trying out a new system and it will be interesting to observe how that works. The Opposition has been examining the New Zealand system, but at this stage it is inappropriate to agree to the amendment moved by Mr Hallam.

One point that has been sheeted home to the Opposition and the National Party in the past ten days is the need to juggle this Chinese jigsaw puzzle of firearms legislation—we certainly need a new Act—and to also examine the various firearms control concepts. The Liberal Party has an open mind as to the thrust of the National Party's amendment but at this stage believes it is inappropriate. The Opposition does not support the amendment.

The Committee divided on Mr Hallam's amendment (the Hon. G. A. Sgro in the chair).

Ayes	5
Noes	32
Majority against the amendment	27

AYES	NOES
Mr Baxter	Mr Arnold
Mr Dunn	Mr Birrell
Mr Hallam	Mr Chamberlain
	Mrs Coxsedge
Tellers:	Mr Crawford
Mr Evans	Mrs Dixon
Mr Wright	Mr Guest
	Mr Henshaw
	Mrs Hogg
	Mr Hunt
	Mr Kennan
	Mrs Kirner
	Mr Landeryou
	Mr Lawson
	Mrs Lyster
	Mr McArthur
	Mrs McLean
	Mr Macey
	Mr Mier
	Mr Miles
	Mr Murphy
	Mr Pullen
	Mr Sandon
	Mr Storey
	Mrs Tehan
	Mr Van Buren
	Mrs Varty
	Mr Walker
	Mr Ward
	Mr White
	Tellers:
	Mr Kennedy
	Mr Reid

Progress was reported

ENVIRONMENT PROTECTION (AMENDMENT) BILL (No. 3)

The Hon. E. H. WALKER (Minister for Agriculture and Rural Affairs)—I move:

That this Bill be now read a second time.

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 person 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 put 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 principal 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. extending the ambit of the Act to include "infectious" so that that type of material may be regulated in the future by the management systems in the Act that govern other potentially polluting and dangerous substances;

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

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

7. 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;

8. 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.

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

10. 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

11. making various housekeeping amendments to the principal Act and the Litter Act.

FINANCIAL ASSURANCE FOR CLEAN-UP COSTS

The EPA's response to pollution incidents sometimes requires significant expenditure 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 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 assurances can be utilised by the EPA if a clean-up is required. The types of assurance include letters of credit, certificates of title, guarantees, bonds and insurance policies.

The Bill allows requirements for financial assurances to be placed only 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 prescribed 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.

If 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 assurances 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 increased legal costs. This is recognised 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 the 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. Significant concern has been expressed by the community that inadequate penalties contribute to serious pollution incidents. Stronger penalties are required as a realistic deterrent to activities that threaten both the environment and the health of the community.

The government is also concerned that penalties should be severe enough to discourage irresponsible operators from becoming involved in the waste management industry in Victoria. In particular, this government is determined that the situation does not arise in Victoria, as has happened in some countries, where criminal elements have become involved in waste management.

The Bill creates a new offence of "aggravated pollution" which is committed where a person intentionally or recklessly causes serious damage or a substantial risk of serious damage to the environment or to public health. The offence is indictable but may be tried summarily. The Bill makes the necessary consequential amendments to the Magistrates Courts Act. The maximum penalty for the offence is a $40 000 fine or two years' imprisonment or both if dealt with in the Magistrates Court and a $500 000 fine or a maximum of five years' imprisonment or both if dealt with by a higher court.

The Bill thus provides for substantial maximum penalties adequate for an appropriate sentencing range for this type of offence. This will act as a powerful deterrent against ignoring the safety of the community and the environment.

The creation of an offence of aggravated pollution is fully supported by the associations representing responsible industries, who are keen to ensure that the public image of industry is not damaged by irresponsible and reckless operators.

I commend the Bill to the House.