.

Then, on reporting to the parliamentary committee, new section 64A provides that when there have been four occasions on which decisions of the FOI commissioner are overturned by the Supreme Court or VCAT the commissioner must report on that to the parliamentary committee. In effect the commissioner is required to self-flagellate, to come before a government-dominated committee and say, 'Here are all the times I got it wrong; here are all the times my decisions have been overturned'.

Mrs Peulich interjected.

Hon. M. P. PAKULA — My response to Mrs Peulich is that on its own that provision might look like an exercise in appropriate transparency, but when it is coupled with all the other changes it looks suspiciously like an attempt to cast the FOI commissioner in the most negative possible light and force the commissioner to show the government in the best possible light.

Mrs Peulich interjected.

Hon. M. P. PAKULA — Mrs Peulich, I suggest that members of the government should view all those new subsections in conjunction with the new subsections providing for the appointment of the commissioner. Unlike the process for the appointment of the Independent Broad-based Anti-corruption Commission Commissioner, there is not even the merest hint of bipartisanship in this bill, not even a suggestion of the opposition being consulted on a position where I would have thought — —

Mr Barber interjected.

Hon. M. P. PAKULA — Or the Greens, Mr Barber, but I imagined that you would make that point in your contribution.

Mr Barber interjected.

Hon. M. P. PAKULA — Tripartisan, Mr Barber. There is absolutely no pretence of any kind of consultation or bipartisanship or tripartisanship in terms of the appointment of the commissioner. It will be a straight Governor in Council appointment. There is not even a hint of tenure or anything like it. We are not talking about an appointment for at least five years; the bill provides for an appointment for up to five years. Initially the commissioner could be appointed for one year or for two years. The government might want to make it a one-year appointment and see whether the FOI commissioner behaves himself.

All in all, the commissioner will be appointed by the government and the government alone, potentially for a very short term, potentially angling for reappointment and with reporting requirements which are all heavily loaded in terms of reporting favourably on the conduct of ministers and departments, and having to effectively self-flagellate every time a decision is overturned.

Then, Mrs Peulich, we come to the matter of delay. The question of delay is quite substantially exacerbated by this bill. At the moment an agency has 45 days to respond to an FOI application. Then if the applicant is dissatisfied, there is a further 14 days to conduct an internal review. If at the end of that process the internal review determines that the applicant gets the documents, that is the end of the matter. It takes less than 60 days, provided that people adhere to time lines.

Under the bill the 45-day response time remains. Then the commissioner is given 30 days to conduct an initial review. If the decision of the commissioner is that the documents are to be released, then the agency has 60 days to comply with that decision. At this point we are up to 135 days. At the end of that 135 days the agency can appeal the decision of the FOI commissioner at VCAT. A process that currently could take no more than 59 days will take up to 135 days before the matter goes to VCAT. If, instead of determining that documents should be released immediately, the commissioner asks the agency to make a new decision, then the agency has another 45 days to do that.

This bill is designed to entrench delays, frustration and inertia. As I indicated at the outset, we are going to move a series of amendments to this bill that principally deal with the matters I have outlined during my contribution to the second-reading debate. The amendments are principally designed to deliver an FOI commissioner in line with the commitments the government made before the election.

Mrs Peulich interjected.

Hon. M. P. PAKULA — It is not my job to hold Mrs Peulich to our commitments; it is our job to hold her to her commitments.

Mrs Peulich — There is a little word that starts with the letter 'h'. It's called 'hypocrisy'.

Hon. M. P. PAKULA — I would have thought that the greatest form of hypocrisy and spin is promising one thing and then doing something completely different when getting into government. This is simply about moving amendments that will deliver the FOI commissioner what was promised by the government when it was in opposition. Members will see something like 88 amendments proposed by the opposition and a bunch of amendments proposed by the Greens. I will put the minds of members at ease by saying that many of the amendments are consequential amendments. There are probably a dozen or so — —

Mrs Peulich — So you've kept the Labor law firms going.

Hon. M. P. PAKULA — I ask Mrs Peulich if she has ever heard of the Office of the Chief Parliamentary Counsel?

Mrs Peulich interjected.

Hon. M. P. PAKULA — Yes, I did that.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I do not mind interjections, but I do mind conversations. The member is to return to speaking on the subject of the bill.

Hon. M. P. PAKULA — I blame myself, because I keep engaging with Mrs Peulich. I really should know better. Our amendments fall into three broad categories — that is, increasing the commissioner's jurisdiction, minimising delays and enhancing the commissioner's independence. We want to give the commissioner jurisdiction for all first stage FOI reviews as promised by the coalition, but that is not delivered in the bill. We would give the commissioner jurisdiction over decisions made by ministers and agency heads as well as jurisdiction over situations where cabinet in confidence or national security is claimed. That is very straightforward; it is what the Liberal-Nationals coalition promised. It would be easily delivered. I will be interested to hear the reasons the government will put forward for removing all those powers from the commissioner.

We are putting forward these amendments, and we say to not support these amendments fundamentally makes a mockery of the coalition's claim on page 6 of its pre-election document, which is, and I will say it again:

> … the Liberal-Nationals coalition's independent FOI commissioner will take responsibility for all first stage reviews of FOI requests in Victoria.

In regard to delays, we are seeking to bring back from 30 days to 14 days the time that the FOI commissioner has to review an agency's decision — that is, the same time frame that exists now. We are also moving to reduce the time an agency has to consider a decision of the FOI commissioner.

Under the bill before the house, once the FOI commissioner says documents are to be released, the agency has 60 days to consider that. We do not see why it is necessary to have 60 days. We suggest in our amendments that 28 days is ample, especially because if, under the current arrangements, an internal review — which is the process that occurs at the moment in the absence of a commissioner — calls for documents to be released, then they are released. The government is bringing forward a provision that will mean that if the FOI commissioner says to release the documents, there are 60 days to think about it and potentially appeal that decision. We say that should be 28 days.

In regard to the independence of the commissioner, we say the commissioner should be appointed for at least five years and not up to five years. We think that appropriately enhances the independence of the FOI commissioner. We also want to ensure that the commissioner rather than the minister sets enforceable standards for FOI officers in departments. This was promised by the Liberal-Nationals coalition in its pre-election document. We do not want to remove the requirement of the commissioner to comment on good FOI practices amongst government departments and ministers, but we want to make it clear that the commissioner can also comment on bad FOI practices in government departments and in ministers' offices.

I am not going to go on for too much longer, but in some respects the bigger they are, the harder they fall. I think this government has set itself up for the kinds of

headlines we have seen in relation to FOI because of the grand eloquent claims it made before the last election about how different it was going to be and how openness, transparency and accountability was going to be the catchcry of the new government. It said there would be a new spin-free regime in Victoria that would lead us down the yellow brick road into sunlight and happiness.

The level to which the coalition has so grandly raised expectations is why so many commentators have been disappointed by the coalition's performance. That is why we are getting so many headlines from different commentators like 'Freedom of information changes are a joke' in a *Sunday Herald Sun* editorial; 'New doubt on secrets'; 'FOI hitting brick walls'; and 'Reform of FOI branded a sham'. These kinds of headlines are not coming from the opposition; they are from newspapers and are coming from experts in the field. The coalition perhaps unwisely raised expectations right through the roof, and it has fallen far short of meeting those expectations in terms of the provisions in this bill.

And I am anticipating some of the attacks that will come our way, not just from government members but from Mr Barber as well. Am I suggesting that the previous government was perfect in relation to FOI? Absolutely not! But one thing about elections is that when you lose one, it is the public telling you things they would like you to do better and differently. We accept — —

Mrs Peulich — But you only listen in opposition.

Hon. M. P. PAKULA — But one of the messages we were getting was that the public wanted more open, transparent and accountable government.

Hon. W. A. Lovell interjected.

Hon. M. P. PAKULA — I say to Ms Lovell that we are now in opposition.

Hon. W. A. Lovell interjected.

Hon. M. P. PAKULA — What I said was that it was a message we took from the election, and the fact is that the public did not just say it to us, it said it to the government as well. The government has claimed, both in the lead-up to the election and since, that it has listened to and it has heard the people of Victoria, but the bill says otherwise. The bill says that the government made a whole lot of promises that it now does not want to keep or does not think it can keep and that it has decided are either all too hard or all too perilous to keep. Its pledge was so clear — the pledge to be open, transparent and accountable — but the government has descended into this paranoid, insular outfit, right down to the point where I cannot meet with the Victorian Commission for Gambling and Liquor Regulation without someone from the minister's office being in the room. That is how paranoid and secretive this government has become.

Mr Barber — What is new about that?

Hon. M. P. PAKULA — What is new about it is that it is new. Ask Mr O'Brien, the Minister for Gaming.

Since the election we have seen interference in the FOI process from ministerial staff, in particular the Premier's senior adviser, Mr Coulson. We have seen FOI requests right across the government having to be vetted in the Premier's office. We have seen unprecedented delay, with some requests just disappearing. We submitted some requests to the office of Ms Wooldridge, the Minister for Mental Health, and 12 months later the staff of that office just cannot find them. Other requests have not been responded to for over a year.

We have seen the Ombudsman having to recommend to the Premier's office that it change its records management system so that simple letter searches can be conducted because such searches cannot be performed at the moment. After the endless carry-on from Mr David Davis in particular about media plans, we have seen responses from the government using the exact same defence, even though the coalition is now in government and even though Mr Davis won the court case and the defence that was being used was found to be not applicable. Nevertheless we have seen the same defence being put forward after all the crocodile tears that were shed by Mr Davis during his time in opposition.

This bill falls a long way short of what was promised by the Premier when he was in opposition. The idea of an FOI commissioner is a good one. I will say that — we think it is a good idea — but not if the FOI commissioner is going to be a toothless tiger, not if the commissioner is not going to have jurisdiction over a whole range of matters and no real independence and not if there is going to be more delay than ever before. We will be seeking to move amendments to hold the government to its original promise. In order to get this bill to the committee stage we will support the second reading of it in this house.

Mr P. Davis interjected.

Hon. M. P. PAKULA — Mr Philip Davis has guffawed. We know the bill will pass anyway, but if our amendments are not substantially supported by the government, we are not going to support the bill, because the FOI commissioner as set out in this bill will do nothing to improve transparency and will only add to delay.

Mr BARBER (Northern Metropolitan) — The Freedom of Information Act 1982 was introduced by then Premier John Cain, Jr. When he did so he made a speech that I would like to quote. On 14 October 1982 he said in the Legislative Assembly:

> The Freedom of Information Bill is tangible proof of my government's commitment to open government in Victoria.
>
> Open government in the true sense is a central need in a democracy. People must have information to enable them to make choices about who will govern them and what policies the individuals or political parties they choose to govern, shall implement.
>
> Freedom of information is very closely connected with the fundamental principles of a democratic society and is based on three major premises:
>
> 1. The individual has a right to know what information is contained in government records about him or herself.
>
> 2. A government that is open to public scrutiny is more accountable to the people who elect it.
>
> 3. Where people are informed about government policies, they are more likely to become involved in policy-making and in government itself.
>
> Freedom of information is a major part of my government's platform and a principle to which it is totally committed.

I happen to know that he was as good as his word, because, firstly, he introduced a code across the public sector embodying these principles for information release even before he brought the bill into Parliament, and secondly, not long after this — in fact if I remember rightly by about 1988 — I was a user of the Freedom of Information Act 1982 and I found that it was exactly as the then Premier, Mr Cain, had intended. In fact in those days you could send off an FOI request and the first thing you would get back in a few weeks was the document. No letters seeking clarification, no delays and no obstructions of various sorts — you would just get the document coming straight back to you.

Because I have continued to use the act on and off all the way up to the current day, some 20 years later, I can tell you that that most high-minded ideal of government has been comprehensively trashed. That is not because the act has been fundamentally rewritten or restructured. In fact it is still a fairly small piece of legislation — it is about 90 pages, and it is about to get a whole lot longer with this bill. It is still fundamentally the same act with a few significant tweaks around exemptions. It is the way the act is administrated by departments and in some cases ministerial offices that has changed so dramatically and that has done so much damage. I refer to a culture which comes from the top — from the ministers and the Premier heading the government.

One of the purposes of this bill that we are being asked to vote on tonight is to improve the operation of the act. I have got some suggestions, and I have even been able to embody some of them in amendments that I will be introducing and moving as I go along.

Along with a number of others, Mr Cain has continued to speak out on the fate of freedom of information. He has done this under both Labor and Liberal governments. I have followed his writings because of my interest in this area. In an article that was published the *Age* of 11 February this year discussing the current issues with the FOI act, he said:

> Whether the refused request is reviewed by a public servant or an outside 'commissioner', as the Baillieu bill provides, isn't the real issue. What needs to be corrected is the 30-year transformation of FOI into the world of political infighting, because that is where it is now, and has been for some years: a world where politicians say one thing in opposition and do another in government.

For the benefit of Mr Pakula I should say 'where they do another in government and say something different in opposition'. I have no doubt that Mr Pakula's eyes have been opened to a whole new world of freedom of information since he has become an opposition MP responsible for the scrutiny of government. I am sure he has a whole new perspective on it. But as I go through some examples relating to how I think this act needs to be perceived, we will in time come even to the responsibilities Mr Pakula himself had when he was transport minister.

Mrs Peulich — That will be interesting.

Mr BARBER — It will be very interesting, as Mrs Peulich says. She is on the edge of her seat now; she is waiting for it!

In the last few years most jurisdictions have reformed and modernised their FOI laws, and this includes many of them having established independent commissioner roles. Victoria, which in 1982 was at the vanguard of that group, is now in the rearguard and is constantly fighting on the defensive, regardless of who is in power. When you look at the reforms implemented in other Australian jurisdictions, you see that the major

difference is that they have included provisions that oblige governments to be proactive in putting information out there for the public to access.

Part II of the existing act certainly has that intention, but its methods are outdated, and frankly the bureaucracy is guarded and paranoid about that. When my office contacted the Premier's office to ask how part II of the act operates in practice — particularly the cabinet register provision, which I will come back to — there was a deafening silence in response to three requests. In the committee stage I will therefore ask some questions of the minister at the table about that. In fact the only proactive disclosure that occurs now is when ministers who have obtained FOI documents that are being requested by people like me drop them to their favoured journalists. Just one example — and I have many — is the government's attempt to model the impact of carbon tax on hairdressers, which was exclusively dropped to the media. When I asked for it under FOI I was told it was an internal working document that was not yet complete and that therefore I could not have it, yet the *Herald Sun* could have it.

Even innocuous documents such as the transcript of last June's press conference where the Minister for Public Transport and the Premier announced changes to myki could not be proactively disclosed. The Premier's office was incapable of doing that. That transcript had been on the Premier's website for media releases, but after two months it had been taken down. When we attempted to get a copy from the Premier's office last month we were refused and given no reason — this in relation to a document which not so long ago was on the Premier's media release website. Eventually we got the document from another source, and it was really a bland and uncontroversial document if ever there was one.

Other recent reforms adopted elsewhere but not here in Victoria include measures providing that the exemption classes cannot be engaged unless the release of documents is determined to be against the public interest and measures providing that only those cabinet documents at the core of the cabinet process can be exempt. In some cases even the exemption of executive council documents has been removed. None of these modest reform proposals, however, has been adopted by this government.

There are some good elements in the bill. Independence is always welcomed. We think it would be good if the commissioner was involved from the beginning point of an application rather than just at the point of the first review. In fact if either Mr Pakula in opposition or the government is looking for ideas, how about making all FOI officers employed by the commissioner himself or herself and having them going into the departments to get the requested materials? The commissioner is answerable to the Parliament through an oversight committee. The commissioner can seek or be invited to assist the Victorian Civil and Administrative Tribunal (VCAT) in a review. The commissioner can issue a production notice against an agency, forcing it to hand over documents, the exception being the cabinet and national security documents, which I will spend some time talking about. The commissioner will also write an annual report, which has Mr Pakula so excited, rather than the Attorney-General, as has been the case for many years.

We think having an independent commissioner is a worthy policy, and we will be supporting the bill, but the chipping away of the commissioner's powers has begun before the position has even been created. The commissioner cannot review any exemption that relies on cabinet or national security grounds, and that complicates things further down the track, as we will see when we get to that. In addition, the Secretary of the Department of Premier and Cabinet can continue to issue a conclusive order that a request relates to a cabinet document and therefore engages an exemption. That power of the secretary is unchecked, because the commissioner cannot investigate the bona fides of that decision. This continues to be a giant black hole, which is inviting obstruction. That is why I will move an amendment to remove the secretary's power under section 28(4) of the principal act. If the claimed cabinet exemption were genuine, then VCAT would refuse disclosure. There is no need for such a power. I am happy for all of my amendments to be circulated.

Greens amendments circulated by Mr BARBER (Northern Metropolitan) pursuant to standing orders.

Mr BARBER — The commissioner is not allowed to copy or obtain a cabinet or national security document even if it is central to a complaint they are investigating. The ALP is seeking to remove those provisions, and the Greens will support those amendments. The Ombudsman is currently able to investigate the administration of the act with no restrictions; however, this bill repeals the Ombudsman's functions. That would be fine, except the commissioner will not be able to examine the contents of cabinet or national security documents when investigating a complaint. The scrutiny power will therefore be weaker than that which currently exists in relation to independent reviewing of the administration of the act. We need to be very clear about that.

In relation to reporting, the commissioner will be responsible for writing the reports on the administration of the act. This was previously the responsibility of the Attorney-General. There is some useful information in those past reports, but a lot is also lacking. Obviously the information was being provided — was being sorted — in those reports produced by the Attorney-General in such a way that the headlines made things look like everything was wonderful. You would need to understand very well how the act was administered to get down to what the real failings of the administration of the act were, using the statistics. I had made requests to the no-longer member for Niddrie in the Assembly, the former Attorney-General, Mr Hulls, about that, and I did not get anywhere, so I have very little doubt that the commissioner will be able to do better than the Attorney-General in the Labor government.

The ALP will be moving an amendment to expressly allow the reporting of ministerial or departmental staff frustrating the act's intent. There is nothing in clause 30 that suggests that the list of what the commissioner can report is exhaustive, so I am not quite sure why the ALP will be moving that amendment. The list certainly shows what must be included in the report, but the provision does not say that nothing else can be included in the report. I do not believe these reports are attracting or requiring parliamentary privilege, so there should not be any prohibition against the commissioner going on to explain other matters. In summing up the debate the Minister for Employment and Industrial Relations might want to correct the record if my interpretation is wrong. Furthermore, proposed section 64(2)(m) requires reporting on where effort is being made to fulfil the spirit and intent of the act. On my reading this would necessarily require reporting where ministers and agencies have not fulfilled the spirit.

The commissioner also cannot review a decision by a minister's office or a decision made by a departmental or agency head — a so-called principal — so any uncomfortable request is going to be sent upstairs to the secretary's in-tray for them to put their signature on it. It is as simple as that. To get around the commissioner you send the FOI request up to the secretary to sign it, which will create further delay because their in-trays are fairly full in my experience, and it will short-circuit the entire process. It will be as if this bill had not been passed. We will know fairly soon how common that practice becomes. After the passage of this bill it will not be long at all until we see how quickly the refusal letters for these FOI requests come back to us signed by departmental secretaries. Not many of them are now. If we suddenly find that all FOI requests are coming back with refusals or even partial releases signed by departmental secretaries, we will know that the government — —

An honourable member interjected.

Mr BARBER — It is the government that would be putting its head on the block. We will find out pretty fast.

A system will also be established whereby an agency can announce it is going to make a fresh decision, and that usurps the commissioner's jurisdiction on the review. The agency is then able to refuse release on cabinet or security grounds, which makes the decision unable to be reviewed by the commissioner and succeeds in delaying the applicant's request. The ALP is moving amendments, which we will be supporting, to remove new section 49M from clause 13.

This brings us to the question of delay, and delay is one of the fundamental tools that has been used to destroy the high-minded intent of the Freedom of Information Act 1982. The member for Altona in the other place stated that she received a letter from the Secretary of the Department of Justice apologising for some of the delays with her request. She has seven outstanding requests, the latest being from September 2011.

I am hoping the new Secretary of the Department of Primary Industries (DPI) might be about to send me a similar letter. I recently received a response from the department for my request in June to review documents around the Alcoa lease, and I received that letter just a few weeks after this chamber debated the bill to give Alcoa 50 more years of subsidised operations.

The principle that the Parliament should have all relevant information before it when debating legislation was plainly ignored then, as it was when the government gutted the solar feed-in tariff. I am still awaiting DPI's response to an FOI request to provide the information I twice sought in questions on notice in April last year and again in August. The bill was debated in November, and Minister O'Brien avoided providing a skerrick of evidence to justify closing down the solar subsidy scheme. The post-mortem FOI request I sent to try to finally get some answers, which I could not get even during the debate on the bill, was sent to DPI after the debate in November, and the statutory limit was reached on that in mid-January.

I have never been able to find this quote, but I have heard it was Napoleon who said it is not necessary to suppress information forever, just until the information is no longer relevant. That is exactly the situation I have been in during my five years in this Parliament. After taking the department to VCAT recently over the HRL

Ltd funding deed documents and receiving the documents — these are the same documents the government refused to table in the Parliament, which I then took the government to VCAT about under an FOI matter and won — I am still waiting on two more related requests on that same coal-fired project. One dates back to 7 July — perhaps we will have a cake for its first birthday soon — and is about the progress reports relating to the conditions for funding. There was $50 million in state funding, and I can see I have Mr Davis's attention because it relates to his electorate.

The other request dates back to 8 September 2011 and is about the review committee for the project. When my office recently made its routine calls to check on the progress of that request, the department made an apology for the 7 July delay and said there were older applications from other people that it was still working through. My request from 7 July has been delayed because the department has even older ones it is trying to work on. The Department of Premier and Cabinet has a tardy track record too, but it gets a bit more leniency because it has to sit on all those questions on notice that come through this chamber and then go to the Premier's office and sit there for a while, plus all the media and communications team briefs that have to be written on — each and every one of them.

The other major cause of delay is the ministerial interference that goes on in applications. I use that term quite deliberately. Both the ALP and the coalition have established protocols for all applications to be vetted by politicians and their staff before they are released. This is not provided for in the act and directly contradicts the purpose of the act in section 3, which says in subsection (2):

> … discretions conferred by this Act shall be exercised … so as to facilitate and promote …

the prompt disclosure of information. The Ombudsman's report of 2006 came to the same conclusion. That report said:

> The act does not authorise agencies to wait for noting of the proposed decision by the relevant minister.

Ms Mikakos over here, who just stifled a yawn, is going to like this one, because at the time of that 2006 Ombudsman's report there were two Liberal members who got up in this chamber and the other chamber to express their absolute outrage at the process of ministerial noting — that is, an FOI that in many cases is already overdue being sent up to the minister's office for five days so it can be noted. Two people, coincidentally — it works out well for us — expressed outrage at this process of ministerial noting. One was Mr McIntosh, the member for Kew in the Assembly, who in referring to the report said:

> In another case an internal review took 160 days so that the minister could have a spin doctor prepare a response to a possible parliamentary question.

The other person who was particularly outraged by this practice was Mr Dalla-Riva, who said:

> There are clear examples of the government using the noting process for spin doctors. The government has a huge number of spin doctors operating in every department and now they are even operating in the FOI process.

This is the outrage that was occurring in 2006. He continued:

> The Ombudsman's report cites a case of an FOI officer who decided to release a report, but was essentially gagged for almost a month so the government could have a spin doctor …

Do members like my Mr Dalla-Riva impersonation? I almost brought the tie. The member continued:

> … and work out how to deal with the press reaction.

It is an outrageous practice condemned by the Ombudsman.

I totally agree that there is nothing in the act that provides for the minister or their office having any say over the actioning of an FOI request, and I would say it would be improper for them to attempt to direct an FOI officer operating under statute as to how an FOI request was to be treated. I suspect it is still going on despite the Ombudsman's recommendations, so I have adopted a new practice. When I do a bunch of FOI requests and get whatever I am going to get, I then do another FOI request seeking all documents associated with the processing of my first request. Of course that process could go on forever; there has to be a place where it stops.

I recently did that in relation to how the Department of Transport administers my applications. I have some examples of how ministerial staff of the Minister for Public Transport, Mr Mulder, are successfully directing FOI officers as to what to exclude and by doing so not only compromising the process in substance but also adding further delays. A number of these applications were well overdue — this one in particular was. It related to the network development partnership — that is, the monthly meeting between the Department of Transport and Metro Trains Melbourne. There are many commuters who would like to be a fly on the wall at such meetings.

What we see are memos going back and forth between the FOI officer and the minister, the FOI officer and the spin unit, and the spin unit and the minister's office. I have one document here from 13 September 2011. It is a file note about the FOI officer's discussion with Mr Mulder's office. The names of the ministerial advisers have been blanked out so I do not get to find out who they were.

Mr Leane — Faceless men.

Mr BARBER — The file note says:

> … called to advise that the minister was noting this FOI request. He asked if I would redact a further excerpt from page 4 of the January minutes which stated that …

We do not know what it stated because it has been blanked out.

> … advised that this was not correct and to release it would be misleading. I agreed to redact the statement … also asked if we would be able to correct typos within documents, and I explained that we were unable to do so.

The FOI officer had to explain to the minister's office that when someone makes an FOI request for documents, we have to give them the documents — we do not get to clean up the typos and then send the documents over. The other point is even if the information in the documents is wrong, that does not mean we get to fix it. We have to send the documents. Get it? This is the FOI officer explaining it to the minister's office. The file note continues:

> … advised that he would send a confirmation email shortly when the minister had noted the FOI brief.

Then we get the following email, which is from the aforementioned 'faceless man' — or woman, who knows:

> Hi Sam, subject to the application of section 30 redactions we discussed, this office has no issues with your decision to release the NDP minutes to Mr Barber.

There are a few more like that. This is just one example I pulled out of my little treasure trove. By way of a denouement, I appealed the removal of the faceless man's name and on internal review I was successful. It turns out his name is Ashley, so at least that state secret is going to be out in the open. It was Ashley in Mr Mulder's office who sought to direct — successfully in that case and unsuccessfully in other cases — an FOI officer in their administration of the act. This is exactly what the Ombudsman condemned in 2006 and exactly what the author of this bill and Mr Dalla-Riva, who will be sitting at the table in a minute, ranted and raved about when they were in opposition. It happens to this day.

However, if you think delays are a problem now, wait until this new system comes in. Let us say for simplicity's sake I make an application on 1 January. Making the wildly optimistic assumption that the application is complied with in the statutory period, 45 days later I will get a decision. In a little while I will explain with statistics why 45 days is wildly optimistic. I then appeal to the commissioner, and 30 days later they overrule the initial decision of the department and decide to release the document to me. The government or an affected third party has 60 days to decide whether to appeal to VCAT. Knowing government practice, it will make that decision on day 59. The government files at the tribunal, and we are now in the middle of April. Four and a half months have passed and proceedings have not even begun. We wait six weeks until the directions hearing at the end of May, six weeks for the compulsory conference in the middle of July, two more months for the trial and then we are in September. Depending on how much the tribunal member has on his or her plate, let us say a decision is made in October.

That is a streamlined example that assumes no prevarication like what the Department of Primary Industries did when it challenged VCAT's jurisdiction to hear my appeal for the HRL contracts. The department claimed my application for a review was submitted one day earlier than the statute allows. No amount of calculation could have supported the department's proposition, but in order to fight it I either had to start up a new hearing to determine that question of jurisdiction or pay another $220 to file a new claim and set the directions hearing back for a further six weeks. This is not what members of this chamber, particularly, I am sure, Mr O'Donohue, would understand to be the actions of a model litigant.

Procedural fairness meant VCAT could not do anything about it, and I could not do anything. It was disgraceful conduct. It was in contravention of item 2(i) of the model litigant guidelines for the Victorian government, which obliges departments not to rely on technical defences unless the state's interest would be prejudiced — which it would not be because the matter was going to be heard anyway — by the failure to comply with a particular requirement, which was clearly not a threat. It was absolutely disgraceful.

That brings us back to Mr Pakula, because amongst my many applications — more than 150 we could count just going back through the files — about the longest running was our request for Victoria's submissions to Infrastructure Australia. We did not request the glossy document that is on the website but the actual submissions — the actual explanations of the nature of

the projects being put forward, the benefit-cost ratios and all the information and modelling that would go along with that.

I received those documents just shy of a year after I first applied. During that year questions of infrastructure, transport, the Victorian transport plan and all the rest of it were matters of major public debate. I got the documents on the courthouse steps. The government delayed it for a year. The documents were handed to me, and at the end of that process do you know what was removed? One number was removed: the cost. The benefits remained, and the cost of each project had simply been removed. Some of the documents were 10, 15 or 20 pages long, and the cost of, for example, the east–west road tunnel had been removed. These figures were well known anyway because they had been promoted in other forums and could be reasonably well established. I got those documents when Mr Pakula was Minister for Public Transport.

When I go back over some of my FOI requests from past days, I recall a request made under the then minister, Justin Madden, who is now the member for Essendon in the Assembly, and under the then Minister for Education, who I think was Ms Pike, for information on opinion polling that had been done for the departments by Auspoll, which was at that time the Labor Party pollster of choice. That information took 265 and 267 days to be delivered after various kinds of cabinet exemptions were claimed.

Information on duck shooting took 55 days; the Epping rail project took 84 days; various franchise agreements and bus service agreements, 202 days and 149 days; in relation to the Dharyna Centre in the Barmah forest, 201 days; boarding and patronage reviews, more than 111 days; and some documents from VicForests, 104 days. The desalination contract came back in nine days. Can you guess why?

An honourable member interjected.

Mr BARBER — There was a refusal, that is why. When they refuse a document it comes back real quick, but when you are seeking a document and they believe you are after some part of it, there is always a maximum delay. There were the Connex reports; information on the black balloons campaign, which took 51 days; matters in relation to the management of wild dogs, 119 days; and fire management plans and fuel reduction plans and submissions associated with those, 142 days. My overall average is about 96 days, which is virtually double the statutory time limit. That is just looking at my most recent 50 requests. By the way, I have 8 current outstanding requests which have not been resolved one way or the other, and they vary between being 53 days and 236 days overdue. All of those were applied for in 2011 and 2012 under this new government.

That is what we are up against: not any particular changes to the act but complete capriciousness from the departments — with complicity, sometimes with the direct involvement but certainly the overall assent of ministers and the Premier. With a document that is controversial and likely to be embarrassing, they simply run down the list and choose the most likely-looking exemption, regardless of whether that will ever stand up in court, no matter how tenuous the link.

There is also the issue of government contracts. Former Premier Cain noted, and I have been in individual matters in relation to this, that the government, by signing a contract, sought to simply contract out of its responsibilities. Once large parts of government service delivery or large buckets of government money have been contracted out, the government then brings in the commercial-in-confidence exemption and says, 'You can't ask us about that'. Even the Auditor-General cannot go looking at those things. While the act has not changed — the intention of the act has never changed, it has never been altered — over time the structure by which executive government is delivered through contracting out has made it virtually impossible in some cases to scrutinise essential services or to follow the public dollar.

The review of government contracts in 2000 presented to the Bracks government by Professor Bill Russell says:

> For the avoidance of doubt, the review recommends that in future every contractor should be informed prior to entering a government contract that there can be no guarantee of confidentiality because of the operation of the Victorian freedom of information … legislation.

That recommendation bounced off a recommendation of the Public Accounts and Estimates Committee, which was written by Mr Bracks and Mr Hulls when they were in opposition but actually tabled after Mr Bracks had won the 1999 election. Since I will move an amendment proposing exactly that, the Labor Party has the opportunity finally, after all these years, to implement its own policy from 1999.

The Greens have a number of amendments. In clause 49 we want to make it a requirement that the committee's chair and the majority of its members be made up of non-government MPs. If the scrutiny and oversight committee is run by the government, you might as well just go ahead and name it the Double

Speak Committee. We want to delete clause 43. We want the Ombudsman to still be able to inquire and report, because his office can access cabinet security documents under this act where the commissioner cannot. Clause 11 we hope to amend because we want to delete subsections 28(4) and (5) of the principal act. That is the one that allows the Secretary of the Department of Premier and Cabinet to issue conclusive certificates which cannot be looked behind. We are looking for that term to be put into all government contracts.

We want to delete section 30 of the act, which is the internal working documents exemption. There is no place for it, it is widely abused and there is no good argument for it, even though it came from the original act. I am sure Mr Philip Davis will be able to attest that it is the most abused section of the Freedom of Information Act 1982, because it does not really mean much. It is the one they rely on when they cannot find any other exemption. We want to include clauses to repeal a number of total exemptions which over time have been inserted into various acts, and by seeing the year of each act you will be able to work out which government did it: the Australian Grands Prix Act 1994, section 14 of the Alcoa (Portland Aluminium Smelter) Act 1980, section 34 of the Loy Yang B Act 1992, section 114 of the Firearms Act 1996, section 40 of the Treasury Corporation of Victoria Act 1992, and the Victorian Funds Management Corporation Act 1994.

These ad hoc exemptions from the act have grown up from time to time, I presume because the government at that particular moment thought there was a particular reason for doing so, but as Premier Cain pointed out in his article, the FOI act is not meant to have politics in it. Wiping out all those automatic exemptions, they will still be able to claim the regular exemptions under the act — commercial in confidence and the rest of it. There will not be a blanket removal of everything to do with that company or that operation being subject to the act. We will be supporting a number of the ALP amendments, but I will address those as we go.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to speak on the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011. Clause 1 sets out the main purposes of the bill, which are: to amend the Freedom of Information Act 1982 to establish the FOI commissioner and to improve the operation of that act; to amend the Parliamentary Committees Act 2003 to establish an accountability and oversight committee of the Parliament; and to make related and consequential amendments to other acts.

This bill delivers another key election commitment made by the government prior to coming to office in November 2010. It will establish an FOI commissioner to oversee the administration of the FOI act by government agencies. This bill is another part of the suite of policies that this government brought to the election campaign in 2010 and was elected to deliver. With the delivery of this bill and its hopeful passage tonight, the government is delivering on that commitment. The bill will improve transparency and accountability across our public institutions. In the last 11 years of the previous government we saw this accountability and transparency close up in many spheres, and we saw secrecy, delay and stonewalling in the administration of FOI.

With this bill we will be seeing in effect the greatest change and significant development in FOI laws since their introduction almost 30 years ago. I too was going to briefly mention the object of the act. Mr Barber has done that, and I will take up part of Mr Barber's contribution. It is important to remind ourselves of the object of the act:

> The object of this Act is to extend as far as possible the right of the community to access to information in the possession of the Government of Victoria and other bodies constituted under the law of Victoria …

As set out in the statement of compatibility, there is also a provision in section 15(2) of the Charter of Human Rights and Responsibilities Act 2006 which has been interpreted to create a positive obligation on the government to give access to government-held documents, and there is a reference to the Victorian Civil and Administrative Tribunal decision in *XYZ v. Victoria Police* (General) [2010] VCAT 255.

Picking up Mr Barber's point, this bill represents a significant change in culture. The problem has not so much been with the previous legislation but rather the manner in which the previous government administered that legislation. What we saw over progressive years of the previous government was, as Mr Barber says, a fundamental trashing of the principles of the act because of the culture under which the act was administered — we would say by the previous government, but I think Mr Barber's words were by departments and ministerial officers. He made the point that the culture starts at the top, from the Premier's office.

Fundamentally, by bringing into the act the operation of the commissioner, this bill introduces independence in the very critical first stage reviews, as well as the complaints provisions in the act. It also confers accountability to Parliament via the establishment of

the parliamentary committee. That is the fundamental difference between what occurred under the previous regime and what we are bringing in with this policy.

This also goes to the criticisms made by Mr Pakula, which in typical Labor fashion are completely contrary to what his party did in office. What Labor is attempting to do is spin in opposition as it spun in government. Mr Pakula said that this bill will entrench delay, frustration and inertia. He referred to a number of headlines on FOI. If there were an entrenchment of delay, frustration and inertia, it was during the 11 years of the unfortunate administration of the previous government. With this bill we will see a change in culture, because it will introduce the independent commissioner.

The opposition is still misinterpreting and not fully stating the coalition's election policy. Mr Pakula and the speakers on the opposition benches in the other place referred to the amendments they will propose. The first of these should be, as Mr Pakula sees it, to increase the commissioner's jurisdiction, because those opposite seek to have first stage reviews of ministerial decisions reviewed by the commissioner. What he has failed to do is read the policy in full, and as a result he has misquoted and selectively quoted it. What he has said is that the policy seeks to legislate to give the FOI commissioner responsibility for first stage reviews. But he left out the words in the policy that are in brackets, which say 'first stage (or internal) reviews'. That indicates a fundamental misreading, misunderstanding and misstatement to this house of what the previous regime was. In the previous regime, under section 51 of the existing act a first stage or internal review occurs in relation to a decision that is not made by a minister or principal officer, and I quote:

> (1) Where a decision has been made, in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency … the applicant may, within 28 days —

with some exceptions in relation to health records —

> after the day on which notice of the decision was given to the applicant … apply to the principal officer of the agency for a review of the decision.

This bill replaces that internal review with an independent freedom of information commissioner. That internal regime never applied in relation to decisions of principal officers or ministers, because they were already appealable to the independent Victorian Civil and Administrative Tribunal (VCAT). That is an independent tribunal. If the opposition has a problem with the independent tribunal or the independence of VCAT, it should have the courage to come and state it on the record. Instead previous Labor speakers in the other place have selectively quoted some recent commentary, saying things to the effect that there will be no independent review of these ministerial or principal officer decisions. To the extent that that impression has been left with the public, it is false. It is not what this act does and it is not what the previous act did. That omits the review to VCAT, the independent tribunal. Decisions are further appealable again on a point of law within the court system.

What we are doing is replacing the culture that Mr Barber has identified as a problem. In that respect what the bill is can be simply stated. This will be a fundamental shift in the way FOI has been administered. It will replace an internal decision-maker within the department with an independent commissioner, preserving the right to appeal to VCAT.

The second aspect of Mr Pakula's amendments relates to a suggestion that there will be increased delay as a result. He referred to a number of headlines. In the time I have, I would like to briefly refer to some of the literature that is readily obtainable in newspaper articles in relation to the previous administration's FOI failures. They are most conveniently summarised in the Ombudsman's report of 2006, which included complaints of delaying the processing of FOI requests, including the delay in the release of documents for political reasons; unreasonable claims that requests were unclear or voluminous; a lack of assistance to applicants trying to reformulate requests; inadequate or misleading advice; misuse of exemptions to deny access to sensitive documents; and use of internal review and VCAT as mechanisms for delay, with documents released on the eve of the hearing by VCAT. The report is worth reading.

I also want to refer to the present Attorney-General's 2008 contribution on the Freedom of Information Amendment Bill 2007, where he refers to the Honourable Richard Dalla-Riva, who was then an opposition member. Mr Clark is reported as saying:

> My colleague Richard Dalla-Riva was put through years of extended litigation, including the threat of the loss of his family home hanging over his head, simply because he wanted to get access to documents that may have shed some light on what government secret pre-2002 election plans had been put in place to toll the Scoresby freeway and to find out how much extra motorists are being forced to pay as a result of the now Premier's extraordinarily costly EastLink tollway deal.

He also says:

> The Court of Appeal delivered a stinging rebuke of the government's interpretation of cabinet-in-confidence provisions.

We could then go, very briefly, to some of the headlines and articles that we saw throughout this period. In the *Age* of 28 April 2006, under the headline 'FOI request obstructed — watchdog', it is reported that:

> In an attempt to find out how much money was being spent on public relations, Liberal MP Richard Dalla-Riva had applied under FOI laws for documents showing 'public servants seeking media opportunities, media attention, and/or the development of media images' for cabinet ministers.

We then have the Ombudsman's report. It is worth reading. It indicates, amongst other findings:

> The Attorney-General's guidelines advise five days should be allowed for noting by the ministers office of decisions on sensitive FOI requests, but this was exceeded in many cases, often exacerbating delays.
>
> In several cases examined the reasons given for claiming exemptions were misleading. In some cases departments asserted requests were unclear or voluminous with little or no justification. In many cases they failed to giver proper assistance to applicants in amending their requests. The effect was to delay answering the request without appearing to exceed the time limits of the act.

I also refer to the contribution of the member for Prahran in the other place, who referred particularly to the absence of any reference to this report in the contributions by speakers, including the lead speaker, in the other place, the member for Altona.

I will refer to some other articles briefly. One is a Focus article in the *Age* of Friday, 4 September 2009, headed 'Secret state'. Under the subheading 'The state government and bureaucracy are increasingly blocking access to information' it says:

> Critics argue that the existing FOI laws are being interpreted in a way that makes them almost meaningless and renders the term 'freedom of information' an oxymoron.

The *Herald Sun* of 2 June 2006 has an article headed 'Ministers rebuked for toying with FOI', and the *Age* of 2 June has an article headed '"Deception, secrecy' hinder FOI"', which again refers to the Ombudsman's report. Under the heading 'FOI: it's like a painful day at the dentist' an article in the *Age* of 6 June 2006 says:

> When the newspaper requested information about emergency department waiting times, the information was received the date the government made a related funding announcement.
>
> Cynical timing or mere coincidence? Whatever the case, this should not be allowed to happen. Freedom of information cannot live up to its name if it is not truly free from interference by government and the bureaucracy.

In the *Age* of Wednesday, 8 September 2006 under the heading 'Government withholds major projects information' it is stated:

> Deputy Liberal Leader Louise Asher — who sought the reports under freedom of information laws — said the government was trying to avoid scrutiny over its troubled projects, many of which had been late and overbudget.

I now want to briefly refer to an FOI case I was involved in concerning documents surrounding the Sugarloaf pipeline. I refer to an article by Melissa Fyfe in the *Age* of 21 June 2009 which reports that Mr Downie of Melbourne Water:

> … told the Victorian Civil and Administrative Tribunal the food bowl minimisation project was unlike other government projects. 'Government policy was made before the business case was done' …

When there is no business case prior to the making of a decision, in a sense that is a case where FOI documents will be quite sparse because they do not actually have the documents. What is important is the role FOI played in that admission in 2009. We then had the famous Auditor-General's report of June 2010, which again confirms that:

> The development of the business cases for the FMP and the Sugarloaf pipeline commenced only after the government had committed to the projects and approved the funding. This process is contrary to the explicit and mandatory business case guidelines for projects such as these.

The food bowl modernisation report of November 2011 by the Ombudsman shows the significance of this sort of FOI exercise and the way the previous government sought to delay and have this sort of information held over for as long as it could. Paragraph 255 of the report quotes David Downie as having said:

> … if we'd done a business case, the government probably would've been forced into doing some other project … other than a food bowl.

Paragraph 257 states:

> As to why the former government committed to the project prior to the completion of the business case, Mr Downie said at interview:
>
> > It was simply all the circumstances of 2006–07, and the government not wanting to announce a thing they knew would be unpopular in many quarters, coming up to difficult times — drought. And we didn't have all the answers because you haven't done a business case.

That is the sort of work that the former opposition had to do to bring to light the processes of the previous government. What we will see with the commissioner as an independent operative in the FOI space is an improvement in the culture of FOI arising from the election of the Baillieu-Ryan coalition government. I know there is going to be much debate in the committee stage in relation to the amendments, so I do not necessarily wish to proceed much further.

Another point that is important is the complaints provisions identifying the functions of the commissioner, which are set out in new section 6C. The minister can set binding professional standards under section 6L, including standards for providing assistance to applicants making a request, the identification of relevant documents, consultation and clear communication with applicants and timely decision making.

The important independent role of the Victorian Civil and Administrative Tribunal is preserved. It is there to review what is presently reviewable, including decisions of ministers and principal officers at first instance.

In relation to the complaints function, new section 61A provides that complaints may be made to the FOI commissioner about the actions the agency has taken or failed to take in the performance or purported performance of its functions and obligations under the act, including decisions that a document cannot be found or does not exist. An important point to mention in relation to time limits is that because of the independence of the commissioner, the time limits — which I am fast approaching in my speech — will mean that because the department has to take the request to the commissioner, there is a greater time for the commissioner to make the initial decision and because the commissioner is independent, there needs to be a right to appeal it, which will be 60 days rather than 28 days.

I must say in closing that we have seen the most extraordinary transparency from the federal Labor Party in recent days. We have seen what Labor is all about: infighting, spin, factions. It is great to see — —

Ms Mikakos — On a point of order, Acting President, Mr O'Brien has failed to mention that Mr Abbott won by one vote, unlike Prime Minister Gillard. I draw him back to the need to be relevant, as there has been absolutely no relevance in what he has to say on this bill.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! There is no point of order. I ask that in the short time he has left Mr O'Brien be relevant.

Mr O'BRIEN — Again Labor is irrelevant. We on this side of the house are relevant. We have delivered our policies, and this will be a significant reform — the most significant in 30 years. The minister should be commended for bringing this important bill to the house.

Ms MIKAKOS (Northern Metropolitan) — I could be mistaken in speaking on the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011, because it really should be entitled the freedom from information bill. What we have here is a bill that is a complete joke and a far cry from the promise the now Premier made at the last election, which was to be open, transparent and accountable. Since the Baillieu government came to office we have seen a culture of secrecy descending upon us. We have seen the centralising of freedom of information requests in the Premier's office, and we have seen questions asked in question time being ignored. Earlier today we had the Minister for Planning, Minister Guy, unable to recall whether he had had a discussion with the Premier around an issue that must be taking up a great deal of time in his mind at the moment. Mr Guy was unable to respond to that question but said he would do so in writing at a later date. I look forward to seeing that answer.

The spokesperson on opposition scrutiny of government, Mr Pakula, has already said in relation to these issues that the state opposition will support the second-reading vote on this bill but we will be seeking to make significant amendments to the bill because we do not believe it meets the objectives set out in the coalition's election promise. If those amendments are not supported by the government, we will be opposing the third reading of this bill.

It was interesting to listen to Mr O'Brien's contribution, because essentially his defence was that FOI legislation could have operated better in the past, therefore those in government are going to ignore their election commitments and weaken freedom of information legislation. I do not want to be too rough on Mr O'Brien, because he and I worked at the same law firm at different times. He must have learnt something while he was there. I am sure that if he were to go and have a considered look at the bill before the house — —

Mr P. Davis interjected.

Ms MIKAKOS — In case Mr Davis is wondering, it was Mallesons. If Mr Davis has a look, he will find that I worked at an interesting array of law firms in the past.

The legislation before the house does not go anywhere near delivering on the coalition's original promises in this area; it falls very far short of what those opposite promised. We are supportive of the establishment of an FOI commissioner and a parliamentary scrutiny committee, but we do not support them if they are

toothless tigers, which is what this bill seeks to make them. Those opposite are establishing bodies with very limited jurisdiction and with no real independence, thereby entrenching further delays in the FOI system.

Mr Barber has already alluded to the fact that freedom of information legislation was a very important historic achievement — a legacy of past Labor governments — that began with John Cain implementing the Freedom of Information Act 1982. That was a significant piece of legislation for this state. If we look at the coalition's record since that time, we see it is far from impressive. The Kennett era in the 1990s brought with it all sorts of tactics to tighten FOI legislation. It sought to broaden the definition of exempt cabinet documents and introduced a $20 application fee, and it required a $170 fee for deemed refusals — that is, the payment of a further $170 just for the privilege of having the government delay responding to your FOI request. Let us not forget that at one point those in government in that time even threatened to scrap the freedom of information act altogether.

When Labor first came to office it made key reforms to the freedom of information legislation. The most recent reforms were in 2007. We believe that freedom of information is significant legislation. The coalition went to the election with detailed commitments in this area. It claimed in its policy document that:

> Lack of scrutiny hinders good decisions and policies …

and:

> Government without scrutiny is bad government.

Since that commitment was made we have had over a year of the coalition in government breaking many promises and backflipping on other promises. This is just the latest one. My own experience of dealing with freedom of information legislation relates to my attempt to have the government release the KPMG report into the Take a Break occasional child-care program. I lodged my request in July 2011, and for seven months my request, appeals and attempts to seek review were knocked back. It was only when I lodged an appeal with the Victorian Civil and Administrative Tribunal and was about to make my public interest submission that the Minister for Children and Early Childhood Development, Minister Lovell, finally decided to release the report. It is farcical that the only way we can get access to documents and have FOI requests responded to is by commencing legal proceedings before VCAT.

In that case it was clear that in that case the Victorian Government Solicitor's Office had actually given advice to the Department of Education and Early Childhood Development to Minister Lovell that she was going to lose the matter before VCAT. That is a complete joke. The *Age* has reported that Don Coulson, Mr Baillieu's FOI adviser, has been closely involved in decisions made by departmental FOI officers. He has been able to effectively pluck to safety any politically sensitive FOI requests. This shows that the government is treating our freedom of information legislation with absolute contempt. Under this bill the FOI commissioner will have no jurisdiction over the decisions of ministers and departmental heads, and perhaps that is because those decisions are already being taken by Mr Coulson. It is an absolute travesty that that process has been centralised in the Premier's office.

On 11 December 2011 the editorial in the *Sunday Herald Sun* called this bill 'a joke'. I agree with that assessment. The editorial went on to say:

> The commissioner will have no jurisdiction over ministers or their officers … The new commissioner will also be unable to review refusals to provide access to cabinet documents. And departmental secretaries will also be safe from the commissioner's powers.
>
> …
>
> The government should be ashamed of this disgraceful legislation.

The government should be absolutely ashamed; this legislation is a complete joke. There was a very detailed coalition document, but time will not permit me to quote extensively from it. There is a lot of talk about sanctions, enforcing compliance, failures to comply and so on and so forth, but what have we seen in this bill? It is a complete joke. We have seen no carryover of the coalition's election commitments into the bill itself. The fierce watchdog promised while it was in opposition is looking more like a bouncy little puppy looking on in earnest but tied firmly to the leash of the Baillieu government. This is a complete disappointment. My colleague Mr Pakula very capably set out in great detail all the flaws in the bill, so I will not attempt to go through all of that again. I put on the record my huge disappointment with the backflips of the Baillieu government to date, particularly in relation to this area. What the government has delivered falls way short of what it promised. It is extremely disappointing that we have a bill that is 'the harder to obtain information act', and it should be condemned.

Mr P. DAVIS (Eastern Victoria) — It is a delight to have the opportunity to make a brief contribution after such an erudite speech from the government lead speaker, Mr O'Brien, who made a very eloquent

contribution which contrasted remarkably with the paucity of the contribution from the opposition. I studied with interest the arguments put by the two opposition speakers and I listened carefully to Mr Barber's contribution. Given the hour and given that we are going to have an extended committee stage, I will succinctly put forward my point of view. I have served in this place for a considerable time: in opposition for nearly 11 years and also on the front bench. I have been involved in seeking information from government in all the various forms — by questions without notice, questions on notice, through motions seeking documents in the house and involvement in a series of freedom of information requests — and what I can say in this house is: talk about pots calling kettles black!

The hypocrisy I have heard tonight from the opposition is consistent with the view of the opposition when it was in government, which was say one thing and do another. Opposition members talk about freedom of information requests. There was no freedom of information then. As a shadow minister making FOI requests, in the end I gave up because it was a waste of time, a waste of money and a waste of resources because the then government, now in opposition, pointedly refused day after day to release documents. It was a farce.

My education on FOI applications started as the shadow minister responsible at the time for the energy and natural resources portfolios when the great transformation of environmental flows for the Snowy River was being implemented. All we were seeking was information on costs and data in relation to the critical impacts of diverting water from irrigation and the benefits to the environment. What a good-news story there was to tell, but even then the minister responsible, Candy Broad, was disinclined to allow that information to be released, and I ended up having to go to the Victorian Civil and Administrative Tribunal. I think we had three days at VCAT, and we employed external consultants from Melbourne University to give evidence. What was the net result? A lot of time wasted, a lot of money invested and an absolute zero result. In my consideration about taking VCAT's decision on appeal the issue was: was I ever going to get a document? No. It was quite clear that the government was going to fight me to the end because it did not want to release any information.

I have an absolute conviction that the government has proposed legislation in this place which, as a matter of principle and as a statement of election policy, will improve the transparency of FOI requests in this state. Credit must be paid to former Premier John Cain for introducing the initial freedom of information legislation in Victoria. However, I have to acknowledge that there is no doubt that over time the worthy intent of that initial legislation has been somewhat changed by the partisanship in the way that FOI requests are treated. There is absolutely no doubt about that. That case cannot be denied, but this is a new beginning.

Ted Baillieu had a real commitment as Leader of the Opposition, which was translated into a clear policy statement. It may be that in its drafting the legislation is not simply a mirror of the policy statement, because it is impossible to articulate a policy statement in every fine detail, but the principles which are substantially contained in that policy document, which tonight I have reviewed again, quite clearly are articulated in this bill. It is my view that that policy commitment is transposed into the detail of this bill. Importantly, we will see not just a new regime of transparency in terms of the FOI commissioner and the office of the commissioner but also a regime imposed by the Parliament.

Members of this house will be able to sit in judgement on the performance of the commissioner. As chairman of a parliamentary oversight committee, I have to say: let nobody in this house accuse me of being a creature of the government. The task of the parliamentary committees that have oversight roles is to ensure that the parliamentary interests are protected, and members of Parliament carry out that role with integrity. The deputy chairman of my Public Accounts and Estimates Committee and other members who serve on that committee take that role and discharge it with great obligation. In preparing the reports that they bring into this house, they ensure that the questions they put to departments are questions that seek information that is important and relevant to proper scrutiny. I believe that the members of the FOI committee will discharge that duty of high responsibility in exactly the same way.

I do not believe that Mr Barber, in making the charge that he did in relation to the oversight committee, was anywhere near the mark. By his remarks he showed contempt, in my view, for his peers in the Parliament. Indeed the Greens have shown contempt for the oversight processes of this Parliament by refusing to be members of the Public Accounts and Estimates Committee. I would say that Mr Barber has no basis on which to make that criticism and in fact it diminishes him and his own standing as a parliamentarian. Mr Barber ought to think again because he may in fact on reflection realise that participating in parliamentary scrutiny ensures integrity in process.

In conclusion, Acting President, I know full well that you better than most understand the FOI processes. In your role in another life, as it were, you endeavoured to be successful in the pursuit of documents and were

extraordinarily unsuccessful on some occasions when seeking documents from the previous government.

We all have a sense of frustration about this FOI process, and I think we would all feel passionately that in future it should work more seamlessly. I think that the intent of the government needs to be understood before judgement is made. The intent of the government is clear. It is to make this act work more effectively. If members do not like some of the details of the bill, let us just suck it up and see how it goes and make a judgement down the track. I urge members to support the bill.

Mr EIDEH (Western Metropolitan) — I rise to speak on the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011. It is a very important bill for an open and honest government, but this government has already failed the test, as we are all well aware from complaints by the Ombudsman and others. Yet, as usual, the Baillieu government is not acknowledging what is being said.

The opposition supports freedom of information, and we support this bill even though we have serious reservations, as we have about everything that this government has brought before us. Indeed the Ombudsman is investigating why this government is bending over backwards to delay FOI requests. Given its inaction in so many areas where leadership is required, as the *Herald Sun* pointed out on the weekend of 19 February, we all know the answer here. Members opposite have no idea of what is going on. They cannot control their own lack of skills, let alone the government as a whole, and so they have no idea of what is going on. They must keep you, Acting President, and me in the dark to maintain that same level of no knowledge across the state, ignorance being their bliss.

This bill is very important, and the opposition is keen to have the community made aware of what we are debating. In stating that, I thank the *Herald Sun* for its relentless pursuit of integrity based on an honest and effective FOI environment — certainly not what the Baillieu government has created in less than 18 months.

This bill establishes an FOI commissioner, but the Parliament will have no say in his or her appointment. That will be solely at the direction of the minister and the Premier. That is very democratic indeed — by coalition standards. This bill allows government departments a longer time to not respond to FOI requests. This is another example of where this state is heading under the leadership of the Premier, as was pointed out in the *Herald Sun* on 19 February.

There will be a considerable degree of limitation on what can be made accessible under FOI, and the commissioner will be restricted from acting like the Ombudsman and making his own investigations. In short, whoever gets the job will get a great salary for considerable public abuse about the lack of any real action under FOI, but there will be no real level of work because the office will be as toothless as a baby doll. I feel sorry for the person who gets this job because they will become very unhappy very quickly or they will try to force the government to strengthen the legislation and in so doing become one of the thousands of excess public servants. Those who will be safe are those public servants, those employees of this government, who will act very slowly on any and all FOI requests. We often talk about the rights of people, such as the right to be heard, but the intention and the clear aim of this bill is to give people no knowledge and thus no basis on which to be heard.

In like manner, as Mr Noonan, the member for Williamstown in the other place, declared, the government sought to prevent members of the opposition from being briefed on the bill. Why are government members trying to prevent full and open scrutiny of the bill? Why do they wish to keep the commissioner powerless? Why do they want to keep you and me in the dark? Could it be that after barely 18 months in the job they have sinister, dark secrets that they cannot divulge on pain of death? Indeed members of the opposition in the other house and in this chamber have highlighted many examples where government members have sought to prevent information becoming public — and that number is growing day by day. For a government already famous for doing little, members opposite are doing a lot to prevent scrutiny, transparency and open government.

I sincerely feel sorry for those members opposite who are honest and decent and who would wish that their government was not amassing a reputation as the most secretive government in the history of Australian politics. Both the *Age* and the *Herald Sun* have proven much on this very matter, and I am certain that they will look more deeply into what this government is trying to hide and why. My concern is that the next target of the government's legislative arm could be to weaken the whistleblower legislation so as to render it useless and thus terrify those honest people who wish the truth about this nothing government to be made public. Unless this bill is amended significantly, I decline to offer it support.

Mr RAMSAY (Western Victoria) — I am a bit confused. We had Mr Pakula saying that he thought the idea of an FOI commissioner was a great one but he

was disappointed that the full opposition party room could not get a briefing on the bill. We had Ms Mikakos saying she thought it was a stupid idea. Then we had Mr Barber saying it is all spin — and that was from the master of spin himself.

I rise to speak on the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011 — —

Hon. M. P. Pakula — We'll talk about you tomorrow.

Mr RAMSAY — Yes, we will hear more spin tomorrow.

I congratulate Minister McIntosh and his office on the work put into this bill. This bill has been introduced in response to public disappointment and anger that for 11 years Labor failed to reform Victoria's integrity system and continued to wallow in a culture of secrecy, stonewalling and inaction, even with evidence from Ombudsman's reports indicating delay, mishandling and deceit.

I commend the Baillieu government on a reforming piece of legislation that is one of the most significant reforms to Victorian FOI law in 30 years, as mentioned by my colleague Mr O'Brien. This is yet another example of the commitment of the Baillieu government to increase government transparency and accountability to the public — in this case in relation to the FOI process.

The Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011 will amend the Freedom of Information Act 1982 to establish an FOI commissioner who will be appointed by the Governor in Council. The commissioner will report to an accountability and oversight committee, which will be a joint parliamentary committee. The FOI commissioner will be independent of the executive arm of government and the commission will be supported by an independent office. This is part of the coalition's commitment, and hopefully it will provide a mechanism to formally resolve FOI disputes through negotiation with applicants and relevant agencies.

The commissioner will also have the power to request documents and submissions from the agency to assist in the making of a decision in relation to a review. This will provide a quicker resolution than we saw under a Labor government, when over 1000 FOI requests sat in the ether and had no determinations. Applicants and agencies will retain and be afforded a pure right through the Victorian Civil and Administrative Tribunal. Agencies will also be able to appeal a decision of the FOI commissioner at VCAT.

The commissioner will be able to handle complaints in relation to the administration of the act and delays caused by ministers when processing FOI requests. There are decisions by ministers to defer access to documents and to release information about third parties. This is a reform Labor would never have had the courage to introduce.

The minister responsible for the FOI act may set professional standards for the purposes of improving the FOI culture and practices of agencies. These may include assistance for applicants, reidentification of documents, a consultation process and timely decision making. This addresses many of the issues raised in the Ombudsman's 2006 report *Review of the Freedom of Information Act*, which indicated that under the former Labor government, decision-making processes were open to manipulation, delays — including delays of more than 20 days — and waiting by ministers' offices. There was a view that there were deliberate delays in notifying applicants of decisions. That door is now closed.

Business interrupted pursuant to sessional orders.

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

That the sitting be extended.

House divided on motion:

Ayes, 21

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

Noes, 19

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

Motion agreed to.

Mr RAMSAY (Western Victoria) — I was just saying that the door is now closed, and I think that is an appropriate time to finish. The coalition is opening a new door of openness, transparency and accountability of government. This bill is part of that process. The FOI commissioner will be like a breath of fresh air for those applicants seeking documents. We have at last moved away from the spin and secrecy of the Brumby government. We now have a government establishing the role of an FOI commissioner who will help and support applicants to receive appropriate documentation. The commissioner will report to a joint parliamentary committee and to the houses of Parliament through an annual report. This report will cover performance and the exercise of the FOI commissioner's powers and functions. I commend the bill to the house.

Motion agreed to.

Read second time.

Instruction to committee

Mr BARBER (Northern Metropolitan) — I move:

> That it be an instruction to the committee that they have the power to consider amendments and new clauses to amend the Alcoa (Portland Aluminium Smelter) (Amendment) Act 1984, the Australian Grands Prix Act 1994, the Firearms Act 1996, the Loy Yang B Act 1992, the Treasury Corporation of Victoria Act 1992 and the Victorian Funds Management Corporation Act 1994 to remove from those acts exemptions from the Freedom of Information Act 1982.

Both the long title and clause 1(a)(ii) of the bill aim to improve the operation of the Freedom of Information Act 1982. The purpose of section 3 of the act is to extend the right of the community to access information that is in the possession of government. Removing the blanket exemptions associated with entities, companies or events like Alcoa, the grand prix, Loy Yang B, the Treasury Corporation of Victoria and the Victorian Funds Management Corporation is unambiguously consistent with improving community access to information and thereby improving the functioning of the act, which this bill aims to do. These entities, companies and events will still be able to claim the other exemptions that exist under the act if a relevant exemption applies, but this will remove their as-of-right claim to secrecy with the state government. Over time we have seen these sorts of spot amendments develop for what were at the time particularly sensitive issues that in many cases are just not sensitive anymore. It is for that reason that I hope to move this instruction and get the house to support it.

Hon. M. P. PAKULA (Western Metropolitan) — The opposition will support Mr Barber's motion, but it should not be taken as read that we will support the amendments that he would move if the instruction to the committee motion were agreed to. As we have indicated in debate on previous bills, it is our view that the committee should at least have the opportunity to consider Mr Barber's amendments, and on that basis we will support his motion.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the members for their contributions. This instruction is unrelated to the issues dealt with in the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011, and it would therefore be inappropriate for the government to consider this motion at this time. Accordingly, we will not be supporting Mr Barber's motion.

Motion negatived.

Committed.

Committee

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I seek leave to have Mr O'Brien join me at the table.

Leave granted.

Clause 1

Mr BARBER (Northern Metropolitan) — I have been informed that the Department of Premier and Cabinet has recently changed its management structures and processes for FOI requests. Can the minister provide details of how the act is now operating compared to how it used to operate and the reason for such changes?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The principal officers of agencies are responsible for ensuring that their agencies are compliant with the obligations of the Freedom of Information Act 1982. The Secretary of the Department of Premier and Cabinet is the relevant principal officer of the department, and therefore how she structures her department in order to comply with the obligations of the Freedom of Information Act 1982 is ultimately a matter for her.

Mr BARBER (Northern Metropolitan) — How much funding will the commissioner's office be provided over the forward estimates?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The 2011–12 budget allocated $7.9 million over four years to establish the office of the FOI commissioner.

Mr BARBER (Northern Metropolitan) — In a number of cases the FOI commissioner may have to defend their decisions in VCAT (Victorian Civil and Administrative Tribunal). If the commission determined to grant documents to me as an applicant, for example, the department would be appealing against its decision, and while for me to ensure that my rights are upheld I guess I would have to join the action, the action itself would be against the commissioner in VCAT. How much money has been provided within the budget the minister mentioned to enable the commissioner to have the proper advice and expertise available to them in order to wholeheartedly defend their decisions that documents be released?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated, there is an allocation of $7.9 million over four years. In terms of the specific question asked, the FOI commissioner will be sufficiently equipped and funded to perform their functions as provided under the bill. The bill does not establish a process for the FOI commissioner to take agencies to VCAT. The FOI commissioner will make an independent decision on reviews of agency decisions, and the FOI commissioner's decision can be appealed to VCAT by either the applicant or the agency concerned. Under new section 51(1), VCAT may ask the FOI commissioner to assist the tribunal in conducting the appeal of the FOI commissioner's decision.

Mr BARBER (Northern Metropolitan) — In later clauses, notably clause 24, we also see that the commissioner can end up in the Supreme Court, and that gets very expensive very fast. Will the related expenses come out of the office's annual appropriation, or will special grants or other sources of funds be accessed for that legal advice when effectively the government's very expensive legal team will be facing up against the commissioner's legal team?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated earlier, the FOI commissioner will be sufficiently equipped and funded to perform their functions as set out in the bill. How the FOI commissioner manages their allocated funding, which as I indicated earlier is $7.9 million over four years, in relation to specific aspects of his or her functions will be a matter for the commissioner.

Mr BARBER (Northern Metropolitan) — I would be pretty confident that the government does not have a line item that says 'legal budget'. I would be pretty confident that when the government decides to dig its heels in it just makes a blank cheque available to fund its legal team. What the minister has seemingly told me is that the commissioner has a limited budget. If their resources become exhausted and they run out of money as a result of constantly defending decisions or dealing with matters in the Supreme Court — and when we get to clause 24 we will see the commissioner could very likely end up there more than once; it will depend entirely on the attitude of the government's department heads — then that is the end of it. The commissioner will have run out of budget and will not be able to defend their decisions anymore — and the minister is telling me there is no other source of funds or special appropriations they can access for the purposes of legal fees. Unlike the minister's department and all the other government departments, this person will not be able to shuffle money around from one function to another to try to cover an unexpectedly large legal cost centre. Is it clear there is no other special appropriation or source of funds the commissioner will be able to draw upon to defend their decisions apart from the budget they get given in the state budget each year?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again I reiterate the statement I made before — that is, that how the FOI commissioner manages their allocated funding in relation to specific aspects of their functions will be a matter for the commissioner.

Mr BARBER (Northern Metropolitan) — I also raised in the second-reading debate the question of the cabinet register. This is a document that is apparently required to be prepared under section 10 of the principal act. Where is that information publicly available? Where this register, which is required under the act, is even located — if it is prepared — is apparently a secret. That relates directly to a number of the ways in which I might use this very legislation we are debating.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for forewarning us in the debate. In relation to section 10 of the principal act — and I note the comments made by Mr Barber — it has not been the practice of successive governments to publish cabinet registers. This section of the FOI act is unrelated to the amendments dealt with in this bill, and therefore it would be inappropriate for the government to debate the details of this provision at this time.

Mr BARBER (Northern Metropolitan) — I think it is related, Minister. I think it is very much related, because it relates to this office's powers in relation to cabinet documents. I understand, however, that the minister has indicated he is not going to address that. I presume the response would be the same if I asked the minister about the so-called part II statements — this is under section 7 of the act — under which departments are meant to proactively disclose information. For any department — and perhaps the minister could point this out for me in relation to his own department — I cannot find where those statements are to be found. I am referring to the information that is proactively released under the provisions of the FOI act.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again, in terms of the member's question and statement, this section of the FOI act is, as I said, unrelated to the amendments dealt with in the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011, and it would therefore be inappropriate for the government to discuss the details of this provision at this time. However, the type of information contemplated by part II of the act is now generally made available through accessible public information sources, including each department's annual report and on departmental and other related websites. This online presence is in line with whole-of-government standards and guidelines for web-based publishing that can be found at www.egov.vic.gov.au. Departments and ministers provide the public with information about their operations by regularly updating their publicly accessible internet sites and tabling reports on an annual basis.

Clause agreed to; clauses 2 to 4 agreed to.

New clause A

Mr BARBER (Northern Metropolitan) — I move:

1. Insert the following new clause to follow clause 4 —

'**A New section 5A inserted**

After section 5 of the Principal Act **insert** —

"**5A Government contracts to provide that Act applies**

(1) This section applies to a contract with a business, commercial or financial undertaking entered into by —

(a) a Minister, for and on behalf of the Crown; or

(b) an agency.

(2) The contract must provide that the contract is a document that is subject to this Act.".'

As I said in the second-reading debate, the aim here is to ensure that a standard clause is inserted into all government contracts with private entities, making it very clear that the contract is subject to FOI. The words 'commercial in confidence' stamped all over things seem to set up quite the wrong impression, especially when there is a commercial-in-confidence exemption within the act. It almost implies that the document has been predetermined to be exempt when in fact it should be predetermined that it be accessible.

This is not an original idea of mine; it is an idea that former Premier Bracks and former deputy leader of the opposition Mr Hulls thought up when they were opposition members of the Public Accounts and Estimates Committee. They recommended it in a report which was tabled after they won government in 1999. This would be the opportunity for the Labor Party to join with me and, after a long time, actually seek to implement that promise.

Hon. M. P. PAKULA (Western Metropolitan) — I should indicate the position the opposition is going to take on this amendment and in regard to the other amendments that will be moved by Mr Barber. Mr Barber effectively has two different categories of amendments; he has a category of amendments that deal with this bill and a category of amendments that deal with the principal act. The opposition has made it clear, both through the second-reading debate in the other place and the second-reading debate here, that the amendments we will be moving and the amendments we will be supporting are those which relate to this bill. We will be supporting the amendments that relate to this bill because our principal objective is to hold the government to its commitment in regard to the bill it is introducing. That is not to say that there are not some matters in the principal act that will ultimately need to be dealt with.

Mr Barber — Do it now.

Hon. M. P. PAKULA — Mr Barber says, 'Do it now'. I indicate to the house that the opposition will form its view about the principal act and what changes, if any, need to be made to the principal act at a time of its choosing, not at a time of Mr Barber's choosing. I should say that if we do not support all of Mr Barber's amendments to the principal act tonight, that should not be taken by anybody as a suggestion that we will not countenance them in the future, sometime between now and the next election.

Mr Barber — You promised this one in 1999!

Mrs Peulich — So you are going to hold them to account?

Hon. M. P. PAKULA — Mrs Peulich, as you know, Mr Barber holds us all to account. That is his role.

We will confine ourselves tonight to dealing with amendments to this bill. Mr Barber will move a number of amendments to this bill that the opposition will support, but we will not support the amendments he seeks to move to the principal act. Frankly that is because we have not given proper consideration at this point to all of the changes that might need to be made to the principal act, including, for instance, the revocation of application fees, which we sought to do in the 56th Parliament but were unable to do because of the combined votes of the Liberal Party, The Nationals and the Greens. The opposition will not be supporting the amendments Mr Barber seeks to move to the principal act. As this is one of them, we will not be supporting it.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Mr Barber and Mr Pakula for their contributions. This amendment would require all government contracts entered into by ministers on behalf of the Crown or agencies to state that the contract is subject to the Freedom of Information Act 1982. This amendment will not affect the application of the FOI act to government contracts or the application of exemptions under the FOI act. To attract the operation of the FOI act it is not necessary to state that a document is subject to the FOI act. Contracts in the possession of agencies are already subject to the FOI act and subject to relevant exemptions or express exclusions, such as those under the Australian Grands Prix Act 1994. Further, this amendment is unrelated to the issues dealt with in the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011, and it would therefore be inappropriate for the government to consider this amendment at this time.

Mr BARBER (Northern Metropolitan) — This is one thing I can take issue with. The minister says it would not influence the operation of the act. It absolutely would, because as the minister is well aware — the previous opposition fought pretty hard on this issue — the question of commercial in confidence, which is an exemption under the act in relation to certain decision-making criteria, has been widened and widened. The previous opposition went to court and fought extremely hard to get copies of business cases put together by NVIRP (Northern Victoria Irrigation Renewal Project) and had to bust through the supposition that has built up over time in VCAT that if something might affect someone's commercial prospects, it can be made exempt. The requirement to put this in each and every government contract would reverse that onus and make it very hard for a third party to come in and appeal a government's decision to release such a document, because at the time they signed the contract they would have seen the words in there. That is why it is very important, but I understand the government is not going to be supporting any amendments.

New clause negatived.

Clause 5 agreed to.

Clause 6

The DEPUTY PRESIDENT — Order! Mr Pakula is to move his amendment 1, which proposes to include decisions of ministers on certain FOI matters in the category of decisions that may be reviewed by the FOI commissioner. This amendment is a complete test of many of his subsequent amendments and a partial test of certain following amendments which relate to current exemptions for decisions of ministers and principal officers of agencies. Mr Pakula's amendment 11 is his first amendment dealing with principal officers, which he may choose to move regardless of whether his amendment 1 is passed. The subsequent amendments are either fully or partly tested by amendment 1. These are amendments 7 to 10, 13 to 20, 22 to 24, 26 to 29, 31, 33, 34, 36 to 42, 45 to 47, 50 to 56, 58 to 74, 76, 77, 87 and 88.

Hon. M. P. PAKULA (Western Metropolitan) — We will dispose of a fair whack of the amendments in the next few minutes. In moving this first amendment I should indicate this is actually a very small amendment. In new section 6C(1)(b), in the middle of page 4 of the bill, it adds the words 'or Ministers', so that it reads:

> to conduct reviews of decisions by agencies or Ministers …

Obviously it is only because this is the first time within the bill that the matter comes up that this amendment is being moved in this way. It is part of the much more substantive reform that we are seeking, which is an amendment to give effect to the government's commitment that all FOI decisions would be within the purview of the FOI commissioner. Fundamentally in order to do that we need to change in various places throughout the bill what the government has said about both ministers and principal officers of agencies. As I say, this is the first place where this comes up.

I should indicate while I am on my feet that there have been a number of interjections across the chamber

about how the opposition will never live it down if it opposes the third reading of this bill. Let me say to those who are interjecting — —

Mrs Peulich interjected.

Hon. M. P. PAKULA — Let me say this to Mrs Peulich: this position is not a surprise. We have said this publicly, we have said it in the other place and we say it in here. Let me be very clear about why we say it. No-one can dispute that there are significant increases in the time that will be taken for matters to be dealt with under this bill. There will be significant increased cost. In order to make any of that worthwhile you need an FOI commissioner who fundamentally has the ability to improve the situation in other regards when it comes to FOI.

But when you have an FOI commissioner who has no authority at all to deal with the decisions that are made in ministers' offices — and the number of decisions that are being made in ministers' offices has grown exponentially since this government came to power — when you have an FOI commissioner who cannot deal with a matter if a secretary of a department withdraws his or her delegation to an FOI officer and makes the decision himself or herself because it might be a particularly sensitive matter, and when you have an FOI commissioner who has nothing to say about matters which the government declares are cabinet in confidence, in those circumstances for the government to parade around and pretend that somehow it has made some quantum improvement in access through FOI is frankly a charade that the opposition will not participate in. As we have said, an FOI commissioner who had some teeth and an FOI commissioner who improved the functioning of the FOI system would be a commissioner worth supporting.

Mrs Peulich — So an all-party committee is just not good enough.

Hon. M. P. PAKULA — Mrs Peulich talks about the all-party committee. All that the all-party committee is there to do is to be an overseer of the commissioner — a government-run overseer of the commissioner.

Despite the fact that we in the opposition have 88 amendments tonight, all of which I expect the government to oppose, and despite the fact that there are something like a dozen substantive improvements that we are seeking, all of which the government is likely to oppose, the government says — and I think Mr Philip Davis put it most bluntly — 'Suck it up and support it'. The opposition is not prepared to do that in the event that none of those improvements is supported.

Mrs Peulich interjected.

Hon. M. P. PAKULA — I know what would happen if we did: every time we had an issue with the way the government treated FOI, every time we had an issue with the fact that the FOI commissioner could not deal with various matters raised by the opposition, the government's response would be, 'Well, you voted for it'. That is what Mrs Peulich would say.

In these circumstances, before I formally move the amendment I have a very simple question for the minister which I think will inform the discussion from here on in. Given that the government's commitment was to have an FOI commissioner who would have responsibility for all FOI, a commitment that said — and I do not want to go back to the government's policy — the commissioner would take responsibility for all first-stage reviews of FOI requests in Victoria, my question is very simply: why does the FOI commissioner not have that power over decisions made by ministers or their officers?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is always good to correct the record. We have to be careful because what has been quoted is not what the policy states. *The Victorian Liberal Nationals Coalition Plan for Freedom of Information* says:

> A Liberal-Nationals coalition government will:
>
> …
>
> Legislate to give the FOI commissioner responsibility for all first-stage (or internal) reviews of FOI requests which are currently conducted by departmental staff.

Hon. M. P. Pakula — What about the next page?

Hon. R. A. DALLA-RIVA — In terms of the internal review I think it is important to go to the principal act, which says under the heading 'Internal review' in section 51 on page 70 — and this is what is in our policy:

> (1) Where a decision has been made, in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency (not being a decision on a review under this section), the applicant may, within 28 days … access to a document …

et cetera. The FOI commissioner bill replaces existing procedures for internal review with an external review process to be undertaken by the FOI commissioner. This essentially means that this is the most significant

change to Victoria's freedom of information laws since their introduction 30 years ago. Clause 6 inserts new parts IA and IB into the FOI act. Part IA relates to the establishment of the FOI commissioner, and part IB relates to the development of professional standards. I inform Mr Pakula that the government does not support his argument or his amendment.

The DEPUTY PRESIDENT — Order! It might help the debate if Mr Pakula formally moved his amendment, because that way I can allow members to discuss it when discussing clause 6.

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

1. Clause 6, line 16, after "agencies" insert "or Ministers".

I would just ask the minister one question. He referred to page 5 of the coalition's policy, but he assiduously avoided page 6. I ask the minister if he denies that at page 6 the policy that he just quoted from says:

> … the Liberal-Nationals coalition's independent FOI commissioner will take responsibility for all first-stage reviews of FOI requests in Victoria.

Does he deny that it says that?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I think it is important to again reflect back on the policy position, which is on page 5, and that is to:

> Legislate to give the FOI commissioner responsibility for all first-stage (or internal) reviews of FOI requests which are currently conducted by departmental staff.

The first-stage review is the internal review as outlined in the policy. We went to the election with this policy, and we are committed to establishing Victoria's first independent FOI commissioner. As I said, this is the most significant change to the FOI laws since their introduction almost 30 years ago. We will not be supporting Mr Pakula's amendment.

Mr BARBER (Northern Metropolitan) — The Greens will be supporting Mr Pakula's amendment.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pair

Darveniza, Ms	Hall, Mr

Amendment negatived.

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

2. Clause 6, page 5, line 33, omit "not exceeding" and insert "not less than".

I want to speak very briefly to the amendment. We make the simple point that a reasonable period of tenure is essential for a person with a position such as this to exercise an appropriate degree of independence from government. We do not believe it is appropriate to have a provision which says that the commissioner should be appointed for a term not exceeding five years because that could be one or two years. You would then have a person dependent on government for reappointment. The bill has made clear that the commissioner can be reappointed. We do not want to see a situation where someone gets a 12-month term and needs to in effect prove his or her bona fides in order to be reappointed after that. You can never make things perfect unless you appoint someone as a judge with tenure till the statutory retirement age. We are not proposing that, but we are proposing that it would be more appropriate for the FOI commissioner to be appointed for a term of not less than five years rather than for a term not exceeding five years.

Mr BARBER (Northern Metropolitan) — The Greens will support this amendment. It is not clear what is independent about the independent commissioner. In addition to the government getting to choose how long it appoints them for, the office has been established as an administrative office under the Public Administration Act 2004. The government can create or abolish one of those any time it wants. The government has not gone to the full extent of creating an office by statute. The government has invested some powers in an office, but at the end of the day it is an administrative office. It is the same as the way the previous government turned around and created the

Victorian Bushfire Reconstruction and Recovery Authority. The government just signed a piece of paper saying, 'There it is. We have created it'. I am not in a position to create enough amendments to create the office by statute — the way the Auditor-General or the Ombudsman has their own stand-alone legislation — but I think Mr Pakula's amendment is quite a reasonable request.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This amendment would require the FOI commissioner to be appointed for a term of not less than five years. The government does not consider that the independence of the FOI commissioner would be compromised in circumstances where the tenure of the FOI commissioner is less than five years. An appointment for a period not exceeding five years provides flexibility to the Governor in Council in appointing an FOI commissioner.

Hon. M. P. PAKULA (Western Metropolitan) — By 'flexibility to the Governor in Council' what the minister really means is flexibility to the government.

Amendment negatived.

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

3. Clause 6, page 7, line 28, after "resolution" insert "passed by an absolute majority".

This provision is again about making an imperfect situation better but not perfect. This is about the provision which provides for the way that the FOI commissioner can be removed from office. At the moment the bill provides that each house of Parliament can simply declare by resolution that the commissioner ought to be removed from office. There are a number of ways in which the opposition could have sought to amend this. For instance, we could have suggested that it required a two-thirds majority of both houses, which would have provided that at least the government and the opposition would have to concur. In these circumstances we have decided not to go that far and are simply suggesting what we believe is a very reasonable amendment, that at least there should be an absolute majority of both chambers before this independent FOI commissioner can be removed.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This relates to new section 6H provided for in the bill, in terms of suspension and removal from office. This new section 6H sets out how the FOI commissioner can be suspended or removed from office, and the process for the suspension or removal of the FOI commissioner is consistent with the process for other bodies such as the Ombudsman and the Auditor-General. The amendment would require the FOI commissioner to be removed from office by the Governor in Council only if each house of Parliament declares by resolution, passed by an absolute majority, that the commissioner ought to be removed from office. As I said, these removal provisions of similar office-holders — the privacy commissioner and the Ombudsman as well — are not consistent with the amendments proposed, nor are they consistent with the removal provisions relating to IBAC (Independent Broad-based Anti-corruption Commission). The government does not consider the amendment to be necessary or appropriate.

Mr BARBER (Northern Metropolitan) — The Greens will support this amendment.

Amendment negatived.

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

4. Clause 6, page 10, line 3, omit "Minister" and insert "Freedom of Information Commissioner".

This is a test for amendment 5. There can be no question about the wording of the Liberal-Nationals coalition pre-election policy with regard to this matter. On page 7 it says very clearly:

> The FOI commissioner will also be provided with powers to impose sanctions and enforce compliance with the act. For the first time in Victoria, the FOI commissioner will be charged with developing and enforcing professional standards for all FOI officers in government departments and agencies.

The bill states that the minister may develop professional standards, and goes on. Our amendment is a simple one. We want to remove the reference to the minister and insert reference to the freedom of information commissioner, as promised by the government in its pre-election policy document.

Mr BARBER (Northern Metropolitan) — The Greens will support this amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The government believes that the minister responsible for the FOI act is best placed to set the appropriate professional standards and to recommend the making of regulations to prescribe these standards. The FOI commissioner will be responsible for monitoring compliance with prescribed professional standards.

Hon. M. P. PAKULA (Western Metropolitan) — It is all well and good that that is what the government

believes, but that is not what the government promised. The government's promise could not be clearer. Mr Dalla-Riva says now that the appropriate role for the commissioner will be to monitor them. The commitment, very clearly, was:

> … the FOI commissioner will be charged with developing and enforcing professional standards for all FOI officers in government departments and agencies.

There can be no lack of clarity about that commitment and there can be no pretence by the minister that in any way the bill acquits that commitment. So my question to the minister is: why has the government changed its mind?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I said, the government believes that the minister responsible for the FOI act will be best placed to set the appropriate professional standards and to recommend the making of the regulations that prescribe the standards. That is the government's position.

The DEPUTY PRESIDENT — Order! Mr Pakula, then I will come to Mr Barber.

Mr Barber — I actually had an answer to Mr Pakula's question. I will come back to it.

Hon. M. P. PAKULA (Western Metropolitan) — I am looking forward to hearing it, but I ask the minister at this stage, given that he now says the government believes that what is in the bill is what is appropriate, and given that the minister has not sought to contest the assertion I have made, which is that its election policy said something quite different, will he at least concede that this is a broken promise?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated, the FOI commissioner will be responsible for monitoring compliance with the prescribed professional standards, and the government believes that the minister responsible will be best placed to set the appropriate professional standards.

Mr BARBER (Northern Metropolitan) — The answer is, for the benefit of Mr Pakula: this stuff looks pretty good when you are in opposition, when you are bashing up against these walls every day, but it takes guts to implement when it is a standard that is applied to you, and this government does not have them.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pair

Darveniza, Ms	Hall, Mr

Amendment negatived.

Clause agreed to; clauses 7 to 10 agreed to.

The DEPUTY PRESIDENT — Order! I will call on Mr Barber to move his amendment 2, which proposes to insert new clause B into the bill after clause 10. This new clause deals with the exemption from FOI for cabinet documents that currently exists in section 28 of the principal act, the Freedom of Information Act 1982. To this extent Mr Barber's new clause partly overlaps with some of Mr Pakula's subsequent amendments but not entirely, because Mr Pakula's amendments also deal with section 29A of the principal act. Mr Pakula will deal with this issue in clause 11 and should therefore be able to test his proposition regardless of whether or not Mr Barber's new clause is passed.

New clause B

Mr BARBER (Northern Metropolitan) — I move:

2. Insert the following new clause to follow clause 10 —

"B Cabinet documents

Section 28(4), (5) and (6) of the Principal Act are **repealed**.".

Deputy President, you summarised very well the intent of my amendment. Why do we not support conclusive certificates, because where they relate to cabinet documents it should be open to a party affected by this section to have it reviewed as to whether or not in fact a document is a cabinet document. Because of the number of different opportunities that are created for departments and others to game the system through this bill, this becomes a particularly pernicious clause.

Just recently in relation to the Ombudsman Act 1973 and in relation to a different matter, this government pulled out the conclusive certificate hammer and used it to refuse the Ombudsman access to the secret Deloitte report into myki. It is my understanding from my research that that is the first time a conclusive certificate has ever been issued under the Ombudsman Act 1973.

For the reasons I stated, we do not believe that a power to write a conclusive certificate over a cabinet document should exist here either. People may think it is very simple to determine what is a cabinet document, but in fact a large amount of the contestation in some high-profile cases has been about exactly what is a cabinet document. It is a definition that at various times has been widened by Victorian Civil and Administrative Tribunal decisions, but in the case of the Baillieu opposition it was successful in some cases in again narrowing the provision. This simply sets up a power, where there exists a power, that by signing a piece of paper it can no longer be reviewed as to whether or not a matter is a cabinet document, and we seek to have that power removed.

Hon. M. P. PAKULA (Western Metropolitan) — Let me just restate the position that I put earlier and that I believe Mr Barber understands well, which is that in the consideration of this bill the opposition will not be considering or supporting amendments to the principal act. Let me restate that that is not a reflection of a view that we have taken about the substance of Mr Barber's amendment, but, as I have indicated, the opposition is giving close consideration to what elements of the principal act need to be altered. We will do that in our own time, and tonight we are confining ourselves to consideration of the bill before the house and the amendments to it that we believe are required in order to ensure that it conforms with the government's commitments.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank members for their contributions. This amendment would repeal subsections (4), (5) and (6) of section 28 of the Freedom of Information Act 1982 to remove the power of the Secretary of the Department of Premier and Cabinet (DPC) to issue certificates that conclusively establish that a document is exempt under section 28 of the FOI act as a cabinet document. The decision to issue a conclusive certificate is not reviewable by the Victorian Civil and Administrative Tribunal.

Given the significance and sensitivity of cabinet records, it is appropriate that the secretary of DPC, as the custodian of such records, have the ability to issue such a certificate. Without putting words in Mr Pakula's mouth, the government's position is that this amendment is also unrelated to the issues dealt with in the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011, and it would therefore be inappropriate for the government to consider this amendment at this time.

Mr BARBER (Northern Metropolitan) — However, I could be pretty sure that at one time or another the minister has made an FOI request himself seeking a document that might have been alleged to have been a cabinet document — and had it refused. I could be pretty sure that the minister would not have been happy if he had received a conclusive certificate just at the moment when he was seeking to obtain that document. It is up to him to tell me if that is not the case.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I said, the government's position is that this amendment is unrelated to the issues dealt with in the Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011, and the government's position is that it would be inappropriate to consider this amendment at this time.

New clause negatived.

Clause 11

The DEPUTY PRESIDENT — Order! I think Mr Pakula is inviting the committee to oppose clause 11.

Hon. M. P. PAKULA (Western Metropolitan) — We are all trying to keep track of the running sheet at the moment. Clause 11 is a provision that substitutes 'Freedom of Information Commissioner' for 'Ombudsman' in sections 28(5) and 29A(3) of the principal act. I am trying to follow this myself, but it is my understanding that the effect of clause 11 being opposed is that this will test a range of my subsequent amendments with regard to cabinet-in-confidence documents and national security documents.

We strongly desire that the FOI commissioner have jurisdiction over documents that the government claims are cabinet-in-confidence or national security documents. In the debate about whether or not ministers' offices should be included, Mr Dalla-Riva made great play of page 5 of the coalition policy, which talked about first-stage refusal by departments, even though on page 6 of the policy document it said quite clearly that it would be all first-stage FOI reviews. But there is nothing in the government's pre-election policy

which suggests that the freedom of information commissioner will have jurisdiction over first-stage reviews other than where cabinet in confidence or national security is claimed.

We are not suggesting that documents which might have some cabinet confidentiality or indeed national security implications should be exposed for the world to see, but we are suggesting that the FOI commissioner ought to be able to determine whether that claim of exemption is valid or not. I seek an explanation from the minister as to why claims of cabinet in confidence or claims of national security cannot be examined and tested by the FOI commissioner.

The DEPUTY PRESIDENT — Order! I should provide some clarity to Mr Barber on something that I did not read from the running sheet that might help in this discussion, and I apologise for not reading it earlier. Clause 11 is a consequential amendment that the government is required to make for sections 28 and 29A of the Freedom of Information Act 1982. However, in some of his subsequent amendments Mr Pakula is seeking to repeal the exemptions that relate to sections 28 and 29A, which are the exemptions from review of FOI decisions of cabinet-related documents and documents affecting national security, defence or international relations. Therefore, Mr Pakula's opposition to this clause is a test for amendments 12, 30, 35, 43, 44, 57, 78, 79 and 82 to 84.

Mr BARBER (Northern Metropolitan) — I support this amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This amendment would remove clause 11 from the bill, as it says. This would mean that sections 28(5) and 29A(3) of the FOI act would continue to refer to the Ombudsman. These sections currently provide that the Ombudsman cannot conduct an investigation in respect of conclusive certificates. The government's view is that this amendment is inappropriate given that the Ombudsman will no longer be investigating matters in relation to FOI. Mr Pakula is referring to the amendment to clause 13. That is where we are at with clause 11 — —

Hon. M. P. PAKULA (Western Metropolitan) — I think we are somewhat the victim of the order in which the bill is structured. Mr Dalla-Riva is technically correct. Nevertheless, the opposition's attempt to remove clause 11 would be the consequence of later amendments that the opposition might move being passed — in other words, those amendments that would reverse the decision of the government to, in this bill, have an exemption for documents that are cabinet in confidence or national security. Whilst it might make more sense to deal with some of those later amendments first, because of the way the bill is structured this comes first.

What I would invite the minister to do is perhaps address the substantive issue, which is whether or not the FOI commissioner has responsibility for or the ability to deal with documents where cabinet in confidence or national security et cetera are claimed, on the understanding that, as you have indicated, Deputy President, this is a test for a range of other amendments that deal with the same matter.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Mr Pakula for explaining. I have the answer. In terms of the question Mr Pakula raised, there is an overriding public interest in exempting cabinet and national security documents. Section 28 of the principal act has long provided that cabinet documents are exempt from release. Section 29A has long provided that documents affecting national security, defence or international relations are exempt from release. Applicants will, however, continue to be able to apply to VCAT for review of decisions relating to cabinet and national security documents. This amendment would expand the FOI commissioner's review function to include conducting reviews in respect of decisions claiming cabinet or national security exemptions.

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister. We appreciate the longstanding situation in regard to cabinet in confidence or claims of exemption for national security. We are not contesting that. What we are suggesting is that when the government claims cabinet in confidence or national security as reason for exemption the FOI commissioner should be able to test the veracity of those claims in the same way that the FOI commissioner can test the veracity of a claim that something is an internal working document or that it would be against the public interest for a document to be released. The government explains why cabinet in confidence is important, but what the government has not explained is why the FOI commissioner, rather than VCAT, cannot have any role in determining whether the claim is a valid one.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I understand Mr Pakula's position. The position of the government, however, is that applicants will continue to be able to apply to VCAT for review of decisions relating to cabinet and national security documents. That will be the government's position on this.

Committee divided on clause:

Ayes, 20

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

Noes, 18

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

Pair

Hall, Mr	Darveniza, Ms

Clause agreed to.

The DEPUTY PRESIDENT — Order! Before progressing, I point out that we have been through two-and-a-half pages of a running sheet with another five or six pages to go. I am assuming that means we have a considerable amount of debate and discussion to go.

Hon. M. P. PAKULA (Western Metropolitan) — We have a bit to go, but it is not as daunting as the running sheet would suggest. There will be few further divisions.

Mr BARBER (Northern Metropolitan) — I have two amendments, and I need not speak for more than 2 minutes on each one. I do not have the intention of calling for a division, assuming both sides are willing to declare their positions for the record.

The DEPUTY PRESIDENT — Order! Is 15 to 20 minutes enough?

Hon. M. P. PAKULA (Western Metropolitan) — Probably.

The DEPUTY PRESIDENT — Order! Members can resume their seats, and we will continue.

New clause C

Mr BARBER (Northern Metropolitan) — I move:

4. Insert the following new clause to follow clause 11—

"**C Section 30 repealed**

Section 30 of the Principal Act is **repealed**.".

As I said in my second-reading contribution, the internal working documents exemption within the FOI principal act is the most abused section of the act. It can mean almost anything that the FOI officer wants it to mean, and it is not at all clear to me why in this day and age that should be secret anyway. The internal workings of government and the matters that a minister might have or might not have considered in coming to a decision are in fact grist for the mill. It tends to be the exemption clause that the FOI officer reaches for when they cannot conceivably make any other exemption clause work. It is the catch-all. Mr Dalla-Riva, the minister at the table, would be well aware of this, because he has made many FOI requests; he would know how often this provision is used and abused. Mr Pakula in his 14 months in Siberia is probably starting to get a sense of the same thing. For that reason it would be a timely modernisation of the act to remove this clause. It would be no great loss and possibly be to the benefit, as outlined in the words of former Premier John Cain, of the functioning of our democracy.

Hon. M. P. PAKULA (Western Metropolitan) — Given Mr Barber has indicated that he wants parties to express a view, the opposition has already expressed its view about amendments moved by him which seek to amend the principal act rather than the bill before the house. Our view on this matter is the same as it was on those previous amendments.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This amendment would repeal section 30 of the FOI act, which is commonly known as the internal working documents exemption. It would mean that agencies and ministers would not be able to rely on specific exemptions to exempt material that contains sensitive advice to ministers.

New clause negatived.

Clause 12 agreed to.

Clause 13

The DEPUTY PRESIDENT — Order! Mr Pakula's amendment 11 to clause 13 is his first amendment referring to the principal officer, which overlaps with the principle of reviewing decisions of the minister in many other tested amendments. As was explained when Mr Pakula was moving amendment 1, it is therefore better for Mr Pakula to move

amendment 11 before determining whether amendments 7 to 10 need to be moved.

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

11. Clause 13, lines 28 to 30, omit all words and expressions on these lines.

I will briefly express why we are moving this amendment and ask the minister to respond when he indicates whether the government will support the amendment. If the answer is that it will not, I would ask him to indicate why not. Very simply, we do not understand why the decisions of principal officers of agencies should not be subject to the jurisdiction of the FOI commissioner.

As the minister knows, FOI officers and departments act on a delegation from the secretary of the department. In those circumstances having a provision like this leaves the system open to a form of abuse whereby if a matter is particularly delicate or controversial, a secretary could withdraw a delegation, make a determination himself or herself and thereby oust the FOI commissioner from the jurisdiction. It is quite rare for the principal officer of an agency rather than the designated FOI officer to make these decisions, and in those circumstances the opposition would ask the government to support the amendment and would also ask the government to explain why the provision is as it is in the bill.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is not currently possible under the FOI act to internally review decisions of ministers or principal officers of agencies. The FOI commissioner bill replaces existing procedures for internal review with an external review process to be undertaken by the FOI commissioner. Therefore it is not appropriate that decisions of ministers and principal officers of agencies be appealed directly to VCAT, as is currently the case.

Mr BARBER (Northern Metropolitan) — I am not 100 per cent sure that is right. When a principal officer makes a decision where there is a need for an internal review of that decision, they delegate, if you like, downwards to a different decision-maker who then undertakes an internal review. The Greens are supporting the ALP's amendment, and I think the minister, in arguing his case for the proposition, is not quite correct.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have from the department is that matters relating to the principal officers of agencies can be appealed directly to VCAT, as is currently the case.

Amendment negatived.

The DEPUTY PRESIDENT — Order! I call on Mr Pakula to move his amendment 21, which relates to time periods for the FOI commissioner to do an initial review of an FOI decision.

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

21. Clause 13, page 18, line 1, omit "30" and insert "14".

Very simply, at the moment under the act internal reviews need to be conducted within 14 days. The FOI commissioner bill gives the commissioner 30 days. That already adds more than two weeks to the process, and that is before you consider the fact that if the commissioner finds that documents should be released, the agency has a further 60 days to consider that decision. In those circumstances we think the current time frame of 14 days, which is the time frame for internal review, is appropriate and should be reflected in the time frame allowed for the FOI commissioner.

Mr BARBER (Northern Metropolitan) — I understand the logic of Mr Pakula's amendment. The Greens have just a practical objection to this. I totally understand that Mr Pakula is attempting to mirror the current internal time line, which is 14 days. However, now that that decision will be shifted to the commissioner, he will be in a different situation. His resources will be limited, and he will have large numbers of applications to deal with. He may want to intervene in other ways, including asking the department to reconsider; assessing whether the decision was properly made; looking at other, related issues, including whether the original decision-maker did a thorough and diligent search; and possibly in parallel dealing with complaints and other matters that an applicant has raised.

Much as I would like it to be a situation where the commissioner could deal with an application in 14 days, I think often he will not be able to do so. I do not want to add delays to the process either. I was very clear about that in my earlier contribution. However, the vast majority of the delays are in the other parts of the process, and the vast majority of improvements to be made are to the other parts of the process. My experience is that I am almost always appealing to the Victorian Civil and Administrative Tribunal because the government has not made any kind of decision at all, much less one on which I could apply for an

internal review. I think that in many ways these provisions will be redundant.

On balance, while I understand Mr Pakula's concerns, I am coming down on the other side of that line and not supporting this amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Mr Pakula and Mr Barber. Of course, as was indicated by Mr Barber, the 30-day time period will allow the FOI commissioner sufficient time to assist the parties to resolve the dispute informally and to conduct a review of the agency's decision if necessary. As was pointed out, the commissioner may require up to 30 days to assess a review. This is due to his or her independence from agencies and the fact that they are removed from the agency. If this amendment were agreed to, the applicants would have the right to appeal to the Victorian Civil and Administrative Tribunal if the FOI commissioner did not complete the review in 14 days. The government considers it would be difficult for the FOI commissioner to comply with a 14-day time period, given the important work they will undertake.

Amendment negatived.

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

25. Clause 13, page 18, line 25, omit "45" and insert "28".

Much along the same line, by the time we get to this provision we will already have had the initial 45-day period and, as has now been confirmed by the committee, another 30 days for the FOI commissioner to review that. The bill provides that if at the end of that period the FOI commissioner sends the matter back to an agency for a fresh decision, the agency has another 45 days. We think that that adds just too much delay to the system and that a period of a further 28 days for the agency to make a fresh decision is ample.

Mr BARBER (Northern Metropolitan) — I agree, and the Greens will be supporting Mr Pakula's amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This amendment would decrease from 45 days to 28 days the time as indicated that the agency has to make a fresh decision following a review by the FOI commissioner. New section 49L currently provides that the FOI commissioner may refer a decision back to the agency for reconsideration and the agency will have 45 days in which to reconsider the decision. That 45 days is an appropriate length of time to allow the agency to adequately reconsider its decision, and the government will not be supporting the amendment.

Amendment negatived.

Sitting suspended 11.46 p.m. until 12.01 a.m.

The DEPUTY PRESIDENT — Order! We are on clause 13 and I am going to call on Mr Pakula to move his amendment 32, which relates to time periods for a further review by the FOI commissioner, and which is also a test for his amendment 81.

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

32. Clause 13, page 19, line 24, omit "30" and insert "14".

We have to keep track of all these time lines. You have had your initial 45 days and then another 30-day period, which is a total of 75 days by this point, and then in the circumstance where the agency makes another decision and the applicant does not agree with it, the FOI commissioner has to recommence the review on the basis of the fresh decision, and another 30 days is provided. We are saying that, given there has already been a substantial period of time, a further 30 days is an unnecessarily long period of time and a more appropriate period would be 14 days, again bearing in mind that at this point we have already had a 45-day period and a 30-day period. I take on board Mr Barber's comments in regard to the earlier amendment that was moved. This is a further period on top of that, and we are saying that in those circumstances another 30 days is more than is necessary.

Mr BARBER (Northern Metropolitan) — I agree. No matter how many different decisions these decision-makers might be making, fundamentally they are still in relation to the same set of documents. By this point in the exercise they should be fairly familiar with what they want to release and what they want to contest. I can tell you from experience that they do not act like that. I have had a number of experiences now where after extended periods documents have been handed over to me at the courthouse steps — metaphorically, not literally; the night before my court hearing. I am very confident that departments will simply exploit this as a further turn around the garden and will be forced to seriously confront what they want to release and what they want to contest in VCAT only at the moment they are forced to. Further time in the process will not serve anyone, and therefore we will support Mr Pakula's amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The

government sees this amendment as a consequential amendment. It reflects amendments that would reduce the required period for the FOI commissioner to conduct a review from 30 days to 14 days. The government believes that a 30-day period will allow the FOI commissioner sufficient time to assist parties to informally resolve the dispute and conduct a review of the agency's decision if necessary.

Hon. M. P. PAKULA (Western Metropolitan) — I simply make the point that this is one of the principal reasons the opposition says that without the support of a number of our amendments we have difficulty — which we have expressed — supporting the bill as it currently stands. The level of delay that is now going to be built into the process is taking the period of 100 days out to 150 days. The government might say anything about the process in the past, but in the past there was a 45-day period followed by a 14-day period. This provision will entrench in the act periods that could — depending on the conduct of parties — extend well past 100 days. The delays that have been built into the process could be considered reasonable only in an environment where an FOI commissioner with real teeth has been created.

From the opposition's point of view it is unfortunate in the extreme that a confluence of events is created by this bill — that is, there is an enormous exacerbation of delay coupled with an FOI commissioner without any real teeth dealing with a whole range of matters that will cause controversy between applicants and the government. We persist with our amendment.

Amendment negatived.

The DEPUTY PRESIDENT — Order! I call on Mr Pakula to move amendment 48, which relates to the time period for the release of documents after a fresh decision. This amendment is a test of his amendments 49 and 75.

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

48. Clause 13, page 23, line 5, omit "60" and insert "28".

In our minds this provision is the most insidious of the delays that are built into the process. We should remind ourselves again of the process that is in legislation at the moment with regard to internal reviews: after an initial 45-day period, if an applicant is not satisfied, there is then a 14-day internal review period. After that if the department deems that documents should be released, they are released. Under this provision there is a 45-day period followed by a 30-day period in which the FOI commissioner can review a decision. That 30-day period has been confirmed by the committee. At the end of that 30-day period if the commissioner orders the release of documents, the department then has 60 days to consider that decision. Under the current act this process has 59 days attached to it; now under this bill the process will have up to 135 days attached to it, which includes that 60-day period.

At the end of that 60-day period — and the agency might wait until day 60 — the agency can decide to appeal the decision of the FOI commissioner and take the commissioner's decision to VCAT. We think that entire process is wholly unreasonable. In the circumstances we move an amendment which says that once the commissioner has made a decision, departments should be able to consider that decision and decide whether to release documents or appeal the decision in a period of 28 days. We think that is ample time; the department will have four weeks to consider the commissioner's decision. Notwithstanding our misgivings about the process itself, 28 days is far more reasonable than 60, given that at that point the process has already been running for 75 days.

Mr BARBER (Northern Metropolitan) — The Greens support this amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The amendment would mean that the decision of the FOI commissioner requiring an agency to release a document would take effect 28 days after the notice of decision is given. The bill currently provides for 60 days. The time limits will allow all affected parties procedural fairness to determine whether a further appeal is necessary to uphold their rights. This includes applicants and third parties.

Hon. M. P. PAKULA (Western Metropolitan) — Let me say that it would be the intention of the opposition to divide on this clause. We think this is fundamental to the operation of the act. We think it is wholly unconscionable for the government, under the cloak of an FOI commissioner's bill, to surreptitiously use the creation of the office of the FOI commissioner to effectively extend the period for responding to FOI applicants from 59 days to 135 days. The government could have implemented its FOI commissioner without entrenching this additional delay in the process. We will divide on this clause. Let me say again, this is a deal breaker for the opposition. If this amendment is not supported, we cannot support this bill on the third reading.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — May I remind members that the time limits will allow the affected parties procedural fairness, as I indicated before. In any

event, the delays under these significant, historic reforms will not be longer than the delays under Labor's legacy of secrecy.

Hon. M. P. PAKULA (Western Metropolitan) — I was not going to get up again, but when he talks about 'Labor's legacy of secrecy' Mr Dalla-Riva invites me to remind him that there is an insidious and unworthy new chapter in secrecy that is being implemented by this government — that is, the practice that has been commonplace in the last 15 months for FOI decisions from across government, whether they are applications made to ministers, applications made to departments or applications made to agencies, to find their way to a desk in the Premier's private office for vetting before they are released. What makes that even worse is that this bill formalises the fact that once those matters are sucked into the private office of the Premier, this much-vaunted new FOI commissioner has no role whatsoever.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I remind the chamber that this bill gives effect to the coalition government's election commitment to create Victoria's first independent FOI commissioner. This is the most significant change to Victoria's freedom of information laws since their introduction almost 30 years ago. When we consider what Victorians experienced under the 11 years of the previous government, these time limits are appropriate.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pair

Darveniza, Ms	Hall, Mr

Amendment negatived.

Clause agreed to; clauses 14 and 15 agreed to.

New clause D

Mr BARBER (Northern Metropolitan) — I move:

5. Insert the following new clause to follow clause 15 —

"**D Applications for review**

Section 50(5) of the Principal Act is **repealed**.".

This section of the principal act says:

> (5) Where a certificate has been given in respect of a document under section 28(4), the powers of the Tribunal do not extend to reviewing the decision to give the certificate and shall be limited to determining whether a document has been properly classified as an exempt document within the meaning of section 28.

I have already outlined our problems with the concept of conclusive certificates.

Hon. M. P. PAKULA (Western Metropolitan) — The opposition's position on this amendment is the same as for all of Mr Barber's other amendments which have sought to amend the principal act, which is that we are not supporting it.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is always good to see Mr Pakula occasionally showing his legal background.

Hon. M. P. Pakula — There is so much I could say, Richard.

Hon. R. A. DALLA-RIVA — There is much more I could say too, but we love work. Section 50(5) of the principal act prohibits VCAT from conducting reviews of decisions to issue conclusive certificates. This section will no longer be necessary if the right to issue conclusive certificates for cabinet documents is removed. This amendment removes section 50(5) of the FOI act. This is a technical amendment which reflects the fact that the amendments remove the right of the Secretary of the Department of Premier and Cabinet to issue conclusive certificates for cabinet documents. We will not be supporting Mr Barber's amendment.

New clause negatived.

Clauses 16 and 17 agreed to.

Clause 18

The DEPUTY PRESIDENT — Order! Mr Pakula's amendments 1 and 11 have tested the amendments related to this clause, so I will put the clause.

Clause agreed to; clause 19 agreed to.

Clause 20

The DEPUTY PRESIDENT — Order! Mr Pakula's amendments 1 and 11, which did not pass, were tests for his amendment 77 — I think that was relevant to this clause.

Clause agreed to; clauses 21 to 23 agreed to.

Clause 24

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

80. Clause 24, page 39, line 1, omit "less" and insert "more".

It seems that the finish line is in sight. This is a very simple amendment. It is about the power to compel a prescribed agency to produce documents. The bill contains a provision which says the production notice must state the documents to be produced, whether the original of a document is to be produced and must provide that the time be not less than 14 days. A 'not less' provision means that the time could be any period beyond 14 days. It could be 14 days, 28 days, 30 days, 45 days or 60 days, and we think the period should be not more than 14 days. That is the purpose of the amendment.

Mr BARBER (Northern Metropolitan) — The Greens will support this amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Clause 24 provides the FOI commissioner with the ability to handle complaints. The amendment relates to the FOI commissioner's power to compel production of documents from an agency. In order to compel an agency to produce documents the FOI commissioner must do so by way of a production notice. The amendment will change the amount of time an agency would have to respond to a production notice to a period that is not less than 14 days rather than a period that must be more than 14 days. It is considered that not less than 14 days is an appropriate time frame under which the FOI commissioner may seek to compel documents from an agency.

Hon. M. P. PAKULA (Western Metropolitan) — Can I just ask the minister: why in that situation would the bill not provide a minimum and a maximum rather than just 14 days or more? Would it not be appropriate to have a provision which at least sets some parameters for how long it must take for an agency to provide those documents?

Mr BARBER (Northern Metropolitan) — Can I just add to and perhaps clarify that question? When the commissioner, who has the power to compel these documents, does so, does the commissioner have the power to send a notice and set a time limit on the agency for providing him or her with the documents? In other words, is the intent of this provision that the commissioner can compel documents within a certain period that the commissioner determines but that the commissioner cannot make that period less than 14 days?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is in the FOI commissioner's interests to seek productions promptly in order to resolve complaints. It is considered by the government that not less than 14 days is an appropriate time frame in which the FOI commissioner may seek to compel documents from an agency.

Amendment negatived; clause agreed to; clauses 25 to 29 agreed to.

Clause 30

The DEPUTY PRESIDENT — Order! Mr Pakula to move his amendment 85, which is a test for his more substantive amendment 86 which seeks to require the commissioner to report on efforts to hinder or frustrate the spirit and intention of the act. I invite Mr Pakula to discuss both his amendment 85 and the more substantive amendment 86.

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

85. Clause 30, page 49, line 23, omit "Act." and insert "Act;".

In order to understand this amendment you need to read the entire new section 64, to be substituted by clause 30, entitled 'Reporting by the freedom of information commissioner'. It provides some reasonably prescriptive criteria the commissioner needs to follow in terms of tabling a report. The report must contain the number of requests made to each agency and minister, the number of decisions where an applicant was not entitled, the name and designation of each officer and agency et cetera. The report must then go through the number of applications to the tribunal

under section 50, the decision of the tribunal and the details of any order made et cetera. But new section 64 then goes on to talk about charges collected by each agency and minister under the act. It asks the commissioner to report on whether an agency or a minister has provided a reading room and whether administering the act has caused any difficulty for the agency or the minister in regard to staffing and costs, which obviously invites ministers and agencies to complain about how costly and time consuming FOI is. Then, in a quite Orwellian move, subsection (2)(m) requires the commissioner to report on 'any other facts that indicate an effort by the agency or minister to administer and implement the spirit and intention of this act'.

That is fine as far as it goes, but the opposition's contention is that if you are going to require the commissioner to report on circumstances that reflect on ministers and agencies in a positive light, if you are going to require the commissioner to say when a minister or an agency has behaved appropriately, then it is equally appropriate to require the commissioner to report on circumstances in which an agency or minister has behaved inappropriately in regard to the conduct of FOI applications.

Therefore we would seek to move our amendment 86, being the substantive amendment, that says effectively that as well as requiring the commissioner to report on 'facts that indicate an effort by the agency or minister to administer and implement the spirit and intention of this act' the commissioner should also report on facts that indicate an effort by an agency or minister to hinder or frustrate the spirit or intention of the act. I suspect that that report would be far more voluminous than the reporting that is required under the bill as it currently stands.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In terms of Mr Pakula's amendment 85, this is a minor technical amendment which reflects his amendment 86, which is below it. Amendment 86 would require the FOI commissioner to include in his or her annual report any other facts that indicate an effort by an agency or minister to hinder or frustrate the spirit and intention of the FOI act. The bill already requires the FOI commissioner to include in his or her annual report details of any recommendations made in the course of the commissioner's complaints-handling function. This could include recommendations in relation to complaints arising out of attempts to hinder or frustrate the spirit or intention of the FOI act.

Clause 30 of the bill sets out the matters that the commissioner must report on; however, the list is not exhaustive, and the FOI commissioner may include other matters in his or her report. Accordingly, we will not be supporting Mr Pakula's amendments.

Hon. M. P. PAKULA (Western Metropolitan) — I ask the minister: why must the commissioner report on incidents of the minister or the agency behaving appropriately in an environment where the commissioner does not have to equally report on instances of the minister or the agency behaving inappropriately in relation to FOI? I would have thought that if you were going to leave to the discretion of the commissioner the reporting of matters of hindrance or frustration, would it not also be appropriate to leave to the discretion of the commissioner questions of whether or not the minister has done the right thing?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I have indicated, clause 30 of the bill sets out the matters the commissioner must report on; however, as I have said, the list is not exhaustive and the FOI commissioner may include other matters in his or her report.

Mr BARBER (Northern Metropolitan) — I am not as concerned as Mr Pakula is that somehow this report could turn into a glossy cover-up for the government. I suspect that the contents of the report will represent a litany of descriptions of attempts to obstruct the provisions of the act. Even the matters covered by subsections (2)(b), (2)(d) and (2)(e) of new section 64 demonstrate quite clearly that agencies are acting totally contrary to the spirit of the act, so I am not sure that Mr Pakula's amendment is strictly necessary. However, to be safe I will vote for it anyway.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Just reflecting on advice in relation to the bill, new section 64(2)(m) on page 49 says, in terms of the reporting by the freedom of information commissioner, that:

> (m) any other facts that indicate an effort by the agency or Minister to administer and implement the spirit and intention of this Act.

As I indicated before, the list is not exhaustive and the FOI commissioner may include other matters. The government's view is that it adequately covers the issue, and accordingly we will not support Mr Pakula's amendment.

Amendment negatived; clause agreed to; clauses 31 to 42 agreed to.

Clause 43

The DEPUTY PRESIDENT — Order! I invite Mr Barber to deal with clause 43. My advice to Mr Barber is that this is also a test of clause 47. Clauses 43 and 47 are linked. If you were to oppose clause 43, you would need to oppose clause 47, because clause 47 deals with clause 43 of the bill.

Mr BARBER (Northern Metropolitan) — I invite the committee to vote against this clause. The purpose of this exercise is to maintain the jurisdiction of the Ombudsman. In a number of important ways the jurisdiction of the Ombudsman has not been fully replaced by the jurisdiction of the commissioner. We have real concerns about that and have not been successful in prosecuting those concerns with other amendments, including some that Mr Pakula moved. For that reason we are seeking to maintain the Ombudsman's jurisdiction.

Hon. M. P. PAKULA (Western Metropolitan) — The opposition supports Mr Barber's view that the committee should vote against the clause.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Mr Barber has invited the committee to vote against clause 43. This clause of the bill clarifies the proposed role of the Ombudsman. The effect of the removal of this clause would be to ensure that both the FOI commissioner and the Ombudsman have joint responsibility for the oversight of the FOI act. This is not considered appropriate because it may result in jurisdictional confusion, duplication of the performance of functions and wastage of public funds. The need to vote against clause 47 is consequential upon the committee voting against clause 43. Accordingly the government will not be voting against the clauses.

Mr BARBER (Northern Metropolitan) — The government has not exactly put it up in lights that this new commissioner has fewer powers than the old Ombudsman, at least in relation to complaints and a number of other matters that we raised as we went along. That is the reason for my invitation to the committee to vote against these clauses: we are seeking to preserve those powers.

The DEPUTY PRESIDENT — Order! Mr Barber has invited the committee to delete clause 43. I remind the committee again that this also has consequences for clause 47. The question will be that clause 43 stand part of the bill.

Clause agreed to; clauses 44 to 48 agreed to.

Clause 49

Mr BARBER (Northern Metropolitan) — I move:

8. Clause 49, page 60, line 15, omit '**1982.**"' and insert "**1982.**".

The viscera of these particular amendments is that the majority of members of the Accountability and Oversight Committee must not be members of the party or parties forming the government. That is to ensure that the Accountability and Oversight Committee is independent of the government of the day. A bit earlier during the debate Mr Philip Davis, who chairs the Public Accounts and Estimates Committee, came in here and lambasted me for not being on PAEC; perhaps he is missing my company. The previous government lambasted me for not being on the environment references committee. I am pretty sure I would be accused of not caring enough about people if I was not on the social matters committee, but I love youse all, the earth and everybody on it.

However, and importantly for this amendment, if Mr Davis read through some of the historical reports of the Public Accounts and Estimates Committee, at least to the extent that I have, he would find a report that refers to the independent officers of the Parliament, which at that time were considered to be the Ombudsman, the Victorian Electoral Commissioner and the Auditor-General. We are creating new ones all the time now. That report recommended particular arrangements for the offices of those office-holders, how they were to be structured and how they would report to the Parliament. Mr Davis might draw some inspiration from that report to support these amendments, because if accountability and oversight through the Accountability and Oversight Committee is actually controlled by the government that the committee is meant to be holding to account and overseeing, you might as well change the name right now to the doublespeak committee. The alternative is to support my amendments.

Hon. M. P. PAKULA (Western Metropolitan) — Labor will support these amendments.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Mr Barber's amendment would amend clause 49 of the bill to provide that the majority of members — that is, more than half of the members — of the Accountability and Oversight Committee must not be members of the party which has formed government and that the chair of the committee also must not be a member of the government party. The amendment would mean that the composition of the Accountability and Oversight

Committee was inconsistent with other joint house committees established under the Parliamentary Committees Act 2003. The government considers this inappropriate and will not support the amendment.

Amendment negatived; clause agreed to; clauses 50 to 53 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, 23

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

Noes, 15

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

Pair

Hall, 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.

Employment: regional and rural Victoria

Mr LENDERS (Southern Metropolitan) — The matter I raise tonight is for the attention of the Minister for Regional and Rural Development, Peter Ryan. The Baillieu government said more than nine months ago as part of its jobs plan that it would convene a business jobs round table, and more than nine months passed before this round table was convened. I draw the attention of the house to an article which appeared on the *Age* online on 17 February, which reported:

> After being one of the stronger states over the past decade, Victoria is now clearly the epicentre of job losses, losing about 1000 full-time jobs a week …

The round table was called — after nine months. In those nine months jobs were going, and in those nine months there was a lot of talk. I am seeking from the Deputy Premier some actions. The first is that if it is to be convened, someone from regional Victoria is to be invited to sit at the round table. We on this side of the house remember a previous Premier describing regional Victoria as the toenails of the state. I would have hoped the Minister for Regional and Rural Development would at least have brought someone from regional Victoria along to his round table.

I also note — and I am talking of jobs, and I ask the minister to consider this — that when at the Public Accounts and Estimates Committee the Minister for Innovation, Services and Small Business, Ms Asher, was asked if she was responsible for financial services, she said it was Mr Dalla-Riva. When Mr Dalla-Riva was asked if he was responsible for financial services, he said Ms Asher was. The issue that we have here is financial services are 9 per cent of the state and yet members of this government point fingers at one another to say who is responsible for the sector.

The Premier just led a super trade mission to India, and I wish the mission well. I wish it to bring jobs, but the matter I am raising for the Minister for Regional and Rural Development is that perhaps he could contemplate a super jobs mission to go to places like Shepparton, where jobs have gone; to go to places like Geelong, where jobs are going; to go to places like Simpson, where jobs are going; to go to places like the Latrobe Valley, where jobs are going; to go to Ballarat, Bendigo and Portland. All these towns have lost jobs under Mr Ryan's watch.

The action I am seeking from the Minister for Regional and Rural Development is for him to bring regional Victoria to the table and to take a super jobs mission out to the regional centres of Victoria. While he is at it, he might just stray through the suburbs, including those in the Premier's electorate, where financial services jobs are being shed daily, and he might take some action. That is what I am seeking: that he bring regional

businesses to the round table so they can have an important input to save the jobs of regional Victorians.

Regional Rail Link Authority: West Footscray footbridges

Ms HARTLAND (Western Metropolitan) — My adjournment is for Mr Mulder, the Minister for Public Transport. Less than a kilometre from my Seddon office there are two pedestrian and bicycle footbridges known as the Rising Sun bridge and the West Footscray station bridge. I actually use the West Footscray station bridge to walk from my home to my office. The Regional Rail Link Authority intends to demolish both these footbridges. Their loss will result in a kilometre-long stretch of residential area with no north–south crossing to link Seddon and Footscray.

Again the Regional Rail Link Authority did not bother to tell the residents, so I had to do so. This resulted in 73 letters from local residents, which I intend to hand to the minister. I will let some of those local voices tell the story and read a few extracts:

> The bridge is a vital link between Seddon and West Footscray. It services day care centres, libraries, parks, car repair yards, the scout hall and numerous other services.
>
> Please don't make it harder to get to child care.
>
> Such a disgrace to demolish access routes to local facilities and further inhibit the elderly.
>
> Relocation of pedestrian access to [near] a dangerous intersection … is an accident waiting to happen with the extent of trucks and B-doubles using this route.
>
> We use this bridge to take the children to day care at the Bulldogs with the pram. If the footbridge over the station is not replaced, this journey would need to be made by car.
>
> All this will do is encourage people to drive, not walk.
>
> I have two little boys that attend Bulldogs child care. We walk from our home. The boys love walking across the bridge and watching all the trains. Please don't get rid of the bridge.
>
> Demolishing the cycle footbridge will push more cyclists onto Geelong Road which is extremely dangerous.
>
> I use the footbridge to go to work in Barkly Street daily.
>
> I use the Rising Sun bridge daily for my morning run with my dog to Seddon. Every time I am on the bridge I meet someone going the opposite way — this is a key link for the community of Footscray.
>
> Obviously an idea from someone not living in the area.
>
> I ride with my son over this bridge to get to school. To lose it will really make our trip longer and less safe.
>
> My daughter is starting child care this year and a short walk will now be a car trip with everyone else in the morning.
>
> We frequently use both bridges to access and connect with friends and shops in Seddon.

I hope the minister is able to hear these voices of local residents. If the Regional Rail Link Authority can engineer a massive rail project, surely it can work out how to adapt a simple footbridge. The action I ask of the minister is that he retains a pedestrian and cycling link in the same approximate locality as the Rising Sun bridge.

Respite care: Southern Metropolitan Region

Mrs COOTE (Southern Metropolitan) — My adjournment matter this evening is for Minister Mary Wooldridge, the Minister for Community Services, and I was pleased to learn that the minister's department, the Department of Human Services, has invited agencies for people with disabilities to apply for funding for respite. It is my understanding that these applications are to be innovative and to reflect some of the problems and challenges being faced within the community.

I have visited many organisations in Southern Metropolitan Region, and one of the things I hear frequently is this plea from parents, 'What can be done with our children during school holidays?'. These days, when often both parents in a family work, it is difficult to find care for children who do not have complex needs, but it is particularly challenging to find appropriate respite care for children with complex needs. That is why I was particularly pleased to hear that the minister had called for submissions for funding for innovative respite care.

As I said, school holidays are a major problem for parents trying to make sure that there are appropriate safety nets and supports in place for their children with complex needs. The minister has allocated $41 million to fulfil an election commitment to fund of innovative accommodation and respite packages, and this is exceedingly welcome. The action I seek is for the minister to consider expanding respite services in Southern Metropolitan Region, especially during school holidays.

Housing: Horsham North community house

Ms PULFORD (Western Victoria) — Last Wednesday I had the pleasure of meeting with community members in Horsham North to discuss some issues of concern to them. The Horsham North community engagement project enjoyed bipartisan support for a number of years; indeed the member for Lowan in the other place, Mr Hugh Delahunty, now the

Minister for Sport and Recreation, was a strong advocate for it when he was an opposition MP.

In 2008 the Brumby government announced funding of $1.8 million for public and social housing residents in Horsham, including a number of initiatives to support the Horsham North community engagement project. Initiatives included improvements to 44 homes, establishment of new bedroom units and employment or training opportunities. These initiatives sought to provide residents with greater opportunities to engage in education, employment, training or community life, and many of them were delivered in partnership with Horsham Rural City Council and Horsham North residents — —

Hon. D. M. Davis interjected.

Ms PULFORD — Yes, it is, sorry; the late hour has made me tardy in mentioning that my matter is for the Minister for Housing.

The region is now experiencing something of a public housing crisis. Over the last six months there has been a 19.6 per cent increase in the number of families on the early housing waiting list. The early housing waiting list represents those with the greatest housing need in our community — people who are homeless or at risk of again becoming homeless. Just last week the minister took to ABC radio to assure the community that new dwellings were being acquired and that this problem was being addressed. For now I will take that assurance at face value; I look forward to improvement in the next reporting period.

What the residents of Horsham North need the minister to urgently address is the need for a community house for their ongoing community engagement work. Since its election the Baillieu government has not continued to support Labor's A Fairer Victoria initiative, but accommodation for the community of Horsham North is still worthy of government support. A house had been made available and was perfect for the purpose, but that building is no longer available. I am told that there is room in the existing buildings at Oaklands Court in Alexandra Avenue and that another alternative may be found by utilising vacant land at 12–14 Forsyth Avenue. I call on the minister to investigate options for a building or rooms for Horsham North residents to use while they continue their important work in and for the wellbeing of their community.

Respite care: Western Metropolitan Region

Mr ELSBURY (Western Metropolitan) — My adjournment matter this evening — or rather, this morning — is for the Minister for Community Services, the Honourable Mary Wooldridge. There is much love, laughter and joy in families. When one family member is dealing with a disability, the family really needs to come together and work as a team to ensure that person's quality of life. This can be exhausting, especially over a sustained period of time. The matter I raise with the minister is to do with respite services for families with a child living with a severe disability.

Just on the weekend I attended a fundraising dinner for one of the respite services in my region out in the western suburbs. We heard stories from different families about how they try to cope with the issues surrounding their children's disabilities. They said that at times it gets quite tough and you just need that little bit of a break. In fact there was one story which touched all our hearts about a 10-year-old girl who was very excited that her parents had organised for respite to occur on the day of her 10th birthday. She was actually able to have a slumber party at her house with her friends — the first slumber party she had ever been able to have. Her brother was able to use the respite service, which meant that her friends could have their party and he would not be upset by them being in the house when, on his terms, they should not be. She was able to enjoy that day.

There will be many times in the coming weeks, when school holidays are up and running, when respite services will be required, whether it is for a family outing, a slumber party or any number of different occasions that require some additional care to be given to a loved one. I ask that the minister act to develop further respite services for families with young children, especially during school holidays, because it will assist families in continuing to provide the support and love that they give to children who are dealing with severe disabilities. It will also ensure quality of life for all members of their families, especially during the school holiday period.

Schools: Modern Greek language programs

Ms MIKAKOS (Northern Metropolitan) — My matter is for the Minister for Education. I wish to express concern about the Baillieu government's decision not to include Modern Greek as one of the seven languages chosen for the 18-month trial of the content and language integrated learning program.

I welcome any proposal to strengthen the teaching of languages other than English in our schools. The previous Labor government had embarked upon the Victorian languages strategy to do exactly that. It had considered ideas around immersion teaching, which teaches mainstream subjects such as maths and science in a second language. It also looked at the possible sharing of teachers and resources through local clusters. Both of these ideas have been taken up in this trial. If maths and science were taught in Greek, students would have the benefit of learning that words such as algebra, Pythagoras, hypothesis and chemistry are Greek words.

The Greek community ran a hugely successful campaign for the inclusion of Modern Greek in the national school curriculum as a language of significant cultural, social and economic importance to Australia. The Brumby Labor government backed its inclusion, and this was subsequently supported by the Gillard federal government.

This is an issue of particular significance to my electorate. According to the Australian Bureau of Statistics 2006 census there remains a significantly higher proportion of residents in my electorate who speak Greek at home — 4.7 per cent — than across metropolitan Melbourne as a whole. But I recognise that this is also an issue of importance to other parts of Melbourne — in particular areas with very significant Greek communities, such as that in Oakleigh.

The retention rate for the Greek language amongst younger generations is one of the highest of any community language in Victoria. However, there has been a long-term historic decline in the Greek language being taught in Victorian government schools. It was very discouraging when in 2010 Wales Street Primary School in Thornbury decided to discontinue its Greek program, and many parents were rightly disappointed. It would have meant that there would no longer have been a feeder primary school for the Greek program offered by nearby Thornbury High School. After months of lobbying by parents and support from the member for Northcote in the Assembly and me, the former Minister for Education, Bronwyn Pike, recognised its importance and stepped up to the mark to provide additional funding for the Modern Greek language program at that school.

I am aware that Fairfield Primary School, also in my electorate, has recently dropped its Greek language program, which I am concerned about. I believe that if Modern Greek were taught as part of this trial of cluster arrangements, it would have the potential to solve the problem at Fairfield Primary School, as well as at other schools.

I query whether there was community consultation in the determination of the languages that have been selected. What consultation, if any, has occurred with Victorian schools? I call on the Minister for Education to include Modern Greek in the trial of the content and language integrated learning program.

Gas: Terang supply

Ms TIERNEY (Western Victoria) — My adjournment matter this evening is for the Minister for Regional and Rural Development. It is in relation to the extension of natural gas to Terang in western Victoria. Prior to the last state election the member for Polwarth in the Legislative Assembly, Mr Mulder, who is now the Minister for Public Transport, promised the delivery of natural gas to the township of Terang — one of 12 towns that would be fast-tracked to allow councils to move swiftly on the project.

In May 2011 Mr Mulder posed for a photograph in the Warrnambool *Standard* with long-time Terang resident and former Corangamite shire councillor Jim O'Brien, who had been campaigning tirelessly for several decades for natural gas connections in Terang. In the article Mr Mulder explained that Terang would be fast-tracked for natural gas extension. However, recently a letter to the editor appeared in a local Terang newspaper, and I think it is worth quoting from it. It is from Jim O'Brien, who says:

> Has this gas project been dropped by our government in its quest to save money? In November I rang the Melbourne office of our local member Terry Mulder, MP, to inquire as to what is happening to the connection of natural gas into Terang. I was informed Mr Mulder was not available and an answer to my query would be within five days.
>
> I still have not received the call. I then wrote to Mr Mulder again with the question, 'What is happening with gas connections to Terang?'. Again, I received no reply.
>
> In mid-January I wrote to Peter Ryan, MP, Deputy Premier, Minister for Regional and Rural Development, with the same question, 'What is happening to the gas line connection into Terang?'
>
> As yet, I have received no reply.

What I am seeking this evening is that the minister inform me, inform the people of Terang and of course inform Jim O'Brien about when this government will honour its commitment to extend natural gas to Terang and when exactly the project will be completed.

Water: northern Victoria supply

Ms BROAD (Northern Victoria) — My adjournment matter is for the attention of the Premier. It concerns water supplied by Grampians Wimmera Mallee Water through the Wimmera–Mallee pipeline to 10 towns in northern Victoria, including Beulah, Brim, Donald, Jung, Lalbert, Minyip, Rupanyup, Ultima, Woomelang and Wycheproof. Since the floods in January 2011 these towns have experienced major water quality problems in relation to partially treated water supplied through the Wimmera–Mallee pipeline and consequently have been required to boil their water. Portable water tanks have provided some alternative drinking water supplies for residents.

Yesterday, following more than 12 months of inconvenience for residents, the Minister for Health declared in the *Government Gazette* that water supplied by Grampians Wimmera Mallee Water to these towns is now regulated water according to the Safe Drinking Water Act 2003. This actually means that the water does not meet Australian drinking water standards and is unsuitable for human consumption. The purpose of the declaration is to prevent the public from mistaking the water supply for drinking water.

Residents have been advised of the declaration by Grampians Wimmera Mallee Water and have also been informed that Grampians Wimmera Mallee Water is considering options to upgrade the water supply so residents receive water that meets Australian drinking water standards in the future. One option identified by Grampians Wimmera Mallee Water is the installation of water treatment plants to treat all water supplied by the Wimmera–Mallee pipeline to towns at an estimated cost of $80 million and increased water charges for residents.

I remind the Premier of his promise to ease the cost of living for Victorians. The action I seek from the Premier is that he explain to residents what the Liberal-Nationals government is going to do to make sure these towns are supplied with water that is fit for human consumption and to ensure that they are not burdened with costs they cannot afford.

Dental services: city of Maroondah

Mr LEANE (Eastern Metropolitan) — My adjournment matter is for the Minister for Health, and it is in regard to public dental chairs in the area of Maroondah and funding towards those chairs. Eastern Access Community Health (EACH) has been operating three dental chairs in the Maroondah area for a number of years. It has managed to push those chairs to the point where their efficiency equates to the usage of five dental chairs.

For the last five years or so EACH has been making a loss of about $100 000 on those chairs, but it has subsidised that through other activities. The EACH board has not been happy about this, but it has accepted that providing these chairs is an important thing to do and that this service runs at that particular loss.

The new agreement that the minister's department, the Department of Health, has put on the table for EACH proposes a net reduction of funding compared to last year for the operation of these three chairs, which actually operate at an efficiency equivalent to five chairs. The reduction of funding in the new agreement is equivalent to $164 000. That means EACH and its board are in a situation where they need to make a decision about whether they are prepared to run these three dental chairs at a loss of over $250 000. EACH has decided that it cannot agree to this, so what it is left with is that either it runs the chairs as if they are two chairs or it takes the funding that it has and asks Knox and Yarra Valley to operate the equivalent of two chairs in their areas.

During the pre-election period there was a lot of rhetoric about fixing problems. I believe this is a problem that this government has created by cutting funding to the Department of Health, so the action I am seeking from the minister is that he fix this problem and not leave Maroondah in a situation where there will be no public dental chairs.

Responses

Hon. D. M. DAVIS (Minister for Health) — A series of adjournment matters have been raised tonight. One is from Mr Lenders for the attention of the Deputy Premier in his capacity as Minister for Rural and Regional Development. The truth of the matter is that the member sought about four or five different actions that went on and on, and it was difficult to divine which one he put most weight on. However, I assure the member of the Deputy Premier's high level of commitment, and indeed the commitment of the government overall, to the business round table and its focus on jobs both in metropolitan Melbourne and in rural and regional Victoria. I will pass this matter on to the Deputy Premier for his attention, but I want assure the member of that strong commitment to employment.

Ms Hartland raised a matter for the Minister for Public Transport, Mr Mulder, concerning a pedestrian bridge in West Footscray that is being impacted upon. I do not fully understand the detail of this matter, but I will pass

it on to the minister. As I understand it, the Regional Rail Link Authority has made a number of decisions. I know much of the decision making around regional rail was done by the last government, but I will pass that in good faith to the Minister for Public Transport.

I note the adjournment matter from a member for Southern Metropolitan Region, Mrs Coote, for the attention of the Minister for Community Services, Ms Wooldridge. It concerns advertising and an approach by the Department of Human Services concerning respite care for those with complex needs assistance, including in school holidays and other times, particularly in Southern Metropolitan Region. I understand the points made by Mrs Coote, and I will pass the details of that onto Minister Wooldridge.

A member for Western Victoria Region, Ms Pulford, raised a matter for the Minister for Housing regarding a community engagement program and the desire for a community house in Horsham north. I will pass that on to the Minister for Housing.

A member for Western Metropolitan Region, Mr Elsbury, raised a matter for the attention of the Minister for Community Services, Ms Wooldridge, concerning disability. Family members, particularly in the western suburbs, have a need for greater respite services for children with severe disabilities. He gave a number of examples, including a 10-year-old girl who had had support through a respite program. I can understand the importance of these programs and his longstanding commitment to these matters. He seeks assistance from the minister to develop further respite programs in the western region of the city, and I will pass that matter on to the minister.

Ms Mikakos, a member for Northern Metropolitan Region, raised a matter for the Minister for Education, Mr Dixon, concerning modern Greek and the importance of languages other than English being taught in schools. In particular she talked about immersion programs, local clusters and the trial that is being undertaken at the moment by the government. I am not familiar with all the details, but it is an important program. I noted the point she made about the long-term decline in the numbers of students undertaking modern Greek and heard some of the examples of specific schools to which she pointed. She also made a point about Oakleigh. I understand the importance of the Greek community in Oakleigh, it being part of my electorate. I would certainly support Ms Mikakos in recognising the importance of language education in general, and I will pass that on to the Minister for Education.

Ms Tierney, a member for Western Victoria Region, raised a matter for the attention of the Minister for Regional and Rural Development, Mr Ryan, concerning the national gas extension, particularly to Terang. The gas extension program is a very important one because of its economic significance. The ability to support industry and jobs is critical. I am not familiar with the details of the government's schedule on that, but I will certainly pass the matter on to the relevant minister. I note that in the last period of government there was a commitment to extend natural gas. Many of the commitments to extend natural gas were not completed during the last term of government, but I have no doubt that the Minister for Regional and Rural Development has this as a significant focus for this term of government, and I will certainly pass the details on to him.

Ms Broad, a member for Northern Victoria Region, raised a matter for the attention of the Premier concerning 10 towns where water quality has become a problem. I am very familiar with these towns and, as she will understand, I have made a set of decisions that concern public safety and the need to make sure that people understand about water quality. I can indicate that the government is keeping a close eye on these matters, both from the perspective of health, which is my area, and from the perspective of ensuring that there are better long-term outcomes. Clearly this relates to the flooding that has occurred and the issues that have flowed from that. I will pass this matter on to the Premier, and we will make sure that a suitable response is given to the member. I am very conscious of the importance of this, and there is considerable government attention on this matter.

Mr Leane, a member for Eastern Metropolitan Region, raised a matter for my attention concerning public dental chairs at Eastern Access Community Health (EACH). This is an important service. I have spoken to the service about these matters, and I am very aware of the importance of dental services. The government increased funding in this year's budget for dental services — —

Mr Leane interjected.

Hon. D. M. DAVIS — Yes, it did. It increased funding across the state. There is a need to make sure that more services are delivered across the state, and we are very focused on that. I can confirm the quality of the work delivered by EACH. It is a very important service in the eastern suburbs, and there have been a number of discussions.

Across the state in the last financial year an additional amount of money was provided. One major service was not able to take up an allocation, so there was a one-off allocation to a number of key services around the state, including EACH, but when you look at actual base funding the matter looks somewhat different. I indicate that I will have further conversations with EACH, as I have on a number of occasions. I understand the importance of public dental services on the eastern side of metropolitan Melbourne.

Mr Viney — On a point of order, President, this evening at 11.46 p.m. I received an email notification of a proposed meeting tomorrow evening of the Legal and Social Issues Legislation Committee from a member for Eastern Victoria, Mr Edward O'Donohue. I raise with you this matter because you advised the house on previous occasions that you have particular views in relation to adequate notice and consultation upon the cancellation of such meetings. That advice you gave the house was in response to my cancellation of a meeting after a very late Tuesday night sitting of this house. I am very concerned that at just after 11.45 p.m. on a Tuesday night members of a committee would be given notice of a proposed meeting without an agenda attached.

I took on board your views about adequate consultation and notice and today advised members of the committee that if we sat beyond midnight tonight, it would be my view that the meeting of the references version of that committee should not proceed tomorrow night. I did talk with Mr O'Donohue during question time about that. I talked to a number of members of the committee, and I asked Mr O'Donohue to pass that on to the government members of the committee. That courtesy was not extended to me or other members of the committee.

It is too late at 11.45 p.m. to receive notice of a meeting scheduled for the following evening. To not provide an agenda is completely inadequate. I would suggest that the calling of the meeting would require an even higher bar than the cancellation of a meeting. To suggest that members of the committee should be prepared to attend a meeting with about 15 or 16 hours notice — I have not done the calculation — is, I think, grossly inadequate. I ask you to consider that matter overnight and to advise the house of your views on it accordingly.

Hon. D. M. DAVIS — On the point of order, President, for your assistance I think it might be worth noting that good notice is a worthwhile general principle. I note that a committee I served on with Mr Viney, the Select Committee on Public Land Development, met regularly on occasions at quite short notice — only a number of hours in some cases. Meetings were called from time to time at quite short notice.

An honourable member interjected.

Hon. D. M. DAVIS — I was the Chair, and there was no difficulty in ensuring that that committee was able to undertake a large range of work. That is not unusual practice in my experience on parliamentary committees, and I have been in this place since 1996.

Mr Viney — That is not what the President advised the house a few months ago.

Hon. D. M. DAVIS — Mr Viney has made a point of order, and I am making a point which may be of assistance to the President in framing his response.

The PRESIDENT — Order! Does the minister have any responses to adjournment matters?

Hon. D. M. DAVIS — I have 19 responses to adjournment matters that have been raised.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 1.34 a.m. (Wednesday).