appeal and the corrective action that flows from such appeals. The second creates a separate credit tribunal to adjudicate disputes relating to regulated credit contracts.

Honourable members will be aware of the vital work of both the Credit Licensing Authority and the Credit Division of the Small Claims Tribunal in defining the nature of responsible contracts between credit providers and their customers. Indeed, the Victorian bodies have taken on a pathfinding role in relation to the uniform credit laws, which have been so important for both industry and consumers in a society that seems increasingly to rely on credit.

The Bill will enhance the existing arrangements. It makes clear the powers of the licensing authority and the tribunal. Under the Bill, any appeal from a decision of the Credit Licensing Authority to the Supreme Court will be a true appeal—based on a review of the facts and the application of the law in light of those facts—and not a rehearing. This is of fundamental importance in achieving the speedy determination of licensing applications envisaged by the Credit Act, and recognises that business must have certainty in the application of the law.

The other major change encompassed by the Bill is to restructure the Small Claims Tribunal when it is hearing disputes between consumers and traders in the credit area. At the present time all applications are heard by a referee sitting alone. It is proposed to establish a credit tribunal made up of a chairperson, a person representing consumers and a person representing the credit industry. This will apply to only two sections of the Credit (Administration) Act: section 74, relief of hardship provisions; and section 85, applications by credit providers to reduce the civil penalty. This is an important initiative in ensuring that justice is done and is seen to be done.

The Bill is a forerunner of other amending Bills that I shall introduce to Parliament to rationalise the operation of all of the licensing arrangements within my portfolio. The particular matters covered in the Bill are of priority. They will make for a more effective and transparently independent process of licensing and adjudication in the area of consumer credit transactions. All honourable members will recognise the importance of this for the achievement of social justice objectives to which society as a whole subscribes.

I commend the Bill to the House.

On the motion of Mr PESCOTT (Bennettswood), the debate was adjourned.

It was ordered that the debate be adjourned until Thursday, April 14.

ENVIRONMENT PROTECTION (AMENDMENT) BILL (No. 2)

Mr ROPER (Minister for Planning and Environment)—I move:

That this Bill be now read a second time.

I seek leave to incorporate the second-reading notes in *Hansard.*

Leave was granted, and the second-reading notes were as follows:

The Bill has two main purposes.

The first purpose is to enshrine into the Environment Protection Act the "polluter pays" principle. That principle is that persons who conduct operations or occupy premises from which there is a potential for environmental damage are responsible for such damage rather than the public. The principle is part of the government's policy. It places the responsibility for environmental clean-ups arising from an operation on the persons who may profit from the operation, rather than the public who might indirectly profit from the operation but are directly affected by any environmental damage.

To further this purpose, the Bill amends the Environment Protection Act by:

1. requiring certain operations to provide a financial assurance for potential pollution clean-up costs;

2. allowing courts to make compensation orders for environmental clean-up costs after a defendant is found guilty of an offence which resulted in the need for clean-up operations;

3. allowing the Environment Protection Authority to recover its internal laboratory analysis costs which it necessarily incurs in proceedings under the Act; and

4. removing deficiencies which unjustifiably limit or impede proceedings for the recovery of clean-up costs or make them ineffective.

The second purpose is to reaffirm the importance which this government and the community puts on environment protection. The Bill does this by:

A. ensuring that the Environment Protection Act and the Litter Act operate efficiently and free from unnecessary technicalities and restrictions; and

B. by increasing penalties and thus ensuring that environment protection legislation has adequate "teeth" to be a deterrent.

To further this purpose, the Bill amends the Act by:

1. creating an offence of aggravated pollution which is intentionally or recklessly creating a serious risk or damage to the environment or to public health. The offence has a penalty commensurate with the seriousness of such consequences;

2. increasing the penalty for pollution offences under the Act which are committed intentionally. Penalties are also increased for offences under the Act, the Melbourne and Metropolitan Board of Works Act and the Sewerage Districts Act dealing with the illegal handling, dumping and abandoning of industrial waste. The penalty under the Water Act for the offence of polluting a water supply after a notice is given requiring the activities causing the pollution to cease is also increased;

3. extending the offence of "causing an environmental hazard" by recognising that such hazards are not only caused by "waste", but can also be caused by any substance;

4. increasing the time limit for commencing prosecutions for offences which by their nature may not be detected for lengthy periods;

5. simplifying the proof of formal and technical matters in proceedings;

6. making driving as well as owning a vehicle which does not have the prescribed emission control equipment fitted or emits noise above the prescribed permissible level an offence so that there is scope for the EPA to prosecute the person who in fact has taken the responsibility for the mechanical condition of the vehicle;

7. broadening a head of regulation-making power in relation to noise-reducing equipment fitted on vehicles to ensure that it is wide enough for regulations to appropriately control the fitting and repair of that type of equipment;

8. giving the EPA the power to delegate the powers and functions bestowed on it by other Acts;

9. increasing the maximum limit below which minor works pollution abatement notices and minor works noise control notices may be issued from 50 penalty units to 100 penalty units—$10 000—and simplifying the administrative procedure for their issue; and

10. making various housekeeping amendments to the Act and the Litter Act.

FINANCIAL ASSURANCE FOR CLEAN UP COSTS

The EPA's response to pollution incidents sometimes requires significant expediture to minimise, prevent or clean up pollution. That expenditure may be required urgently. A quick response to environmental emergencies can minimise damage and reduce the final amount of the clean-up costs.

For example, in April 1985 a large fire broke out in a chemical warehouse in Footscray . As a result of the fire, there was a threat that chemicals would flow into the Maribyrnong River. The EPA acted quickly and successfully to end that threat. The costs of minimising and preventing pollution arising from that fire were in the vicinity of $900 000. Those costs have been paid by the government. If the chemicals had entered the river, significant damage would have occurred and clean-up costs would have been much higher.

The majority of clean-up operations are paid for by the polluter. However, if liability for a clean-up is denied, recovery of costs may be difficult because of the complex legal issues which are sometimes involved. Liability for the clean-up costs from the Footscray chemical fire is still being disputed before the courts. If clean-up costs cannot be recovered, the public purse bears those costs.

Other situations in which pollution clean-up costs may be difficult to recover include where:

1. the polluter is insolvent; or

2. the site is abandoned, leaving contaminated soil and equipment for the authorities to clean up. This has already occurred several times in Victoria. Even if the previous occupiers can be located, the issue of liability for the clean-up of the unoccupied site is often contested.

To reduce the number of situations in which recovery of clean-up costs is difficult, the Bill allows the EPA to require financial assurances from operations where there is a potential for severe pollution by conditions in works approvals, licences, pollution abatement notices and transport permits. The assurance can be utilized by the EPA if a clean-up is required. The types of assurance include letters of credit, certificates of title, guarantees, bonds and insurances policies.

The Bill only allows requirements for financial assurances to be placed on Schedule 4 premises—that is, premises which reprocess, treat, store or dispose of prescribed industrial waste—premises that handle more than the prescribed quantity or the proscribed concentration of a notifiable chemical—that is, a chemical for which the EPA has certified that there is not a satisfactory facility for its destruction or disposal in Victoria—and waste transporters. Operations that do not fall into those categories cannot be required to provide a financial assurance. The Bill recognises that operations in those categories have a special risk of extremely expensive environmental clean-ups which the operation may not be able to pay for in the short term unless provision is made for that possibility.

The Bill allows the EPA to require the assurance to be in effect even though the works approval, licence, pollution abatement notice or permit may no longer be in force. This is because problems with polluted sites or pollution spills may not be detected or fully appreciated until some time after a site is vacated or a spill is thought to have been cleaned up. The EPA intends to build in a time frame for the release of an assurance in the assurance requirements. The assurance will be released earlier if the EPA is satisfied that there are no potential problems.

In an emergency situation in which the provider of the assurance refuses to pay for the clean-up, the EPA intends to immediately utilise the assurance to finance the clean-up. In non-emergency situations in which the provider of the assurance refuses to pay for the clean-up, the EPA intends to seek mediation or arbitration in relation to the payment of the clean-up costs and the utilising of the assurance to pay for those costs.

The requirement for an assurance and a refusal to vary or release an assurance are all matters which the Bill makes appealable to the Administrative Appeals Tribunal.

RECOVERY OF CLEAN-UP COSTS ON A FINDING OF GUILT

A clean-up after a pollution incident may be conducted by the EPA or the EPA may require the polluter or the occupier of the premises from which the pollution arose to carry out the clean-up by serving a clean-up notice. Other bodies such as the MMBW or the Port of Melbourne Authority may also incur costs in the clean-up. The costs of those bodies may be billed to the EPA or may be claimed directly from the polluter or occupier. The EPA's clean-up costs may be recovered as a civil claim under the Act.

A prosecution under the Act may follow a pollution incident. In a prosecution, the offence must be proved beyond a reasonable doubt. Currently, if a defendant in a prosecution is found guilty of an offence under the Act, there is no compulsion on that defendant to pay clean-up costs arising from that offence. If the defendant refuses to pay those costs, civil proceedings must now always be instituted to recover them. Those civil proceedings essentially cover the same ground as the prosecution on the issue of liability to pay clean-up costs, but the civil claim needs to be proved only on the balance of probabilities rather than beyond a reasonable doubt. Litigation that essentially covers the same issues in both criminal and civil proceedings is unnecessarily duplicating. It delays the recovery of compensation and increases legal costs. This is recognized by section 92 of the Penalties and Sentences Act which allows a court to make an order against a person found guilty of an offence to pay compensation to a person who has suffered loss or damage as a result of the offence.

To overcome the unnecessary delay and expense that arises from the duplication of criminal and civil proceedings under the Act, the Bill clearly allows the recovery of clean-up costs that are related to the commission of an offence under the Act by an order under section 92 of the Penalties and Sentences Act. Those costs may be recovered by any person who incurs them. The clean-up costs that the Bill provides can be recovered in that order include costs that are anticipated but are not as yet incurred. Pollution clean-ups may continue for a considerable period of time, consequently a clean-up may not be completed by the time a prosecution is completed. The amount of the anticipated costs will have to be proved as are other anticipated costs in litigation, such as anticipated future losses and expenses in personal injury litigation.

All the prosecutions under the Act are dealt with in the Magistrates Court except for the proposed offence of aggravated pollution, which is indictable, but may be tried summarily. An order made by a Magistrates Court is appealable as of right to the County Court and on appeal the matter is re-heard afresh. Consequently, in summary prosecutions under the Act, a defendant will have at least two full opportunities available as of right to contest an order under section 92 of the Penalties and Sentences Act. Of course, such an order cannot be made unless the charge is first proved beyond a reasonable doubt. For those reasons the jurisdiction of the Magistrates Court to make an order has not been limited.

Courts have sometimes refused to make orders under section 92 of the Penalties and Sentences Act for various reasons unrelated to the merits or evidence of the claim. Reasons for such refusals have included insufficient court time being allocated after the completion of a prosecution to determine the claim or the defendant not being in a position to defend the claim as insufficient or inadequate notice of the claim was given or the court is

of the view that the claim is a matter which has a civil flavour and therefore would be better handled by civil proceedings. To overcome these difficulties, the Bill requires that in relation to an application for an order for clean-up costs arising from the commission of an offence under the Act, notice of the application must be given to the defendant. Affidavits may be used at the hearing of the application upon a copy of the affidavit and notice being given to the defendant and provided the defendant does not object. The purpose of the notice and affidavit provisions is to ensure that courts and defendants will be in a position in which they are prepared for a claim to be determined following the completion of a prosecution. By these devices it is anticipated that courts should not be placed in a position where in their view it would be preferable for the claim to be dealt with by civil proceedings.

OFFENCES OF INTERNATIONAL POLLUTION AND IMPROPER HANDLING OF INDUSTRIAL WASTES

The Bill increases the penalties for certain offences under the Environment Protection Act from 100 to 200 penalty units and under the Melbourne and Metropolitan Board of Works Act from 50 to 200 penalty units. The increased penalties in the Environment Protection Act are for offences in relation to improperly handling industrial waste, causing an environmental hazard and pollution offences which are committed intentionally. The increased penalties in the Melbourne and Metropolitan Board of Works Act are in relation to offences dealing with the illegal discharge of trade waste to sewer and contravening the industrial waste provisions of that Act. The reason for increasing the penalties is to maintain an adequate deterrent against improper handling of potential pollutants and to emphasise the seriousness of improper handling of industrial waste.

AGGRAVATED POLLUTION

The increases in penalty are sufficient to deter and punish some intentional polluting acts. They are, however, inadequate where the effects or the potential effects of intentional or reckless polluting acts, possibly motivated by profit, are serious and may potentially be irreversible.

Recent incidents, such as the intentional disposal of carcinogenic and non-biodegradeable polychlorinated biphenyls in waste fuel oils, has demonstrated the inadequacy of penalties under the Act in those circumstances.

On the motion of Mr HEFFERNAN (Ivanhoe), the debate was adjourned.

It was ordered that the debate be adjourned until Thursday April 14.

TRANSFER OF LAND (COMPUTER REGISTER) BILL

Mr SPYKER (Minister for Property and Services)—I move:

That this Bill be now read a second time.

The major purpose of the Bill is to effect a number of amendments to the Transfer of Land Act 1958 to facilitate the development of a computer register for land titles in the State of Victoria.

This initiative will remove the legislative provisions that restrict the land titles register to a paper-based system.

As honourable members would be aware, the Land Titles Office principal function is to maintain a register of the legal ownership of all privately owned land in Victoria—apart from the 5 per cent of private land still under the general law. Land transactions are recorded in the register book which consists of Crown grants and certificates of title on which instruments are notified or registered.

The records that comprise the current register are paper based. In round figures they consist of 2 million "live" titles showing current proprietorship information, one million "cancelled" titles showing historic information and 13 million instruments showing the detail of current endoresements on titles. In the past three financial years the Land Titles Office has registered over 500 000 dealings a year. The title and instrument records occupy some 5200 linear metres of shelving over five floors of a strongroom built for the purpose and completed in 1885.

The traditional problems associated with large paper-based record systems are apparent—record deterioration, storage problems, labour-intensive access requirements and a lack of compatibility with other record systems.