PARLIAMENT OF VICTORIA

# PARLIAMENTARY DEBATES (HANSARD)

## LEGISLATIVE ASSEMBLY

## FIFTY-FOURTH PARLIAMENT

## FIRST SESSION

## 26 October 2000

## (extract from Book 5)

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**By authority of the Victorian Government Printer**

## The Governor

His Excellency the Honourable Sir JAMES AUGUSTINE GOBBO, AC

## The Lieutenant-Governor

Professor ADRIENNE E. CLARKE, AO

## The Ministry

| | |
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| Deputy Premier, Minister for Health and Minister for Planning | The Hon. J. W. Thwaites, MP |
| Minister for Industrial Relations and Minister assisting the Minister for Workcover | The Hon. M. M. Gould, MLC |
| Minister for Transport | The Hon. P. Batchelor, MP |
| Minister for Energy and Resources, Minister for Ports and Minister assisting the Minister for State and Regional Development | The Hon. C. C. Broad, MLC |
| Minister for State and Regional Development and Treasurer | The Hon. J. M. Brumby, MP |
| Minister for Local Government, Minister for Workcover and Minister assisting the Minister for Transport regarding Roads | The Hon. R. G. Cameron, MP |
| Minister for Community Services | The Hon. C. M. Campbell, MP |
| Minister for Education and Minister for the Arts | The Hon. M. E. Delahunty, MP |
| Minister for Environment and Conservation and Minister for Women's Affairs | The Hon. S. M. Garbutt, MP |
| Minister for Police and Emergency Services and Minister for Corrections | The Hon. A. Haermeyer, MP |
| Minister for Agriculture and Minister for Aboriginal Affairs | The Hon. K. G. Hamilton, MP |
| Attorney-General, Minister for Manufacturing Industry and Minister for Racing | The Hon. R. J. Hulls, MP |
| Minister for Post Compulsory Education, Training and Employment and Minister for Finance | The Hon. L. J. Kosky, MP |
| Minister for Sport and Recreation, Minister for Youth Affairs and Minister assisting the Minister for Planning | The Hon. J. M. Madden, MLC |
| Minister for Gaming, Minister for Major Projects and Tourism and Minister assisting the Premier on Multicultural Affairs | The Hon. J. Pandazopoulos, MP |
| Minister for Housing, Minister for Aged Care and Minister assisting the Minister for Health | The Hon. B. J. Pike, MP |
| Minister for Small Business and Minister for Consumer Affairs | The Hon. M. R. Thomson, MLC |
| Parliamentary Secretary of the Cabinet | The Hon. G. W. Jennings |

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**Standing Orders Committee** — Mr Speaker, Mr Jasper, Mr Langdon, Mr Lenders, Mr McArthur, Mrs Maddigan and Mr Perton.

## Joint Committees

**Drugs and Crime Prevention Committee** — (*Council*): The Honourables B. C. Boardman and S. M. Nguyen. (*Assembly*): Mr Cooper, Mr Jasper, Mr Lupton, Mr Mildenhall and Mr Wynne.

**Environment and Natural Resources Committee** — (*Council*): The Honourables R. F. Smith and E. G. Stoney. (*Assembly*): Mr Delahunty, Ms Duncan, Mr Ingram, Ms Lindell, Mr Mulder and Mr Seitz.

**Family and Community Development Committee** — (*Council*): The Honourables E. J. Powell and G. D. Romanes. (*Assembly*): Mr Hardman, Mr Lim, Mr Nardella, Mrs Peulich and Mr Wilson.

**House Committee** — (*Council*): The Honourables the President (*ex officio*), G. B. Ashman, R. A. Best, J. M. McQuilten, Jenny Mikakos and R. F. Smith. (*Assembly*): Mr Speaker (*ex officio*), Ms Beattie, Mr Kilgour, Mr Leighton, Ms McCall, Mr Rowe and Mr Savage.

**Law Reform Committee** — (*Council*): The Honourables D. G. Hadden and P. A. Katsambanis. (*Assembly*): Mr Languiller, Ms McCall, Mr McIntosh, Mr Stensholt and Mr Thompson.

**Library Committee** — (*Council*): The Honourables the President, E. C. Carbines, M. T. Luckins, E. J. Powell and C. A. Strong. (*Assembly*): Mr Speaker, Ms Duncan, Mr Languiller, Mrs Peulich and Mr Seitz.

**Printing Committee** — (*Council*): The Honourables the President, Andrea Coote, Kaye Darveniza and E. J. Powell. (*Assembly*): Mr Speaker, Ms Gillett, Mr Nardella and Mr Richardson.

**Public Accounts and Estimates Committee** — (*Council*): The Honourables D. McL. Davis, R. M. Hallam, G. K. Rich-Phillips and T. C. Theophanous. (*Assembly*): Ms Asher, Ms Barker, Ms Davies, Mr Holding, Mr Loney and Mrs Maddigan.

**Road Safety Committee** — (*Council*): The Honourables Andrew Brideson and E. C. Carbines. (*Assembly*): Mr Kilgour, Mr Langdon, Mr Plowman, Mr Spry and Mr Trezise.

**Scrutiny of Acts and Regulations Committee** — (*Council*): The Honourables M. A. Birrell, M. T. Luckins, Jenny Mikakos and C. A. Strong. (*Assembly*): Ms Beattie, Mr Carli, Mr Dixon, Ms Gillett and Mr Robinson.

## 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

*Hansard* — Chief Reporter: Ms C. J. Williams

*Library* — Librarian: Mr B. J. Davidson

*Parliamentary Services* — Secretary: Ms C. M. Haydon

## MEMBERS OF THE LEGISLATIVE ASSEMBLY

## FIFTY-FOURTH PARLIAMENT — FIRST SESSION

**Speaker:** The Hon. ALEX ANDRIANOPOULOS

**Deputy Speaker and Chairman of Committees:** Mrs J. M. MADDIGAN

**Temporary Chairmen of Committees:** Ms Barker, Ms Davies, Mr Jasper, Mr Kilgour, Mr Loney, Mr Lupton, Mr Nardella, Mrs Peulich, Mr Phillips, Mr Plowman, Mr Richardson, Mr Savage, Mr Seitz

**Leader of the Parliamentary Labor Party and Premier:**
The Hon. S. P. BRACKS

**Deputy Leader of the Parliamentary Labor Party and Deputy Premier:**
The Hon. J. W. THWAITES

**Leader of the Parliamentary Liberal Party and Leader of the Opposition:**
The Hon. D. V. NAPTHINE

**Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition:**
The Hon. LOUISE ASHER

**Leader of the Parliamentary National Party:**
Mr P. J. RYAN

**Deputy Leader of the Parliamentary National Party:**
Mr B. E. H. STEGGALL

| Member | District | Party | Member | District | Party |
|---|---|---|---|---|---|
| Allan, Ms Jacinta Marie | Bendigo East | ALP | Leighton, Mr Michael Andrew | Preston | ALP |
| Allen, Ms Denise Margret [4] | Benalla | ALP | Lenders, Mr John Johannes Joseph | Dandenong North | ALP |
| Andrianopoulos, Mr Alex | Mill Park | ALP | Lim, Mr Hong Muy | Clayton | ALP |
| Asher, Ms Louise | Brighton | LP | Lindell, Ms Jennifer Margaret | Carrum | ALP |
| Ashley, Mr Gordon Wetzel | Bayswater | LP | Loney, Mr Peter James | Geelong North | ALP |
| Baillieu, Mr Edward Norman | Hawthorn | LP | Lupton, Mr Hurtle Reginald, OAM, JP | Knox | LP |
| Barker, Ms Ann Patricia | Oakleigh | ALP | McArthur, Mr Stephen James | Monbulk | LP |
| Batchelor, Mr Peter | Thomastown | ALP | McCall, Ms Andrea Lea | Frankston | LP |
| Beattie, Ms Elizabeth Jean | Tullamarine | ALP | McIntosh, Mr Andrew John | Kew | LP |
| Bracks, Mr Stephen Phillip | Williamstown | ALP | Maclellan, Mr Robert Roy Cameron | Pakenham | LP |
| Brumby, Mr John Mansfield | Broadmeadows | ALP | McNamara, Mr Patrick John [3] | Benalla | NP |
| Burke, Ms Leonie Therese | Prahran | LP | Maddigan, Mrs Judith Marilyn | Essendon | ALP |
| Cameron, Mr Robert Graham | Bendigo West | ALP | Maughan, Mr Noel John | Rodney | NP |
| Campbell, Ms Christine Mary | Pascoe Vale | ALP | Maxfield, Mr Ian John | Narracan | ALP |
| Carli, Mr Carlo | Coburg | ALP | Mildenhall, Mr Bruce Allan | Footscray | ALP |
| Clark, Mr Robert William | Box Hill | LP | Mulder, Mr Terence Wynn | Polwarth | LP |
| Cooper, Mr Robert Fitzgerald | Mornington | LP | Napthine, Dr Denis Vincent | Portland | LP |
| Davies, Ms Susan Margaret | Gippsland West | Ind | Nardella, Mr Donato Antonio | Melton | ALP |
| Dean, Dr Robert Logan | Berwick | LP | Overington, Ms Karen Marie | Ballarat West | ALP |
| Delahunty, Mr Hugh Francis | Wimmera | NP | Pandazopoulos, Mr John | Dandenong | ALP |
| Delahunty, Ms Mary Elizabeth | Northcote | ALP | Paterson, Mr Alister Irvine | South Barwon | LP |
| Dixon, Mr Martin Francis | Dromana | LP | Perton, Mr Victor John | Doncaster | LP |
| Doyle, Robert Keith Bennett | Malvern | LP | Peulich, Mrs Inga | Bentleigh | LP |
| Duncan, Ms Joanne Therese | Gisborne | ALP | Phillips, Mr Wayne | Eltham | LP |
| Elliott, Mrs Lorraine Clare | Mooroolbark | LP | Pike, Ms Bronwyn Jane | Melbourne | ALP |
| Fyffe, Mrs Christine Ann | Evelyn | LP | Plowman, Mr Antony Fulton | Benambra | LP |
| Garbutt, Ms Sherryl Maree | Bundoora | ALP | Richardson, Mr John Ingles | Forest Hill | LP |
| Gillett, Ms Mary Jane | Werribee | ALP | Robinson, Mr Anthony Gerard Peter | Mitcham | ALP |
| Haermeyer, Mr André | Yan Yean | ALP | Rowe, Mr Gary James | Cranbourne | LP |
| Hamilton, Mr Keith Graeme | Morwell | ALP | Ryan, Mr Peter Julian | Gippsland South | NP |
| Hardman, Mr Benedict Paul | Seymour | ALP | Savage, Mr Russell Irwin | Mildura | Ind |
| Helper, Mr Jochen | Ripon | ALP | Seitz, Mr George | Keilor | ALP |
| Holding, Mr Timothy James | Springvale | ALP | Shardey, Mrs Helen Jean | Caulfield | LP |
| Honeywood, Mr Phillip Neville | Warrandyte | LP | Smith, Mr Ernest Ross | Glen Waverley | LP |
| Howard, Mr Geoffrey Kemp | Ballarat East | ALP | Spry, Mr Garry Howard | Bellarine | LP |
| Hulls, Mr Rob Justin | Niddrie | ALP | Steggall, Mr Barry Edward Hector | Swan Hill | NP |
| Ingram, Mr Craig | Gippsland East | Ind | Stensholt, Mr Robert Einar [2] | Burwood | ALP |
| Jasper, Mr Kenneth Stephen | Murray Valley | NP | Thompson, Mr Murray Hamilton | Sandringham | LP |
| Kennett, Mr Jeffrey Gibb [1] | Burwood | LP | Thwaites, Mr Johnstone William | Albert Park | ALP |
| Kilgour, Mr Donald | Shepparton | NP | Trezise, Mr Ian Douglas | Geelong | ALP |
| Kosky, Ms Lynne Janice | Altona | ALP | Viney, Mr Matthew Shaw | Frankston East | ALP |
| Kotsiras, Mr Nicholas | Bulleen | LP | Vogels, Mr John Adrian | Warrnambool | LP |
| Langdon, Mr Craig Anthony Cuffe | Ivanhoe | ALP | Wells, Mr Kimberley Arthur | Wantirna | LP |
| Languiller, Mr Telmo | Sunshine | ALP | Wilson, Mr Ronald Charles | Bennettswood | LP |
| Leigh, Mr Geoffrey Graeme | Mordialloc | LP | Wynne, Mr Richard William | Richmond | ALP |

[1] Resigned 3 November 1999
[2] Elected 11 December 1999
[3] Resigned 12 April 2000
[4] Elected 13 May 2000

# CONTENTS

## THURSDAY, 26 OCTOBER 2000



## QUESTIONS ON NOTICE

## TUESDAY, 24 OCTOBER 2000

# Thursday, 26 October 2000

**The SPEAKER (Hon. Alex Andrianopoulos) took the chair at 9.36 a.m. and read the prayer.**

## PETITIONS

**The Clerk** — I have received the following petitions for presentation to Parliament:

### Preschools: funding

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled:

That the Victorian government immediately invest more substantially in preschool education for the benefit of Victoria's young children and their future. That the Victorian government increase funding to preschools to at least equivalent to the national average in order to ensure:

a reduction in fees paid by parents and the removal of the barrier to participation for children;

reduction in group sizes to educationally appropriate levels consistent with those established by government for P–2 classes in primary schools;

teachers are paid appropriately and in line with Victorian school teachers and preschool teachers interstate;

critical staff shortages for both permanent and relief staff are alleviated;

the excessive workloads of teachers and parent committees of management are addressed.

And your petitioners, as in duty bound, will ever pray.

**By Dr DEAN (Berwick) (297 signatures) and Ms DUNCAN (Gisborne) (157 signatures)**

### School buses: seatbelts

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled:

The humble petition of Fantain Gale Primary School council showeth [the] school council of Fantain Gale Primary School.

Your petitioners therefore pray that the government and Parliament should legislate of the undersigned that wherever buses are used to transport students they must be fitted with seatbelts for the protection and safety of these passengers.

And your petitioners, as in duty bound, will ever pray.

**By Dr DEAN (Berwick) (680 signatures)**

**Laid on table.**

## SHIRE OF MELTON

### Investigation

**Mr SAVAGE (Mildura), by leave, presented report on investigation of allegations by Mr L. Dobie of irregularities on part of officers of Shire of Melton in regard to construction of section of road.**

**Laid on table.**

## PAPERS

**Laid on table by Clerk:**

Harness Racing Board — Report for the year 1999–2000

Queen Victoria Women's Centre Trust — Report for the year 1999–2000

Treasury Corporation of Victoria — Report for the year 1999–2000

Victorian Multicultural Commission — Report for the year 1999–2000.

## AUDITOR-GENERAL'S OFFICE

### Financial audit

**Mr BATCHELOR** (Minister for Transport) — By leave, I move:

That pursuant to section 17 of the Audit Act 1994 and the recommendation contained in the *Report of the Public Accounts and Estimates Committee on the Financial Audit of the Auditor-General's Office for 1999–2000 — Revised Audit Fees (Parliamentary Paper No. 35, Session 1999–2000)* the level of remuneration to be paid to Mr Douglas N. Bartley of KPMG to complete the financial audit of the Victorian Auditor-General's Office for the 1999–2000 financial year be increased by $9000 to a total remuneration of $24 000.

**Motion agreed to.**

**Ordered that message be sent to Council seeking concurrence with resolution.**

## MEMBERS STATEMENTS

### Powelltown: roads

**Mrs FYFFE** (Evelyn) — I have received a petition from the residents of Powelltown. Unfortunately it is not in the correct format to present to Parliament. I will, as I have promised, forward the petition and accompanying letter to the Minister for Transport.

Little Yarra Road is the only route for Powelltown residents who are going to work, to school, to shop, to

attend medical services or visit other towns in the region. The town was surrounded by bushfires on Ash Wednesday in 1983. The road is extremely dangerous and narrow. Although the road was recently widened near Gladysdale, the strip connecting the old road to the new has already started to wear and there is a lengthy ditch and potholes. It is extremely dangerous because the ditch that has been created pulls cars towards the path of oncoming traffic. Logging trucks will soon be using the road. It is a major accident waiting to happen.

On other parts of the road edges have crumbled and there are large potholes in many places. In order not to slip off the road people tend to drive in the middle of it. Imagine what that would be like when a logging truck came around the corner.

The 170 residents of Powelltown are fearful that they are again being ignored and they have asked me to approach the Minister for Transport for funding for this dangerous section of road. During the Ash Wednesday bushfires residents were trapped in the town because they could not get out via their one road.

## Carers Week

**Ms PIKE** (Minister for Housing) — In my electorate of Melbourne the Moreland community care organisation in Brunswick is holding a carers forum to discuss the contribution carers make to the community and to look for ways the community can offer ongoing support to them.

We know that carers play a critical role in supporting people who need to live in their own homes but require care to enable them to live dignified and independent lives. The task of caring can also be challenging and demanding.

This week is Carers Week, and it is our opportunity as a community to pay tribute to the thousands of carers who play such a vital role. The theme is ‘Listen to carers and listen to their needs’.

With the honourable member for Essendon I had the privilege of launching an exhibition called ‘The Art of Caring’ which depicts carers from around the state. The exhibition will be moved around, and this week it will be at St Michael’s Church in Collins Street.

The government has made an additional $675 000 available for the support of carers, which takes its annual contribution to $26 million. I am confident that these additional resources, plus the focus on carers during Carers Week will contribute to the lives of carers and the people they support in the community.

## Essendon Airport: future

**Mr JASPER** (Murray Valley) — I bring to the attention of the house my concern as a country member of Parliament for the future of Essendon Airport, which must be retained as a domestic commuter airport because it is ideally positioned to service the needs of country people and metropolitan business and industry.

It is also essential for use by the air ambulance and emergency services from all parts of country Victoria, with regular aircraft movements from cities such as Wangaratta and Shepparton and from north-western and south-western Victoria.

In 1989–90 at a cost of approximately $1 million the former Labor government commissioned a report to investigate the future of Essendon Airport. The report concluded that the airport must be retained because it is essential for the future movement of domestic, commuter and emergency services aircraft to and from Melbourne.

It is disappointing that the Victorian government is now not supporting the continued operation of Essendon Airport. Minister Brumby has responded to my representations, and while acknowledging that the airport has an important role to play in servicing regional Victoria, he said:

> The new Victorian government came to office with a clear commitment to a relocation of aircraft activity from Essendon Airport and the redevelopment of the site for mixed and essential commercial uses.

Although the final decision to determine the future of Essendon Airport lies with the federal government, the state government must reconsider its position and support the retention of this essential airport to service regional Victoria in particular and Melbourne.

## Paralympic Games: Ballarat athletes

**Mr HOWARD** (Ballarat East) — I wish to congratulate Ballarat’s Paralympians who are competing in Sydney. Following the outstanding results of Ballarat’s Olympians who gained five medals in the Olympic Games, our Paralympians have already seen great success in Sydney. Most notably wheelchair athlete Greg Smith, who won a bronze medal in Barcelona and a silver medal in Atlanta, has gone on to win gold in the 800-metre wheelchair event and on the following night again won gold in the 5000-metre wheelchair event.

I also pay tribute to Peter Tait, who won a silver medal in the mixed pistol event, and Jodie Willis-Roberts,

who won bronze last Friday night in the F12 discus event and yesterday won gold in the F12 shot-put.

They are terrific. The gold rush has been returning to Ballarat, and it is great to see. Sandy Blythe is competing in the basketball, and Brad Dubberley is continuing to compete in the wheelchair rugby. I wish them both well.

I congratulate all of Ballarat's Paralympians. They are doing Ballarat proud. I wish them and all the other Paralympians well in the final days of the Paralympic Games.

## Planning: Moreland development

**Mr CLARK** (Box Hill) — Yesterday the Minister for Planning was reported in the media as saying that if only Bayside City Council had asked him he would have intervened to halt the demolition of a historic home in Brighton. However, there is a case in Brunswick where Moreland City Council has repeatedly asked the minister to intervene in a planning issue but he has refused to do so.

In St Phillip Street, Brunswick, a developer was refused permission by both Moreland City Council and the Victorian Civil and Administrative Tribunal to construct two double-storey townhouses on a site. The developer has now started building a large double-storey dwelling on one half of the property leaving the other half vacant. From the design and layout of the building there is little doubt that it is in effect one half of the original proposal that was rejected by the council and by VCAT.

The neighbours next door to the development, Ronnie and Steve Whitmore, held an around-the-clock vigil outside Parliament for many days seeking redress from the minister. At last he agreed to see them, only to tell them that he was not prepared to intervene. The best solution would have been for the minister to have brought in interim planning controls pending completion of Rescode, as I urged him to do in the house in November last year and for which he would have had bipartisan support. However, failing that, there is precedent for the minister to intervene directly in this case to require any development to comply with the *Good Design Guide*. His predecessor intervened in similar cases such as Delany Avenue, Burwood, where loopholes were being used to defy tribunal decisions.

It is not only the opposition that has been making these points. An honourable member for Melbourne Province, Glenyys Romanes, is reported in the *Moreland Community News* of 10 October as calling on the minister to intervene to stop further building work.

**The SPEAKER** — Order! The honourable member's time has expired.

## Geelong Hospital

**Mr TREZISE** (Geelong) — I take this opportunity to congratulate Barwon Health on recently topping a statewide patient satisfaction survey on the level of care provided to war veterans and widows.

As the chairperson of Barwon Health is reported as saying in the *Geelong Advertiser* at the time, 'It is pleasing that local veterans have given Geelong Hospital such a huge stamp of approval'.

Barwon Health staff have told me that they appreciate the public accolade because it comes at a time when the Liberal opposition continues to attack and undermine the work of the hospital, just as it did during its seven years in government.

In the eyes of the Geelong community the honourable members for South Barwon and Bellarine stand condemned as local members who at best meekly stood by for seven years and witnessed the destruction of the Geelong Hospital. Although the shadow Minister for Health may think the people of Geelong are fools, I can assure him they are not.

The CEO, Mr Capp, who presided over Barwon Health during the time of the previous government, is reported in the *Geelong Advertiser* under the heading 'Public hospitals still recovering from Kennett years' as saying:

> The Kennett government placed great financial pressure on the state public health system and it will take time to fix.

Despite the program destruction that occurred during the Kennett years in government, the Geelong Hospital continues to serve the public well, and I congratulate it on its achievements.

## Snowy River

**Mr McARTHUR** (Monbulk) — A few weeks ago the Premiers of both Victoria and New South Wales announced that the flows to the Snowy River would be increased, a decision cautiously supported by the Liberal Party because it had heard only vague details of a 21 per cent increased flow to be achieved over 10 years at a cost of $300 million.

Since then further details have gradually become available. The Honourable John Della Bosca, Special Minister of State in the New South Wales Parliament, said that an entity or enterprise would be formed that would have the ability to purchase water because it was more cost efficient than finding the flows from savings.

On Tuesday the Minister for Energy and Resources in the other place said that an enterprise would be formed that would have the ability to purchase water at least cost irrespective of where the water comes from.

The Premier modified that statement yesterday to say that a joint statutory authority would be formed — not an enterprise or an entity — and purchases of that water would be restricted to occurring after 21 per cent increased flow was achieved from savings and after the 10-year period.

Those statements are contradictory. I call on the Premier to make all the details publicly available — if the agreement exists — and to table it in the Parliament as Premier Bob Carr has agreed to do in New South Wales. Victorians should be aware of the secret deals — —

**The SPEAKER** — Order! The honourable member's time has expired.

## Pastures for Profit program

**Mr HARDMAN** (Seymour) — I advise the house of a fantastic program called Pastures for Profit that is run in my electorate by the Goulburn Ovens Institute of TAFE and the Victorian Farmers Federation (VFF).

Recently the Minister for Agriculture and I visited a participant in the project — a model farm near Broadford owned by Paul Fleming. The program is a hands-on course in which farmers participate and gain benefits from practical application not offered by many other courses.

The enthusiasm of the participants is marvellous to see and the confidence they derive from the program is wonderful. Each month the participants visit the farms of other course members to examine their implementation of the program, offer constructive criticism and see new ideas at work.

The program is so successful that enthusiastic farmers told me that by utilising the method of cell farming taught in the course they were able to double the number of sheep they carried on their properties. The profits of their industry, which has been struggling, have been boosted.

The course participants have gained fresh enthusiasm for farming and have been provided with networks of other farmers who wish to continue to improve their practices and farm successfully. I congratulate the Goulburn Ovens TAFE, the VFF and the course participants and encourage them to continue their great efforts.

## Great Ocean Road: study

**Mr VOGELS** (Warrnambool) — I draw the attention of the house to the fact that the Department of Infrastructure had called for submissions, closing in early October, regarding the Great Ocean Road pre-feasibility study. The submissions were to be clearly labelled 'Great Ocean Road pre-feasibility studies' and would examine linkages to Warrnambool and the Great Ocean Road.

I have no problem with access or linkage routes to Warrnambool, but I have a problem with the process of pre-feasibility. Since when has the government commenced pre-feasibility studies? This pre-feasibility study will cost $80 000. Will the government also implement an intermediate pre-feasibility study and a post-feasibility study before it gets to the feasibility study?

The advisory group conducting the study will continue to recommend further stages of the studies because they are all the same people: representatives of the Department of Natural Resources and Environment, the Department of Infrastructure, Vicroads, Tourism Victoria and Parks Victoria — they will not put themselves out of a job.

This is bureaucracy at work — a pre-feasibility study, and then the enormous decision will have to be made between six departments! A committee will be appointed to make a recommendation to a panel, which will then report back to the minister and — wait for it — the question will need to be asked: do we have enough information to make a recommendation on pre, intermediate and post-studies to actually conduct a feasibility study?

**The SPEAKER** — Order! The honourable member for Carrum has 45 seconds.

## Chelsea Primary School

**Ms LINDELL** (Carrum) — I ask the house to join me in commending a fine example of excellent government education provided by the Chelsea Primary School in my electorate. Recently I had the great pleasure of attending the students' annual concert, called 'A Kidsummer Night's Dream'. The evening was terrific fun. All the students from grades 3 to 6 were included. There were courtly Athenians, workers, fairies and goblins, forest folk and the principal cast of Theseus, Hippolyta, Philostrate, Egeus, Hermia, Helena, Lysander, Demetrius and many others.

I congratulate the principal, staff and school council on the wonderful production.

## WRONGS (AMENDMENT) BILL

*Second reading*

**Debate resumed from 5 October; motion of Mr HULLS (Attorney-General).**

**The SPEAKER** — Order! As a statement of intention has been made under section 85(5)(c) of the Constitution Act, I am of the opinion that this bill requires to be passed by an absolute majority.

**Dr DEAN** (Berwick) — The Wrongs (Amendment) Bill will be of great interest for all lawyers and absolutely no interest for anybody else. I have got a bet on that I can clear the house in about 35 seconds — and I can see that it has already started.

While the legislation may look complicated — I have never understood the title of the act, and it seems strange to me — the concept is reasonably simple and explainable. The need for the amendment arises as a consequence of the history and evolution of Victorian law, as is the case for all democratic states based on the Westminster common-law system inherited from the United Kingdom. Quite often you cannot understand procedures until you go back and work out for yourself how the law got to where it was in the first place.

When laws were made and the common law started to develop more than 300 years ago people's attitudes and the culture were a little different from today. It was a much harsher society. There was no government to assist those who were underprivileged and there was no help for the weak. Some people lived in poorhouses; a person could earn wealth by living under a feudal lord and working a patch of ground; and others lived in the streets and attempted to eke out a living either by theft or obtaining food by begging.

The common law evolved when the king decided that in order to be able to control the provinces surrounding his kingdom it was necessary for his officers to solve disputes. That was the beginning of a system that grew from the king's officer asking his peers about the reasons for disputes and making a decision to what we know today where we have concepts of natural justice and independent courts.

The term 'bar' — which has a fond memory for me, not because I spent a lot of time drinking in one but because I spent a lot of time earning money there — comes from the fact that the king's representative needed some protection. A fence-like structure or a pole was erected so that the crowds could stand on one side and the king's representative could stand on the other. It made sure he would not receive a pie in the face or whatever it was in those days — obviously people have not changed and they still do those sorts of silly things.

When the king's representatives made decisions and went from one borough to the next, not unexpectedly, news of decisions made in one borough travelled to others. When the king's representative rose to make a decision on another dispute some clever soul said, 'I understand you had a similar case in the borough next door and you decided this way. Wouldn't it be unfair if you didn't give the same decision for me?'. It led to a system of precedents. If we had only known what that would lead to we probably would have hung that person. Slowly but surely rules developed and became entrenched into common law. But the common law was a pretty harsh doctrine.

Rather than people only being able to take their problems to the king's representative who was expected to be at the market on a given day, the procedure became more sophisticated with the introduction and access of paper and printing. When a person wanted to see the representative he or she had to fill out a piece of paper, it was given to the representative and would aid the proceedings. Again, if only we had known what that would lead to, which was wonderful costs for lawyers as they drafted complicated documents and procedures — not that I am complaining — statements of claim and defences — —

**An honourable member** interjected.

**Dr DEAN** — I do complain now, because I cannot get any of those benefits.

The drafting of documents led to formal processes and things revolved around pieces of paper. For example, detinue became the forerunner of contract law. That meant a certain sum or debt could be asked for at one of these legal gatherings.

The common law of negligence was also developing, albeit slowly. The fact that somebody did something to somebody else and caused an injury meant that there was fault on one side or the other, but decisions about that fault were made on an arbitrary basis. Rules then started to develop around fault. The stage was reached where although things became sophisticated they still reflected the very harsh culture of the time. In other words, if someone made a complaint about someone who he said had done something wrong to him, it was an all-or-nothing world. If that person had done something, the complainant got full damages, even if the complainant had been partly responsible.

In those days the world said it was not about whether the plaintiff was also partly responsible. It said it was

about the fact that somebody had done that to him and therefore he could have all the damages that flowed from that act. That was pretty harsh. The court could say that a person had done the act and must therefore pay 100 per cent of the damages to the plaintiff. What often happened was that the defendant would have his own action against the plaintiff, where the 100 per cent rule would also operate. Things became quite confused. A person making a complaint could be 1 per cent responsible, leaving the alleged perpetrator not responsible.

People say the common law is dead, dry, frozen and non-flexible, but if one takes an historical approach one sees that the common law is an ever-growing, burgeoning flower that blossoms and blooms as things change. It is amazing how as the seasons have changed that flower has adjusted to become the common law we have today.

*Honourable members interjecting*.

**Dr DEAN** — Could I have some assistance from the Chair?

**The ACTING SPEAKER (Ms Barker)** — Order! The Chair is pleased to offer assistance to the honourable member for Berwick. I ask members on the opposition benches to cease interjecting.

**Dr DEAN** — It is not unexpected that as people became more concerned about matters of fault and apportioning blame the common law had to find a way to change the nature of its decisions to get around the situation whereby, even in the case of 1 per cent negligence, someone got 100 per cent of the result. However, it was pretty entrenched by then.

I turn to a book entitled *The Law of Torts* by John Fleming. Anyone who has done any legal studies will immediately know about Fleming, because his is the bible of torts. All of us who grew up in the wonderful discipline of the law hold his book in great esteem. My legal colleagues may laugh, but if I were to ask them what one book they would think of if they were asked about the legal text that had the most impact on them, they would say Fleming on torts.

I know that your appetite, Madam Acting Speaker, has been whetted and that you want to hear what Fleming says on torts. Fleming writes with great flair and in a way that enables even non-lawyers to understand the legal complications about which I wish to speak. It is important to understand why our laws are as they are. If they are a little bit odd it is important to understand why that is so — and why we should change them. On page 269 of *The Law of Torts* Fleming states:

> The common law treated contributory negligence as a complete defence, defeating the plaintiff's recovery entirely. Less drastic would have been the rule of equal division of loss under admiralty law.

Under admiralty law one can get fifty-fifty:

> … or apportionment in accordance with the parties' share of responsibility favoured by the modern civil law.
>
> One looks in vain for any persuasive doctrinal justification of this 'stalemate solution'.
>
> …
>
> This causal theory, however, is only a sham. It is, of course, beyond all argument that a plaintiff's negligence will not be counted against him unless it was at least a cause of his injury. But this truism does not help to explain why it should bar recovery if it was a cause. We have long become familiar with the idea that one's liability is not precluded merely because some other legally responsible cause also contributed to the harm.

Further down the page he states:

> Like voluntary assumption of risk and the common employment rule, it subsidised the growth of industrial and business enterprise burden by lightening the burden of compensation losses for accidents inevitably associated with a rapidly expanding economy and the faster and greater volume of transport. These economic developments were accompanied by an individualistic philosophy which stipulated a higher degree of self-reliance: the law, barely required to aid those who could not protect themselves, could well be indifferent to others who could help themselves but failed to do so.

We learn here that part of the reason contributory negligence was not embraced was that it could have caused problems for industrial entrepreneurs. For example, it would have caused problems for those people who wanted to develop business at a time when they were given preference over the masses who worked in the factories. The courts did not particularly want to say that where an employer was partly liable he should contribute. That became a harsh rule, but it was done nevertheless. It was a little bit like the corporate veil that exists today as a mechanism to promote business.

The court invented all sorts of things to try to get around it as the pressure increased to do something about it. For example, the court invented the last-opportunity rule. It said that although it was unjust that in the case of 1 per cent negligence someone got 100 per cent of the damages, that was the law. However, to get around that the court invented another law, which meant that even though the person who was complaining was rightfully entitled to damages because the other person was negligent, if it was possible at the very last moment for the claimant to have done something to avoid the accident, the rule of last

opportunity would apply. That meant that if the complainant did not take the last opportunity, he would not get the damages. That is an example of how the common law tries to get over problems by creating its own laws.

The court also had to invent a reason for its inventing the last-opportunity rule as a substitute for contributory negligence. It said that the causal link between the beginning of the accident and the accident was broken by last opportunity. It was a fabrication, which everyone knew, but it was a way for law to struggle through.

As time went by, the last-opportunity rule developed into what Fleming described as:

> … a plastic instrument for allocating the loss to either plaintiff or defendant in accordance with the court's view of whose was the disproportionately greater share of responsibility.

The court reached the stage of saying that it could not provide for contributory negligence but it could use the last-opportunity rule. So the court had a 100 per cent negligence rule on one side and a last-opportunity rule on the other side. It was really deciding who was the least responsible, and that person got everything. At least the person who got everything was the most deserving. If it were 70:30, the person who was only 30 per cent responsible got everything.

But it was still obviously unsatisfactory. Mr Fleming explains why it took so long for the legislature to do something about it but, in the end, the legislature did do something and that is why the Wrongs Act has many things in it. The reason the Wrongs Act is called the Wrongs Act may well be that it is attempting to amend wrongs. I have only just thought of that. My learned colleagues, who are more learned than I, are saying that is probably true. Whether they knew it was true before I said it or not, they are now accepting the possibility that the Wrongs Act is there because it was an act the legislature introduced to overcome the wrongs of common law. The general provision states that:

> … where any person suffers damage as the result partly of his own fault —

I notice it refers to 'his' but we will take 'his' and 'her' as read —

> and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility of the damage.

There is the opportunity in common law for the judge to say, 'It is 70:30 responsible. You only get 70 per cent because you were 30 per cent responsible'.

Mr Fleming, probably the guru of torts, has always said there was a problem that had not been solved. There was a lot of debate about the situation where there was a contract. The duty of care, or the negligence, was under contract not tort. A contract is a bargain between two parties but, as part of its terms, can include a term or implied term that the parties will not be negligent. So the question was whether the Wrongs Act extended to negligence. Everybody thought it did, so that was fine, and most negligence cases were brought in tort and contract so everything was fine.

However, eventually someone decided to test it in *Astley v. Austrust* and, lo and behold, the High Court said that the Wrongs Act applies to negligence in tort but not to negligence in contract. So we are back to the early days where if you sued in contract for negligence, it was non-contributory negligence which is ridiculous. That was held because in the Wrongs Act the term 'fault' is inevitably used as a requirement of getting in under the Wrongs Act. However, contract does not include fault. There is no fault in contract; it is a bargain and someone has either fulfilled it or not. As a consequence the High Court determined it does not apply to contract.

That is what the bill is about: ensuring the Wrongs Act amends another wrong which we thought had been fixed but has not; to ensure that when actions in contract negligence are brought, the court can, as in tort, decide whether there is contributory negligence and, if there is, what that contributory negligence should be and divide the judgment accordingly.

I have done better than I thought. There are at least five honourable members left in the chamber, so I lost the bet. The bill has the support of the opposition. I commend the bill to the house.

**Mr RYAN** (Leader of the National Party) — It is my pleasure to join the debate on this important bill. I have listened attentively to the contribution of the honourable member for Berwick who has taken gleefully to the debate as would, with all due respect, a substantial pig in a deep pool of mud. I strongly recommend to anyone reviewing the passage of the legislation to read his comments. It can fairly be said that his contribution today will provide the definitive view of the history of the Wrongs Act and it is a good read, not only for its content but also for the entertaining way in which it was delivered.

The National Party supports the bill. Even I support it and I make that qualified comment because in the work I did in litigation, and the many thousands of cases in which I was engaged over the years, I acted for plaintiffs, not defendants; I acted for individuals, not corporate entities. The notion of this change bringing about an outcome which will see a reduction in damages payable to a plaintiff because of a finding of contributory negligence is something that, on the face of it, having regard to my personal history, might seem contrary to the position I once had in representing those plaintiffs. By the same token, as a matter of commonsense and fairness, the legislative amendment is needed to give consistency to the law and effect to the intention of the original legislation.

The decision in *Astley v. Austrust* was based upon the South Australian act, but it has become the mechanism of interpretation of the Victorian act, the terms of which are reflective of that which applies in South Australia. Therefore, the amendment is necessary because without it we will suffer the same consequence in terms of the interpretation of our act as that which occurred in South Australia. So, it is necessary to make the change.

I support the basic principles of the amendment, as does the National Party. In essence, the net effect will be that if a plaintiff brings a case under contract law and is awarded $100, but a court then determines that given the events that gave rise to the wrong there was a degree of contribution on his or her part, which is judged to be, say, a 40 per cent contribution, the plaintiff will be paid the net figure, which is $60. That is a fair outcome. It means that there will be some commonality in the application of the basic rules not only insofar as they apply to cases pleaded under contract law, but also to those cases pleaded under the law of torts.

I raise an issue I have referred to on a number of occasions concerning the scrutiny of acts and regulations. I have not seen the Scrutiny of Acts and Regulations Committee report on this legislation — that is an omission on my part and not on the part of the committee — but I believe it is another piece of legislation before the Parliament that will apply in all jurisdictions throughout Australia. It highlights the necessity to develop a process whereby all jurisdictions will have an appropriate mechanism for the scrutiny of this form of legislation without the process having to be undertaken in the individual jurisdictions to which it is to apply. When I chaired the Scrutiny of Acts and Regulations Committee during the time of the previous government, the all-party committee did much work in trying to design a mechanism whereby that could happen. I understand that work has developed to a stage where the committee, under the able leadership of the honourable member for Werribee, is now at the point of having developed a draft bill. I also understand a discussion of all the jurisdictions involved in the work of various scrutiny committees will be convened in our Legislative Council chamber later this year. I commend that work. It is important in the interests of all jurisdictions in Australia to have a situation whereby the legislation that comes before the respective parliaments is consistent so as to avoid separate changes being made as a result of the work undertaken by the respective scrutiny committees of each Parliament. Instead, we need a mechanism whereby the scrutiny process can occur in a way that all the jurisdictions find acceptable, which will thereby assist in ensuring that the legislation that makes its way into the various jurisdictions of application will have that all-important element of consistency.

I strongly recommend those people with an interest in this issue to spend some time reading the contribution of the honourable member for Berwick, because it was excellent in content, informative and accurate in its outlining of the history of the development of the law in this important area while accommodating the various aspects that are pertinent to the bill. I commend the bill to the house.

**Mr WYNNE** (Richmond) — I support the Wrongs (Amendment) Bill, and in doing so I acknowledge the contributions to the debate of the honourable member for Berwick and the Leader of the National Party. I look forward to the contribution of the honourable member for Kew, who will also be making a contribution to the debate on the bill.

It is interesting that by and large the vast preponderance of legislation that is sponsored by the Attorney-General receives bipartisan support. It is important that most of the good work in the general hubbub of parliamentary debate and in media reporting is done on a bipartisan basis. The bill is particularly representative of all the legislation sponsored by the Attorney-General.

I could not hope to compete with the broad overview of the bill provided by the honourable member for Berwick, save to touch, as he did in part during his contribution, on the importance of the historical basis of the bill. The honourable member for Berwick touched on the poor law of the 1830s. The 1834 poor law raised the concept of the deserving and undeserving poor. In a discussion with a colleague earlier today we noted that much of the social policy in Victoria to this day derives from that law. Those 1834 concepts, often called the poor-law mentality, were a strong aspect of the way social policy was formed through the early part of this

century. In that context we must reassess how to proceed forward.

I refer to Fleming's *The Law of Torts*, but one could not possibly hope to compete with the contribution of the honourable member for Berwick. I recommend, as did the Leader of the National Party, that those people who have a particular interest in this issue should review the contribution of the honourable member for Berwick. However, I will steal a line from my colleague the honourable member for Burwood, who was hoping to speak today. He was to start his contribution by saying that this bill rights a wrong by writing a wrong. That is in fact the context in which we should be considering the bill today.

The government has introduced the bill to ensure that the courts can reduce damages awards where people contributed to their own losses. The High Court acknowledged in its judgment in *Astley v. Austrust* that such legislative change may be necessary.

In the past most authorities in Australia and England supported the view that apportionment legislation that reduced damages in accordance with the respective share of responsibility could be applied where the defendant was liable concurrently in tort and contract. However, in *Astley v. Austrust* the High Court determined that damages could not be reduced by the contributory negligence, as a strict interpretation of the apportionment legislation did not apply in a claim of contract.

Prior to the High Court decision the weight of judicial interpretation was that the Wrongs Act applied, so that, firstly, if a plaintiff was guilty of contributory negligence the court should reduce proportionately the damages awarded; and secondly, it did not matter if the plaintiff framed the action as a tortious breach of duty or a concurrent breach of contract. So the High Court indeed interpreted the South Australian equivalent of section 26 of the Wrongs Act as applying only in tortious claims.

The practical effect of that decision is that where the defendant's negligence is also a breach of his or her contractual duty of care there can be no finding of contributory negligence. Therefore, if a plaintiff can frame his or her claim solely in contract, contributory negligence will not be a factor. Indeed, the award of higher damages against individuals is likely to result in higher insurance premiums for everybody, so it is quite important that this bill enjoy a speedy passage through the house.

Calls for amendments to the Wrongs Act 1958 have come from the Law Institute of Victoria, the Insurance Council of Australia and the Law Council of Australia. Earlier this year the Standing Committee of Attorneys-General resolved to address this issue and instructed the Parliamentary Counsels Committee to prepare amendments in response to the High Court decision. In Victoria consultation has taken place with the bar council and the law institute.

The bill contains a new definition of 'wrong' to include a breach of contract. That is concurrent with the duty of care in tort, and that is indicated in clause 4. Provisions in clause 5 clarify that a court should reduce a plaintiff's damages arising from a wrong if the plaintiff is guilty of contributory negligence. This bill places Victoria's litigants in the position they were in prior to the High Court decision in the Astley case.

It is fair to say that the introduction of the bill is a prompt response to the need for legislative change driven by the High Court decision. I am pleased that it enjoys bipartisan support in the house. I commend the bill to the house and wish it a speedy passage.

**Mr McINTOSH** (Kew) — I also commend the speech of the honourable member for Berwick on the historical development of contributory negligence and the speeches of other members who have contributed to the debate thus far.

I point out at the outset that contributory negligence is probably the most frequently used defence in civil courts in this state and elsewhere. It is certainly a major defence in relation to vehicle accidents, personal injury claims and a wide variety of other matters. In my experience it is also used extensively in relation to contract. It got to the point where as a practising barrister you would make a claim for contributory negligence arising from a claim under contract. It was axiomatic; it would automatically follow. That was the practice right around the country until the High Court — correctly, perhaps, on the basis of the interpretation of the South Australian provisions — made an end of it. Of course, that is why we are debating the matter now.

The bill arose from a decision by the Standing Committee of Attorneys-General to amend not only the Victorian act but the relevant acts right around the country to enable contributory negligence to be claimed in respect of both negligence and contract.

Perhaps the reason that contributory negligence is such a widely used defence is that one of the developments this century has been the extensive use of the law of

negligence. That is where you plead the classic pedigree of the law of negligence — you have to establish a duty of care, a breach of that duty of care — and damages flow. In claims arising from motor vehicle accidents and personal injuries the classic apotheosis of a claim is made in negligence. Accordingly the most common defence in this country is contributory negligence.

I say outside of politics that the opposition supports the bill and commends the government on introducing it in a timely manner. I have only two queries about the legislation, and I shall raise them for the purpose of discussion. I do not have answers to the queries I have. Perhaps a solution will develop. Perhaps the Attorney-General or other speakers may be able to answer my queries.

The first matter relates to the word 'co-extensive' which is used in the bill. The second-reading speech talks about a concurrent liability arising from negligence or perhaps a breach of duty of care and also in relation to contract. However, the bill talks about concurrent liability and 'co-extensive' liability. What is the meaning of the word 'co-extensive'? As I said, the second-reading speech uses the words 'concurrent liability' extensively. I certainly understand what that is — that it arises out of a similar matrix. It means you cannot have different facts — for example, a car accident and a personal injury claim as a secondary matter. It has to arise from the same factual matrix.

The use of the word 'co-extensive' in the bill is perhaps not really a matter of concern, but I do not understand the use of the word there. I suppose it means the liability arises independently under both tort and contract. I hope the word is not supposed to mean that the measure of damages would be precisely the same, because under contract and in tort there is a different determining factor for the measure of damages. You can have the same factual matrix, but the measure of damages may be different. I hope the use of 'co-extensive' means there is independent liability arising out of contract and also in tort.

My second concern, which flows from the first, relates to the clear statement in the second-reading speech that the purpose of the bill is to ensure that people who may have a concurrent liability under tort and contract could get around a defence of contributory negligence that may arise only out of tort by pleading a breach of contract. If the High Court's decision were to be followed, contributory negligence would not be available in that circumstance.

My concern arises in this way: the wrong is defined in the legislation as being a concurrent liability under both tort and contract, but it also has to be coexistent, which means that if you are to plead a contract and contributory negligence you would also have to plead that the contractual liability also arose out of the tort.

Just to put it back to its original proposition, if somebody wanted to avail himself or herself of a remedy under breach of contract the defendant may wish to plead as a defence contributory negligence on the part of the plaintiff, entitling that defence to be apportioned as a measure of damages. But what would occur in that case is that, notwithstanding that the plaintiff chose to frame his or her action in contract, the defendant would also have to plead that the claim under contract also had a liability under tort. That is not the purpose of the bill, but my reading of it indicates that that issue may arise. I flag it as something that may have to be rectified later.

I understand the circumstances that led to the drafting of the bill. I am aware that the government has consulted with both the Law Institute of Victoria and the Victorian Bar Council. I understand that the bar council assisted with the drafting of the bill. I also understand that the Standing Committee of Attorneys-General sought the advice of a number of parliamentary counsel, not just Victoria's. This is template legislation that will be introduced in all the states. As I said, I flag those matters for the purposes of the debate. Perhaps they can be put to rest elsewhere.

**Ms DUNCAN** (Gisborne) — I have pleasure in speaking in the debate on the Wrongs (Amendment) Bill. People sitting in the gallery may be surprised to learn that many bills are passed as this will be — that is, with bipartisan support in the house. Members are not always yelling and screaming at each other.

The intention of the bill is to redress the impact of the High Court decision in *Astley v. Austrust*. Prior to that it was always the case that if a person was found guilty of contributory negligence a court would reduce the damages awarded accordingly. The idea behind that was that a person should not benefit from his or her own wrongdoing or negligence. For example, if it were deemed that a person had contributed 40 per cent to an injury, he or she would receive only 60 per cent of the damages deemed appropriate for that injury. The government considers that to be fair and equitable. That had always been the case until the High Court decision.

The decision of the High Court means that if a plaintiff can frame his or here claim solely in contract, his or her contributory negligence is not a factor. That is clearly

not the intention of the principal act, so it must be addressed in light of the High Court decision. The amendment will return Victorian law to the position that existed prior to the High Court decision. Although that decision was based on South Australian law, the High Court acknowledged in its judgment that various state governments might wish to respond to the decision by amending their legislation. So it was acknowledged that the High Court had made a technical decision and that the states might want to make changes to return their laws to the basic premise that a person should not benefit from his or her own wrongdoing.

The bill is the government's response to the High Court decision. It is critical that Victorian law reflect the law in the other states. I understand that other states are in the process of making similar amendments to their acts to ensure that they are consistent. As I said, the amendment will return Victorian law to the position that obtained prior to the High Court decision.

It has been decided that the amendment should have a limited retrospective effect. Honourable members are aware that it is dangerous to include retrospective provisions in legislation. The new provisions will apply in all cases expect where a court has given a decision or the parties have already settled. As I said, although retrospective provisions are generally avoided, the aim is to quarantine the impact of the High Court decision. Given the unusual circumstances of the limited retrospectivity, the bar council and the law institute specifically support that aspect of the amendments. I join with previous speakers in commending the bill to the house.

**Mr HULLS** (Attorney-General) — I thank the honourable members for Berwick, Gippsland South, Richmond, Kew and Gisborne for their contributions to the debate.

The bill is an important measure. In summing up, I will respond to the technical issue raised by the honourable member for Kew. He asked about the policy basis for the use of the words 'concurrent' and 'coextensive' in subclause (b) of the definition of 'wrong'. That wording was developed by the Parliamentary Counsels Committee. As honourable members know, the sole aim of the bill is to give the principal legislation the effect it had prior to the High Court decision.

The United Kingdom Court of Appeal identified three classes of breach of contract: category 1, where the defendant's liability arises from breach of some contractual provision that does not depend on negligence on his or her part — that is, where liability is strict; category 2, where the defendant's liability arises from breach of a contractual obligation which is expressed in terms of taking care but which does not correspond to a common-law duty to take care that would exist in the given case independently of contract; and category 3, where the defendant's liability in contract is the same as his or her liability in the tort of negligence independent of the existence of any contract.

The Court of Appeal held that apportionment legislation applied to only category 3 classes of contract, and that has been the generally understood position in Australia.

The Parliamentary Counsels Committee determined that if the intention to is to limit the operation of category 3 cases — that is, where the defendant's liability in contract is the same as his or her liability in the tort of negligence independent of the existence of any contract — both words are necessary.

It should also be noted that the wording will be used in the equivalent legislation in other states and territory. Although there may be arguments in favour of expanding the application of the apportionment legislation to other contractual duties, the purpose of the bill is directed solely at again giving the legislation the effect it had prior to the High Court decision. As the honourable member for Kew would know, a more extensive examination of the legislation aimed at expanding its operation would necessarily have delayed the making of the urgently required amendments. I give that technical explanation in response to the issues raised by the honourable member for Kew. I hope that in part addresses his concern.

Again I thank all honourable members for their contributions to the debate on the bill. It is pleasing to note that such a measure has received bipartisan support. I wish the bill a speedy passage.

**The ACTING SPEAKER (Ms Barker)** — Order! As the required statement of intent has been made pursuant to section 85(5)(c) of the Constitution Act 1975 and as there are fewer than 45 members present, I ask the Clerk to ring the bells.

**Bells rung.**

**Required number of members having assembled in chamber:**

**Motion agreed to by absolute majority.**

**Read second time.**

*Third reading*

**Motion agreed by absolute majority.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

## TRANSPORT ACCIDENT (AMENDMENT) BILL

*Second reading*

**Debate resumed from 5 October; motion of Mr CAMERON (Minister for Workcover).**

**Government amendments circulated by Mr CAMERON (Minister for Workcover) pursuant to sessional orders.**

**The ACTING SPEAKER (Ms Barker)** — Order! As a required statement of intention has been made pursuant to section 85(5)(c) of the Constitution Act 1975, I am of the opinion that the second reading of the bill requires to be passed by an absolute majority.

**Ms ASHER** (Brighton) — The opposition does not oppose the bill, which covers a range of amendments to the Transport Accident Commission Act and the Workcover legislation. The shadow Minister for Workcover will be speaking on the elements relating to Workcover.

I note also that the minister did not provide the opposition with amendments in advance, and it is very clear to me why he did not do so. It is because he has botched his first bill; the amendments are an attempt to rectify mistakes in the drafting.

**An Honourable Member** — He has only just put them on the table

**Ms ASHER** — He has just lobbed me mine over the table. They are drafting errors.

**An honourable member** interjected.

**Ms ASHER** — Yes, they are fundamental errors in the bill which he is trying to correct.

I will commence by referring to the review by the Transport Accident Commission. The minister's second-reading says that the bill follows a 'comprehensive review of the act undertaken by the Transport Accident Commission'. That is what the minister said: he referred to a comprehensive review in his second-reading speech.

Naturally, given that it is now in the public domain, members of the opposition asked whether they could have access to the review — for example, to see what was recommended, what is instituted in the bill and what may not be implemented by this minister.

Initially we were told, 'We will consider it'. Then we were told, 'The review will be couriered to your office'. Finally, yesterday the minister wrote me a letter telling me there was no review. A review was referred to in the second-reading speech, but now it does not exist!

I refer to the minister's letter to me dated 25 October 2000.

> In following the matter up —

that is, my request for a briefing —

> I am advised by the TAC that there is no review document as such. Over the period of the last 12 months the TAC has identified a number of sections of the act where problems have arisen over several years in both administration and legal interpretation of the scheme.

He then goes on to say:

> These issues were agreed to by the TAC board and refined after consultation with external parties.

He expects this Parliament and the opposition to believe the Transport Accident Commission produced not one document in considering this review, that the board — —

**An honourable member** interjected.

**Ms ASHER** — No, the problem is you. This is not a letter from the TAC, this is a letter from the minister.

According to the minister, we are to believe the board considered and refined this whole process with absolutely no documents. That would be the first time in recorded history that a board meeting had been held to discuss substantial amendments to its own governing act with no documents at all.

The minister's second-reading speech refers to a review. I call on the minister to reconsider his second-reading speech where he made reference to a review, because in his letter to me he indicated that there is not one shred of documentary evidence relating to it. What is the government trying to hide and why is it refusing to release the review to anybody?

I will quote the minister's letter because I would not like to misrepresent him, although he likes to misrepresent his own position. It states:

> Some issues, such as the removal of discrimination against same-sex couples and electronic lodgement of documents, were deleted from the draft submission as they were being addressed through other legislation.

Two particular issues arise. Firstly, I hate to advise the minister that he appears not to have read his own explanatory notes because electronic lodgment of documents, according to his notes, are covered in clause 23. This minister is not strong on detail. The explanatory notes for clause 23 state that it:

> repeals the requirement for a claim for compensation to be accompanied by a statutory declaration to enable claims for compensation to be lodged electronically.

Details are not the minister's strong suit because he said that had been deleted from the draft legislation. The more substantive policy issue is why discrimination against same-sex couples has been removed from the bill, particularly given a number of ALP commitments.

**Mr Cameron** interjected.

**Ms ASHER** — The minister concludes:

> … there was no formal document setting out the outcome of the review(s) undertaken by the TAC … so no review document as sought exists.

There is a fundamental problem with the way the government is handling this issue which it says is on the basis of the review but no-one is allowed to see what the review was. It raises the question of what is not in this legislation. The bill has some good features.

**Mr Cameron** interjected.

**Ms ASHER** — For example, the increase of 4 per cent to recompense long-term claimants for GST benefits is good. However, there are a number of significant problems with the bill and I will refer to a range of its features and problems. The 4 per cent increase in compensation for the GST for accident victims obviously compares with the commonwealth government's compensation for pensioners, and this bill is consistent with that. The opposition had called for this previously and the minister would be aware of my press release.

**Mr Cameron** interjected.

**Ms ASHER** — I asked him a question relating to this issue in this chamber and he acknowledged that he would introduce the measure. The interesting question is why the measure was not introduced on 1 July. Why was the government not ready to introduce compensation, because while the legislation is retrospective and the payments will be backdated to 1 July it raises the issue of the minister's tardiness in attending to about 1000 of the most severely affected people?

**Mr Cameron** interjected.

**Ms ASHER** — You should be apologetic.

**The ACTING SPEAKER (Mr Lupton)** — Order! If the honourable member for Brighton and the Minister for Workcover would like to have a private discussion, I suggest they go outside. Otherwise I ask them to direct their comments through the Chair.

**Ms ASHER** — I am enjoying the public discussion because I have got the high ground. The 4 per cent increase should have been introduced on 1 July. The minister had ample knowledge of the introduction of the GST but he could not get his act together to amend the legislation prior to 1 July. I acknowledge the payment is backdated but the legislation should have been introduced earlier than today.

The second issue, which will be taken up by the honourable member for Prahran in her capacity as shadow Minister for Women's Affairs, is the one of death benefits for a non-earning spouse. Currently, benefits are claimed for an earning spouse and honourable members would be aware of the Phillpott case which drew attention to the fact that if an earner died in a transport accident compensation was payable on death, but if a non-earner — and Mrs Phillpott was a non-earner — died in an accident compensation was not paid. There was a great deal of community sympathy in the case and the minister indicated in his second-reading speech that the bill was meant to rectify that circumstance.

The honourable member for Prahran had prepared a private member's bill on the issue in her capacity as shadow Minister for Women's Affairs. She felt strongly about the case and wanted to see it addressed well before the minister saw the need to address it. The opposition supports the lump sum payments for a non-earning spouse.

Before I move to the amendments lobbed onto the table at the very last moment by the minister, I point out that the bill changes and expands the definition of 'dependent spouse' to include a person who is wholly dependent on the person for the care of the children of the spouse or of that person.

Although an attempt has been made to have the bill reflect what is in the second-reading speech, I see from the amendments that the Minister for Workcover gave me just minutes ago that at least in part he has

acknowledged the bill is deficient. Although he said the bill provided for death benefits to a non-working spouse, it does not. This minister does not do his homework; this minister is lazy; this minister pays no attention to detail; this minister would rather attack other honourable members than do the necessary work. The second-reading speech claims that the bill provides death benefits for a non-earning spouse, but the death benefits are not in the bill; again the minister has not paid attention to detail.

In examining section 57 of the principal act, those who have a better legal mind than our legally trained Minister for Workcover will have noted that the section covers death benefits for the surviving spouse. In the bill circulated in the house there was no amendment to the use of the term 'an earner'. As I said, the minister claimed to have instituted death benefits for a surviving spouse, but because of his failure to amend section 57(1) of the act the bill does not do that. The minister tried to sneak that failure past the opposition by amendments lobbed on the table at the last moment. Naturally I will go through those amendments in greater detail — —

**Mr Cameron** — Vigilance!

**Ms ASHER** — We do need vigilance. If only the minister were more vigilant! I note some tardy amendments have been made to section 57 that delete the words 'an earner'. It is typical of both the government and the minister that no attention has been paid to detail. The bill goes through cabinet and the minister is too busy doing something else at the weekend. A faulty bill is introduced into the house, a bill that does not effect reform to an area where reform is urgently needed, a bill that required much tighter scrutiny by the minister but did not receive it. Honourable members now see his later attempt to alter that circumstance.

I turn now to the provision covering cyclists running into parked cars for journey accidents, another reform that the opposition supports. Again, the amendment is in response to a tragic case involving a gentleman called Dale Sheppard. The case invoked an enormous amount of community sympathy for a young man who became a quadriplegic after having a bicycle accident with a car.

In preparing for my contribution I was reminded of a letter written to me as a member for Monash Province by one John Brumby on 19 September 1997. It states:

> Dear Minister —

He advised me that he was going to rectify the problem that arose from the Dale Sheppard incident by the introduction of a private member's bill. The then Leader of the Opposition and now aspirant Premier said:

> This week I advised the Parliament of my desire to amend the Transport Accident Act 1986 to provide for a fair and appropriate compensation for cyclists injured or killed in a collision with a motor car, tram or train irrespective of whether the vehicle is moving or stationary.

He goes on to say:

> I am sure you would share my view that Victoria was once and should be again —

a bit of rhetoric —

> a society where justice and compassion take precedence over red tape and legal interpretations, a society where the future security of a seriously injured young man far outweighs bureaucratic technicalities.

He continues:

> I urge you to support my amendment so Dale can get on with his life confident that the community to which he contributes is prepared to give something back.

Those were the sentiments of Mr Brumby when he was Leader of the Opposition on 19 September 1997.

Does the Minister for Workcover's bill reflect those sentiments? Does his bill reflect that clear political commitment? The answer to both questions is no. Despite all the fanfare, despite all the letter writing, despite all the media publicity, the bill is not retrospective and Dale Sheppard will get nothing. Not only is the bill not retrospective to cover that case, it does not go as far as the private member's bill Mr Brumby wished to introduce.

The Transport Accident (Amendment) Bill is a narrow change that covers cyclists running into parked cars specifically for journey accidents. It may well be that in government the consequences of the more detailed bill have now been thought through, but it may also be that not only is the minister negligent in terms of detail he is less compassionate than the former Leader of the Opposition. The current minister is not interested in rectifying the case of Dale Sheppard. He has not honoured the political commitments that were made by his former leader in 1997.

I will delineate some of the smaller changes in the bill. A number of them provide flexibility and greater benefits. The bill introduces travelling and accommodation expenses for spouses and children in instances where the hospitalised person is

100 kilometres from his or her normal place of residence. That is a good step forward. The amount is capped at $5000. Currently children can be visited by parents, but the act is deficient, for example, in the issue of visitation by spouses. This is a reasonable step forward and one the opposition supports.

The bill will also enable early impairment determinations where injuries are stable. At the moment the act requires an 18-month period. Again if injuries stabilise earlier that would seem to be a commonsense approach to an early determination for a road accident victim.

The bill provides for counselling for family members of seriously injured road accident victims. Currently there is provision for counselling for family members where a person has died, but there is no counselling available for family members of seriously injured accident victims. Again this is a commonsense and compassionate expansion of the grounds on which the Transport Accident Commission can provide funding for counselling for family members.

Another commonsense improvement relates to funding under special circumstances and with consultation with the TAC on new vehicles and moving costs. The act allows for modifications to a car and a home for a road accident victim, but it does not allow — I suppose it is a case of prescriptive legislation and what you have to do to alter it — for the purchase of a new vehicle if, for example, the existing vehicle cannot be modified. The act does not allow for moving costs associated with a home where, for some reason, modifications may not be possible. Again the opposition supports the commonsense approach.

The bill provides for electronic lodgment of claim forms, notwithstanding the fact that the minister is not aware of it.

**Mr Perton** — He would not know what an electronic signature was.

**Ms ASHER** — Worse than that, the minister has written to me saying that the bill does not provide for electronic lodgment of claim forms. The clause notes indicate that the bill does provide for electronic lodgment of claim forms.

That approach is obviously moving with the times — again the shadow minister for multimedia has been the greatest exponent of moving with the times — and is worth while.

**Mr Perton** interjected.

**The ACTING SPEAKER (Mr Lupton)** — Order! The honourable member for Doncaster has just entered the chamber. Already the level of decorum has dropped dramatically because of his interruptions. It would be appreciated if he could refrain from interjecting.

**Ms ASHER** — There are other similar clauses in the bill and their objective is to provide a better system overall. For example, there will be no financial penalty if a return-to-work attempt is unsuccessful. At the moment the act appears to require that payments be withdrawn and they are not able to be reinstated. This is a positive move.

The bill provides for equitable treatment if people are injured in multiple accidents. The second-reading speech sets out the situation this is trying to redress — that is, if you had certain accidents in a certain order you may not end up with the same financial outcome as someone else who may have had multiple accidents in a different order. Conceptually the reform is aiming for equal treatment.

The bill also extends the time for a minor to lodge a claim — for example, where a guardian failed to do so. The bill gives the system more flexibility. It makes some reforms to the basis of calculation for loss of earning capacity. It allows regular overtime to be part of the calculation. In situations where there is no work history — for example, in the case of minors — the calculation has gone from the current 60 per cent of average weekly earnings to 80 per cent of average weekly earnings.

The bill also provides for overseas attendant care at Australian rates for eight weeks a year, which in effect would allow someone injured in a motor vehicle accident to take an overseas holiday. That is at no more expense to the TAC; it would simply be attendant care paid for overseas at the Australian rate because the act refers to medical expenses in Australia. The bill makes a favourable amendment to that provision.

The bill also imposes additional rigours on the TAC — for example, requiring it to accept claims in a reduced number of days. It is changed from 28 days to 21 days. Rigour being imposed on those authorities is a positive development. I congratulate the TAC if a recommendation for that development was in its review, but of course no-one is allowed to view it. It is particularly commendable if the faster turnover time was instigated at the TAC's initiative.

However, not only are there a number of changes that result in benefits to the system overall and to road accident victims, there are also a number of procedural

changes that in some instances cause concern for groups who work under the legislation. I wish to raise some concerns on behalf of the opposition.

In the first instance I refer to the definition of nervous shock. The bill amends the definition. The TAC's explanation for this appears on its face to be reasonable.

The definition of nervous shock will now be the shock:

> … suffered by a person who was directly involved in the transport accident or who witnessed the transport accident or the immediate aftermath of the transport accident.

The change has been made to prevent frivolous cases such as someone claiming they had suffered nervous shock after watching the TAC road safety advertisements. Ostensibly the amendment is designed to prevent that sort of case, but in this instance proof will give rise to particular difficulties. I seek an assurance from the Minister for Workcover on how he will police who witnessed a transport accident or the immediate aftermath of it. It will be very difficult to prove those things. A correspondent of mine asked if the police would run around and get a list of names. Clearly they will not. The point was made in jest, but the serious point is the issue of proof will be quite difficult to deal with. I ask the minister to explain this detail — I know he does not like detail, but it would be of benefit.

The next issue of concern is the definition of serious injury, which the government wishes to limit. The definition relates to the psychological overlay of injuries. We have been through this debate in this chamber and in the other place in relation to Workcover. The minister's second-reading speech says that this change seeks to codify what the courts have already said. I again refer to the minister's very sloppy second-reading speech, in which he said:

> This will reflect the existing understanding of the treatment of functional overlay in the determination of serious injury, as outlined in the recent decision of Wylie and Richards.

The Australian Plaintiff Lawyers Association raised this issue with me and provided me with documentation. I would like the minister to comment on the issues raised by the Australian Plaintiff Lawyers Association. Their argument is that the judgment in the case mentioned by the minister in the second-reading speech — the judgment of Justice Winneke, President of the Court of Appeal, in the Supreme Court of Victoria on 19 April in *Richards & anor. v. Wylie* (2000) VSCA 50 — does not say what the minister's second-reading speech says. President Winneke's judgment said:

> If, as a result of an injury, a person loses a limb, it will, no doubt, often occur that one of the consequences of such a loss or impairment will be the development of a mental response to that impairment or loss. That is one of the consequences which, along with others, the court will need to evaluate in determining whether the loss or impairment of a body function, when judged by comparison with other cases in the range of possible impairments or losses can be fairly described as 'serious'.

He goes on to say:

> … thus, the serious injury defined by subparagraph (a) of subsection (17) can, I think, have its seriousness measured in part by a mental response to a physical impairment.

The minister claimed in his second-reading speech that the bill will reflect the existing understanding of the treatment of functional overlay as outlined in the recent decision of *Richards v. Wylie*, but the decision which has been handed to me by the Australian Plaintiff Lawyers Association does not reflect that. I ask the minister whether he wishes to reconsider that aspect of his second-reading speech. Although I am not legally trained, it would appear that the minister has made an error in his second-reading speech.

The Common Law Bar Association has also raised a range of issues with me. I have not had a chance to go through the documentation it sent me, which arrived only as I got to my feet.

I move now to the issue of the prior approval requirement for medical reports. The Transport Accident Commission has argued that the number of medical reports has increased significantly. I guess doctor shopping is the implication in that claim. The response by the TAC is, on the face of it, a reasonable one — that is, prior approval from the TAC will be required before medical reports are issued. The precise terminology is 'reports must be authorised by the commission'. However, this issue requires further consideration. The TAC verbally advised me that it will issue a policy for automatic approval for second opinions, but that is not in the bill. I seek an assurance from the minister of a basic right to at least seek a second opinion given the impact of transport accidents on people's lives. The bill is not precise on this, and I seek an assurance from the minister that there will be an automatic right to a second opinion.

This morning I saw a letter from the Common Law Bar Association addressed to the Leader of the National Party. The association makes that point in its letter, which states:

> Whilst it is laudable to introduce measures which avoid duplication, and whilst no-one wishes to incur unnecessary costs, the concern of the CLBA is that by restricting the 'medical service' to a report authorised by the commission,

> the TAC is in a position to dictate, perhaps arbitrarily, and often unnecessarily, from which doctors an applicant's solicitor will be able to seek a report. It is the submission of the association that the aim of prohibiting the escalation of costs and the aim of avoiding duplication of medical reports can as easily be achieved by limiting the provision of medical reports to those 'reasonably obtained', rather than any report 'authorised by the commission'. To do otherwise unnecessarily has the potential of enabling the TAC to unilaterally control the impairment process.

Although the opposition will not be moving an amendment on this, I seek an assurance from the minister that the clause will be applied reasonably.

I move now to another issue raised by the Australian Plaintiff Lawyers Association and the Common Law Bar Association. It concerns the revocation of the claim form that is provided for in the bill. I seek an assurance from the minister that the TAC will be reasonable in its application of this proposed section. The Australian Plaintiff Lawyers Association is concerned that as the TAC has very wide powers it may get information that is irrelevant to the transport accident injury.

I will read from a document given to me by the Australian Plaintiff Lawyers Association outlining its concerns regarding the Transport Accident (Amendment) Bill. In light of the fact that the TAC has powers beyond those of the ordinary citizen, the Australian Plaintiff Lawyers Association says:

> The current claim form also involves an exceedingly intrusive authority form requiring injured persons to make available their complete medical history, police records and other documents. Matters which may never have been discussed with an employer or even with a spouse such as an abortion or a police record suddenly become the right of the TAC to be considered in any claim. There should be an element of reasonableness.

The minister has been actively involved in a conversation on another matter while I have been raising these issues, but the opposition is seeking an assurance from him that this provision will be exercised in a reasonable manner.

The Common Law Bar Association has raised much the same issue and I wish to put its concerns on the public record. It states:

> In the view of the CLBA the privacy of individuals, including transport accident victims, should be protected. Whilst it is undoubtedly necessary for the Transport Accident Commission to obtain, at least initially, medical information concerning the nature and effect of injuries sustained by a claimant as a result of a transport accident, there is, in the view of the association, no justification for extending that invasion of privacy so as to authorise delving into a person's medical, police or social security records, perhaps going back 10, 20, 30 or more years.

On the face of it the concerns are reasonable, and I ask the minister to give an assurance that the TAC will act in a reasonable manner with respect to the information it will have before it.

There are a number of other changes in the bill, and I will comment on a few of them. The bill will give the Transport Accident Commission the power to suspend benefits if someone fails to attend a medical examination. The word 'reasonable' is used in this instance — it must be a reasonable judgment — which raises the question of why the word 'reasonable' is not used in other parts of the bill.

The bill also provides for one claim per person per accident. While multiple injuries can be claimed, or injuries can be added to the claim, I seek an assurance from the minister that this will also be exercised in a reasonable manner.

The bill allows blood alcohol readings to be used in court proceedings. That has to be a provision everyone would agree with. Again, that is a step forward, and the opposition has no qualms about it.

The bill also provides that someone who has not renewed his or her licence for three years will be deemed to be unlicensed. The bill allows for refunds from State Trustees where payments have been made in error.

The bill also institutes a mandatory, informal review process prior to any appeal to the Victorian Civil and Administrative Tribunal (VCAT). There are mixed views on this, which generally fall into two categories: non-lawyers such as me think it sounds reasonable, but a number of people in the legal profession think it is a denial of process. We think the informal review process suggested by the TAC — we think but we do not know, because the minister will not give us the review — may well help to reduce costs for the TAC and add to the process rather than detract from it.

The bill also introduces some minor changes to board rules, which I will not address in any detail because they do not substantially impact on policy issues.

There are a number of other issues relating to the bill which I will raise one by one and about which I will seek assurances from the minister. Clause 33 gives the minister power to issue directions. I have sympathy with one of my correspondents on the issue, who believes that reading the act should suffice. It is difficult to follow the rules when the act is combined with ministerial directions. Clause 33 allows for directions on procedures. The directions must be published in the

*Government Gazette*, which is reasonable, and must relate to actions for damages.

Again, I raise the matter of reasonableness. It is reasonable for a citizen to pick up an act, read the rules and be able to comply with them. I ask the minister whether he will issue many directions. What information processes will he set up with the TAC to allow people access to these directions without their needing to go hunting around for back copies of the *Government Gazette*? In other words, what processes will he put in place to ensure the ordinary person has access to his directions?

I also want to comment on the commencement date. As I said earlier, the part of the bill relating to GST compensation is backdated to 1 July. The bill should have been introduced earlier. Most of the commencement provisions are standard on proclamation, but there is a curious commencement clause, clause 2(4), which says that the trigger date will be 1 July 2002. That raises the question: why 2002? Normally 1 July 2001, or perhaps the end of the year, would be the expected date, so a later date could be a trigger if the minister has not done his homework and proclaimed the bill — and the minister is renowned for not paying attention to detail.

I ask the minister what he intends to do regarding proclamation. Will he proclaim the bad bits first and hold off on the good bits for road accident victims? The date is unusual, and I ask him to explain why the benefits of the bill could be postponed until 1 July 2002. I seek an assurance that the benefits will be introduced before that date. There is not much point in introducing a bill now if the benefits will not flow through until 1 July 2002. I seek an assurance that he will not withhold benefits from road accident victims.

I will also comment on what is referred to in the bill as scheme viability, which much of the rationale for the bill appears to be based on. What strikes me is that the TAC is viable: it has been viable under both Labor governments and Liberal governments. I ask why the term 'scheme viability' has been used time and again to justify these reforms, particularly given the costings provided to the opposition.

In 1999, the TAC dividend was $221 million. We already know that the government will receive a dividend in 2000 that will probably be in excess of that.

The government has also made a policy decision to fund an accident black spot program through the Transport Accident Commission to the tune of $240 million spread over four years. Some $2 million was to be taken out last year and the rest will be taken out this financial year and the next couple of years. The government has already allocated funding from the TAC to its black spot program, and it expects — quite reasonably — a larger dividend than the $221 million that was paid last year. I do not understand why these reforms are being introduced. I do not believe there is an acceptable rationale, which is why I am seeking assurances from the minister about the reasonableness of some of those provisions.

The issue of the viability of the TAC will not depend on changes to road accident assessments; it will be in the hands of the government. The major threat to the viability of the TAC does not involve claims, revocation of forms or the number of visits to doctors. Those issues will not impact on the viability of the scheme. It is this Labor government that will impact on its viability.

Labor governments in Victoria have a strong track record of looking to the TAC for funds. I refer to the dividends requirement in the bill — namely, the clause that deals with the return of capital from the TAC. That is the crunch issue concerning the viability of the scheme. The test of dividend payments is a high one, and it should be high. The TAC is not there to be milked by this government or by any other government. Proposed new section 29B(2) to be substituted by clause 11 of the bill states that the Treasurer, when determining the dividend policy that applies to the commission, must:

> … have regard to the solvency margin determined to maintain the long term financial viability of the transport accident scheme.

So, the test is a high one. The Treasurer, when he moves to pull out dividends from the TAC, as he will, must have regard to the long-term financial viability of the transport accident scheme. However, the minister has indicated that he is not completely committed to that high test. That is demonstrated by the wording in the bill of the test for the repayment of capital.

**An honourable member** interjected.

**Ms ASHER** — I am well aware of the State Owned Enterprises Act. The test for dividends is high; the test for the repayment of capital is lower. Proposed new section 29A states:

> (1) The capital of the Commission is repayable to the State, at the times and in the amounts, determined by the Treasurer after consultation with the Commission and the Minister.
>
> (2) In making a determination under this section, the Treasurer must have regard to any advice that the

> Commission has given to the Treasurer in relation to the Commission's affairs.

So, the Labor government can pull capital out of the TAC. It has to have some consultation — a bit of chitchat — with the TAC, but there is no requirement for this Labor government to have regard to the long-term viability of the TAC. It is a lesser test.

As I said, the former government took dividends from the TAC and repayments of capital, but past Labor governments have shown an alarming propensity to look to the TAC and to milk it dry. I raise that issue with the minister.

**Mr Cameron** interjected.

**Ms ASHER** — The minister was not listening. I said the former government took dividends and repayments of capital, but the Cain–Kirner government had a remarkable propensity to milk the TAC dry. There is a lesser test for this government under this bill, and there is no need for the government to pay any attention to the long-term viability of the TAC in the repayment of capital.

The TAC is different from other state-owned enterprises. I am sure the minister, if he wants to read his briefing note, will say, 'This is the provision that appears in the state-owned enterprises legislation', but the TAC is different from other state-owned enterprises. The TAC has a monopoly: no consumer in Victoria has a choice about the issue; everyone must be insured by the TAC. The TAC also enjoys a significant amount of public support. When people get into their cars there is a degree of comfort in the knowledge that in the event of an accident befalling them the TAC is there as a backup body for ordinary Victorians. There is strong support for the TAC beyond its role as an insurer, and there is also strong support for its road safety campaigns.

As I said earlier, I support the government's use of TAC funding for the accident black spot program, and there is also broad community support for the use of TAC funds for road safety initiatives. However, the issue is one of degree. If members of the public know the government is able to milk funds from the TAC their opinion may change. The Royal Automobile Club of Victoria has strong views about the hypothecation of funds for road safety purposes, and the minister may have had those views put to him directly by the RACV.

The long-term viability of the TAC is a significant issue for Victoria. It is a sensitive fund. The TAC is dependent on equity markets and a very bad accident can have an impact on it. I ask the minister to urge the Treasurer to use the higher test, the dividend test, when making any determinations regarding the repayment of capital and to ensure that the Treasurer does not have regard to what the TAC may put forward, but considers the long-term financial viability of the transport accident scheme.

That is how the amendment should have read. When the provision was picked out of the State Owned Enterprises Act and put into the proposed transport accident legislation the test should have been the higher one. The fact that that is not so signals to the opposition and the community, and no doubt to the Transport Accident Commission, that the government is prepared to have a lesser financial test on the issue of the TAC. And honourable members should just watch this Treasurer with that money!

I turn now to the issue of the cost of the amending legislation. As always, there are swings and roundabouts, one-offs and annual costs. The TAC has conducted an estimate of the impact of annual costs and benefits of the bill. It is estimated that annual costs will be up to $7.9 million and the savings will be up to $3.9 million. I note, given that there is some concern about the informal review, that the TAC expects to save $2 million a year. It is estimated that nervous shock savings will be up to $250 000. In net terms the savings will be $4 million to $6 million on current calculations.

There are also a number of estimated one-off costs — and GST compensation is estimated to be up to $10 million — amounting to $20.2 million, and the estimated one-off savings will be up to $1.4 million. As I said earlier, I do not think those reforms have been brought in for scheme viability, as it is constantly referred to. The major threat to the long-term viability of the TAC is not these reforms or road accident victims; it is the Labor government.

The opposition does not oppose the bill. Indeed, the proposed legislation has some particularly good features. As I said earlier, the 4 per cent compensation arrangement for the goods and services tax — it was the subject of a question I asked the Minister for Workcover some time ago — should have been introduced earlier. The 1000 people who will feel the impact of the GST should have received their compensation on 1 July. The minister, as always, is tardy.

**Mr Cameron** interjected.

**Ms ASHER** — In theory the opposition was pleased to see a lump sum payment for the death of a non-earning spouse, but the minister was so deficient in

his attention to detail that the bill did not contain that provision.

**Mr Cameron** interjected.

**Ms ASHER** — The minister says, by interjection, that it is a minor drafting amendment. That is this minister to a T. He claimed a significant reform had been introduced. He claimed in his second-reading speech and all his briefing notes that this bill would introduce the benefit where the non-earning spouse dies in a car accident. He did not do it, and he included it by amendment at the last minute. The minister did not show the amendment to the opposition or the National Party. He simply said it was a minor drafting amendment.

It is not a minor drafting amendment. It is a fundamental policy issue. It is a fundamental comment that the minister did not read his bill; that he is occupied doing other things; that he did not pay attention; and that he is the Achilles heel of the Bracks Labor government. It is a fundamental policy issue that the minister did not include in the bill. He has had to scurry around. I assume he has read the private member's bill prepared by the honourable member for Prahran and learnt from that. In fact, the government should have allowed that bill to be debated.

The minister has made an absolutely amazing claim. The bill does not do what he said it would, and now he is trying to rectify his error. He again says, across the table, that it is a minor draft. It is not a minor draft. It is a fundamental policy issue to ensure that the bill reflects what is in his second-reading speech. The minister may well like to reflect very carefully on his second-reading speech. He may wish, for instance, to make a personal explanation; and he may wish to clarify the issue of the review that is not a review.

The minister's second-reading speech outlines an entire review process within the TAC, including consideration by the board, all without a piece of paper. It will be the first meeting in history of the TAC board, or indeed any board, that does not have board papers. It is a secret review. I have absolutely no doubt that the minister wants the opposition not to have access to the review. I am sure other good ideas could have been implemented in this round of reforms. There is no doubt about it: there is a reference in a second-reading speech to a review but no-one is allowed to know the details — it is secret, no-one can know, but it can be put in the second-reading speech.

I look forward to speaking with members of the TAC board. I want to know how they conduct their board meetings without papers. It is absolutely absurd and blatantly misleading to suggest in this letter that there are no review documents at all. Clearly there have been documents associated with the review. The government does not want Parliament and the public to know the contents of the review because there may well be other things that have not been implemented, or it may mean that because of his insufficient attention to detail the minister has neglected to include benefits that could have been incorporated at this time.

The minister would have been well advised to debate the private member's bill of the honourable member for Prahran. That would have saved him the embarrassment of this policy error to which he has now directed the attention of the house.

The GST compensation provision is a good feature of the bill. The lump sum compensation for the death of a non-earning spouse — finally, after the minister has fixed his botch-up — is a good feature. The bill contains many schematic improvements that the opposition welcomes.

However, there are a range of concerns, which I have raised. The minister may also want to reflect on whether his second-reading speech is accurate in view of the concerns raised by the Australian Plaintiff Lawyers Association. It would be a dreadful shame if he had misled the house in a second-reading speech!

There are some good and some bad features of the bill. Unfortunately, this minister's reputation has continued, with very little attention to detail, errors right from the beginning, and secrecy relating to the review. The opposition does not oppose the bill.

**Mr RYAN** (Leader of the National Party) — It is my pleasure to join the debate on the Transport Accident (Amendment) Bill. Let the record show that when the resumption of the bill was called on for debate the Minister for Workcover handed to me a document comprising two amendments. The minister said the purpose of the amendments is to address simple drafting errors. But that is not the case, as I will demonstrate during my examination of the bill today.

If honourable members are to debate and scrutinise proposed legislation in the interests of all Victorians, the usual rules of fairness should apply. If amendments are to be made, they should be circulated to all parties for examination. By contrast to what has happened today, I refer the house to what occurred yesterday when amendments to the tertiary education legislation were proposed. The National Party proposed amendments, which were ultimately adopted; there

were amendments by the Liberal Party; and there were also amendments by the Independents. Proposed amendments were circulated back and forth between all parties.

In the end there was a division over an aspect of those amendments, but I commend the whole process that unfolded during the course of the day. As the positions of the respective parties became apparent and proposals were circulated around the chamber, constructive discussion occurred in a manner that enabled many issues of concern to be resolved. I believe that consultation process was responsible for the excellent legislative amendments that were made.

I contrast that situation with what has occurred with this bill. The bill was read a second time on about 5 October, so it has been out in the marketplace for about three weeks.

There is absolutely no question — and not even the minister would deny it — that the amendments were available for distribution to the opposition parties well before the debate commenced today. It is utterly inexcusable that, when the house is dealing with a measure of major import, particularly for people and the families of people who have the misfortune to suffer injury or death in the course of an accident, the amendments dropped on the table are said to be the result of having to cure some drafting faults in the original bill when the very contrary is the case, as I will demonstrate.

I exhort the minister in particular and the government at large to ensure that honourable members can discuss matters in a manner that best suits the purposes of all concerned. If honourable members are to have a constructive discussion about proposed legislation in a manner that best reflects the contribution of all those wanting to have their say, it should be done on the basis of paying proper heed to the customs and practice of the Parliament.

In making some general comments about the Transport Accident Commission I put on the record that when I was in the law and was involved in litigation I acted for plaintiffs. I did not act for defendants or the TAC — on the contrary, on literally hundreds of occasions I contested cases against the TAC. Indeed, I am so old, grey and battle worn that I can report that for many years I contested cases against the State Insurance Office, which was the precursor to the TAC. So I am very familiar with how the TAC operates in discharging its very important role.

On the measure of things, the TAC can fairly be said to be a success story for Victoria. It was initiated in 1987 by the then Cain government and it came into existence with the support of the opposition parties of the day. Having regard to its various functions, it has performed its role in an exemplary fashion. Over the course of the time of the existence of the TAC the number of deaths resulting from motor vehicle accidents in the state has significantly reduced. It is fair comment that that factor is directly reflective of the contribution the TAC has made in educating people on issues pertinent to that very important matter.

Victoria has seen the development of trauma treatment in a manner that reflects very positively on the TAC. Issues such as the development over the years of the Epworth Hospital, the growth in rehabilitation centres, and the capacity for people who are most in need to have ongoing sources of treatment available to them in a manner that best suits their requirements also reflect very positively on how the TAC conducts its affairs.

Apart from the issues associated with the ultimate tragedy of road deaths, the TAC has been one of the main drivers in addressing road safety generally. Honourable members are all familiar with the advertisements that regularly appear on our television screens or are conveyed by the print media or radio stations. The TAC has set standards that have attracted the interest of many international entities of a similar ilk. Today the road safety initiatives of the TAC are reflected in similar campaigns in various countries around the world. That is to the eternal credit of those conducting the affairs of the TAC.

Another element in the discussion is that the TAC has made significant cash contributions to governments of all persuasions. As the Deputy Leader of the Opposition has just observed, the dividend for 1998–99 was $221 million and for 1997–98 it was $133 million.

Honourable members must have regard to other aspects when considering not only the bill but the general operation of the TAC. It is a very large monopoly — it has no opposition in the marketplace — and it employs many people. It is constantly faced with the intrinsically difficult problem of on the one hand collecting money from people who register their motor vehicles in Victoria and on the other hand controlling the system by which the money is paid out. Motorists in this state contribute the funds which constitute the income of the TAC as the first essential of its financial capacity. In addition, of course, it has other investment dividends and other streams of income, but in the first place Victorian motorists fund the operation of the TAC.

The whole scheme is designed to enable persons who are injured as a result of motor vehicle accidents to be appropriately accommodated both in the treatment they need at the time and in an ongoing sense and also by compensating them either by the no-fault scheme that operates under the act or the common-law damages provisions of the act.

There is an obvious tension because the collector of moneys, or the gate keeper, also decides how the moneys are distributed. In time to come society must consider that matter. I compare that situation with what applies in the workplace. The Victorian Workcover Authority, which is the accident compensation authority, has the responsibility of on the one hand collecting premiums from employers and on the other hand governing how that income is distributed to those people who suffer the terrible misfortune of being injured in the workplace. I make that comparison because the operative conditions of the two enterprises — that is, the TAC and the VWA — bear comparison in the context of the debate.

Currently plenty of discussion is going on about the operation of the Workcover authority because the concern is that it does not have sufficient funds to meet its actuarial liabilities. On the other hand the TAC is operating on the basis that, in practical terms, it is returning a very handsome dividend. One of the issues honourable members must have regard to is that if schemes are intended to compensate and care for people who suffer the misfortune of injury — be it in the workplace or as a result of a motor vehicle accident — that needs to be balanced against the extent to which there is a burden placed upon those who pay the money that funds the schemes.

As a matter of principle we should be aiming to establish a position whereby the amount of money paid in equates with the amount of money paid out and, of course, payments are made on a fair basis.

In the case of the accident compensation authority there is a slight shortfall in income versus outgoings based on actuarial calculations, whereas with the Transport Accident Commission the position is precisely the opposite. It is being treated as a government business enterprise that renders handsome dividends to the government of the day. From a policy perspective, that throws up the question of whether the TAC needs to reduce the payment pool and thereby convey a benefit to Victorian motorists by reducing their premiums or, alternately, whether benefits should be increased for those who suffer the misfortune of having to draw on them. That is where the tension arises.

It is an issue that we need to examine in the longer term, because on its face the TAC certainly has the capacity to either reduce the payments it draws from motorists or look at the extent of the payments it makes to those who are injured.

I am referring to the TAC's capacity, but in a policy direction it falls to the government of the day to look at the issue. It is timely that the government is considering the situation with a view to having Victorian motorists derive a benefit, particularly those who live in country Victoria, for whom the use of a motor vehicle is an absolute necessity because access to publicly funded transport is not freely available. If the government saw fit to have the TAC conduct its affairs based on the prospect of a decrease in premiums, that would have a terrific long-term benefit for people who live in country Victoria.

Another point I want to clarify concerns the issue of costs, particularly legal costs. The bill deals with the notion of controlling and/or reducing the legal costs and disbursements payable to solicitors as a result of action taken on behalf of persons who are injured in motor vehicle accidents. The general thrust of the discussion on the issue is that controls not only need to be there but need to be constantly reviewed to address the voracious behaviour of some solicitors acting on behalf of persons who are unfortunately injured in motor car accidents.

As is the case with the Victorian Workcover Authority, the poor old Transport Accident Commission is sometimes subjected to unabashed attacks by legal practitioners who are forever attempting to get into Aladdin's cave. When the TAC or the authority is involved in litigation, the reality is that each will spend what is absolutely necessary to defend its interests.

As a matter of general principle, I do not have a concern about that. But it is important that people understand the practical reality, which is that the TAC spares nothing in engaging counsel to present its arguments on the floor of the court and in engaging solicitors to instruct those barristers. Mind you, the TAC has a very competent team of in-house practitioners, but if the commission feels the necessity to engage independent legal representation, it goes its hardest.

Although provisions in the bill speak of constraining the capacity of plaintiffs or applicants to provide and be paid for medical reports, let there be absolutely no doubt that if the TAC feels the necessity to obtain another medical report that will serve its purpose, it will go and get it. If the commission feels it needs evidence

from an independent expert on how its interests may be best protected, it will go and get it. For example, in serious injury applications it would not be out of order for the TAC to pay barristers preparation fees over as many days as it sees fit to ensure that its interests are best represented when the matters get to court.

I say again that I do not have a problem with the general principle, but I want to make sure that members understand that it is not all one-way traffic. It is all very well to have an understanding that the actions of plaintiff solicitors need to be sanctioned with regard to legal costs, but no such understanding applies to the TAC, save what can be gleaned from a careful analysis of its annual report. However, on my reading of its annual report, I am not so certain that all the legal costs and disbursements that the TAC incurs appear in their totality as a line item to which one could specifically point as being representative of its outlays.

As a reflection of the tension in the operations of the TAC, the bill contains good parts as well as parts that are neither fair nor, in some instances, sensible. I invite the government to consider some of the issues that I will raise while the bill is between houses, because some changes could be made to make the operation of the legislation more effective.

The bill contains nine amendments which provide for improved benefits as set out in the second-reading speech. They include an amendment to increase benefits by 4 per cent for those in receipt of loss-of-earning-capacity payments to reflect the operation of the GST. That is a good change. A further amendment provides for the payment of a lump-sum benefit to a surviving spouse after the death of a spouse responsible for the care of children. Again I commend the change.

An amendment extends access to TAC benefits to a cyclist injured in a collision with a parked vehicle while riding to or from work. Although I commend the amendment it is pertinent to refer to some material provided to me by Mr David Martin of counsel on behalf of the Common Law Bar Association. I will refer to it in the context of other points made by Mr Martin as I go through aspects of the legislation.

The bill provides additional access to counselling by a claimant's family, and that is supported by the National Party. For the first time expenses totalling up to $5000 incurred by a spouse and dependent children of a claimant visiting the partner or parent who is a hospital patient more than 100 kilometres from the family home will be reimbursed. On behalf of country Victorians I strongly support the provision.

The bill corrects an anomaly for a claimant injured in more than one accident. At present there is the farcical situation where a different level of impairment benefit is paid depending on the order in which the accidents occur. The second-reading speech gives illustrations of such circumstances, and I support the resolution of the issue.

A further amendment deals with home and vehicle modifications. The bill refers to section 60 of the act, and I will talk about that later, but the principle is supported by the National Party although there are points to be made about its practical operation. As a second element of the same amendment the bill clarifies current requirements for modifications with a value in excess of $5000 and talks about agreements and the like that have to be undertaken. I have some misgivings about the provision but will refer to it later.

The bill requires the commission to preserve the entitlement to loss-of-earning-capacity benefits of a claimant who participates in a return-to-work program but is unsuccessful in achieving a lasting return to employment. The amendment is supported because under the current structure there is a disincentive where, with the best will in the world, an injured person uses his best endeavours to get back to work only to find that if he is not successful he will have to grind his way back through the bureaucracy to regain the benefits.

Two important amendments benefit minors. The first will allow a minor on whose behalf no claim for compensation was lodged at the time of the accident an opportunity to lodge that claim in his or her own right upon reaching 18 years of age. Secondly, the bill changes the calculation of the entitlement of a minor to loss-of-earning-capacity benefits by using a figure of 80 per cent of average weekly earnings instead of 60 per cent, which now applies. The benefit will be payable to a minor after he or she turns 18 years of age.

The amendments taken in totality substantially benefit recipients of compensation payments, and the National Party agrees with them, save for a couple of aspects I will discuss later.

The second-reading speech turns to amendments relating to the efficiency of the scheme and maintaining its viability. When they hear those words the ears of parliamentarians always flick up, and the speech goes on to refer to amendments to address anomalies and restore the original intent of the legislation. Those sorts of provisions are often made at the stage where everything is going rosily until one gets to the word 'but', and that is where some concerns arise.

Consideration is given to the treatment by the Victorian Civil and Administrative Tribunal of material that comes before it, and the bill enables the TAC to use a more extensive process to conduct an informal review of decisions by allowing a longer period for the claimant to provide information. That is fine as a matter of principle, but the test will be to see how the provision is exercised. There is always a discretionary element in how quickly these things are dealt with. I hope the extension of time will not mean that its practical operation draws things out for a claimant rather than serving the purpose for which it is designed.

A further amendment deals with the determination of impairment, which is required to take place after 18 months or upon the stabilisation of the injuries, whichever occurs later. These measures are intended to improve the manner in which the determination is effected, and the basic intent is fine.

There is an amendment that will impact upon the way medico-legal reports are provided for people who are involved in impairment disputes.

In turning to some of the issues raised by the Common Law Bar Association (CLBA), I refer specifically to material provided to me by Mr David Martin. I will work my way through the association's concerns before turning to some of the other matters that have been put to me by those who have an interest in this jurisdiction.

When the bill was introduced I sent material to the Law Institute of Victoria, the Victorian Bar Council and some 20 barristers with whom I have worked over the years. Those people, who include Terence Casey, QC, John Keenan, QC, Peter Galbally, QC, Patrick Dalton, QC, and Paul O'Dwyer, a senior barrister at the bar, represent the interests of both plaintiffs and the Transport Accident Commission (TAC). It is good to have input from people involved at the coalface, because their comments are helpful.

The first point Mr Martin makes refers to clause 3(3)(c) on page 4 of the bill, which relates to the definition of 'medical service' and any report authorised by the commission. The Common Law Bar Association believes that the addition to the definition of medical service is designed by the TAC to limit the ability of transport accident victims to obtain independent medical reports on their injuries.

Since the introduction of the Transport Accident Act in 1986 the TAC has been obliged to pay for medical reports obtained for the purposes of assessing a person's entitlement to an impairment benefit pursuant to section 47 of the act. The obligation has always been confined to payment only for medical reports deemed reasonably necessary.

In his second-reading speech the Minister for Workcover commented on that. As Mr Martin observes:

> It ought be borne in mind that the assessment of an impairment benefit pursuant to the provisions of the Transport Accident Act will often necessarily involve examinations by a number of suitably qualified experts in their own field, whether they be neurologists, orthopaedic surgeons, physicians or psychiatrists.

That is so, because the assessment of an impairment benefit is based only on the *Guides to the Evaluation of Permanent Impairment* — those famous tables. The guides require assessments by individual specialists that are necessarily confined to their areas of expertise. We do not want a position where it is impossible to make a proper assessment of an injury sustained by a claimant because of concern about appropriate reimbursement for medical reports.

Mr Martin has told me that although it is laudable to introduce measures that avoid duplication, and although no-one wishes to incur unnecessary costs, the Common Law Bar Association is concerned that by restricting the definition of 'medical service' to reports authorised by the commission the bill puts the TAC in a position to dictate, perhaps arbitrarily and often unnecessarily, from which doctors an applicant's solicitor may seek a report. I ask the minister to have regard to that concern.

The second point Mr Martin has raised with me relates to clause 4, which extends the definition of 'transport accident' to a collision occurring between a pedal cycle and a motor vehicle while the cyclist is travelling to or from his or her place of employment. That is the matter to which I said I would return. The Common Law Bar Association has two concerns. Firstly, why should the amendment apply only insofar as a person is injured by riding a bicycle to and from his or her place of employment? Why not have it apply generally?

Secondly, the amendment appears to have been introduced to deal with the tragic case of Mr Dale Sheppard. The Common Law Bar Association makes the reasonable point that the minister and the government ought to consider applying the provision so that it benefits the person upon whom the amendment is essentially based and thereby enable Mr Sheppard to be a beneficiary of it.

The third issue raised by the Common Law Bar Association concerns clause 13, which deals with the degree of impairment. Mr Martin argues that clause 13 prohibits a transport accident victim from successfully

applying to the TAC for an impairment determination unless such application is made within six years of the date of injury or within six years of the injury manifesting itself. He goes on to say that in all the circumstances that is not a fair thing:

> In the case of a minor, that mandatory duty is to be undertaken 18 months after the accident, or when the injury stabilises, or when the person attains the age of 18 years, whichever last occurs.
>
> Given that it is the obligation of the commission to make the assessment, it is not considered reasonable that if the TAC fails in its obligation, it can nevertheless escape liability for the payment of an impairment benefit after the expiration of six years.

Again, the Common Law Bar Association has urged that that situation be reviewed.

The next area of concern is clause 23, which provides that an authority to release information to the TAC cannot be revoked. The essential comment from the Common Law Bar Association is that the general nature of the provision is far too broad. A claimant injured as a result of a transport accident has no choice but to sign the authority, which actually forms part of the claim form. Therefore a person cannot access the system to receive entitlements unless he or she signs up to it. The association views this as an unfair imposition. Why should it be that, in effect, a person will authorise the TAC to delve into his or her medical, police or social security records perhaps going back some 10, 20 or 30 years? The association has asked that that be investigated.

The operation of clause 30, which is the serious injury provision, is also cause for concern. This is one of the areas where the minister dropped the amendment on the table just as the debate was about to happen. He said that the amendment was necessary because of a drafting error.

I have had only limited time to look at the amendment, but the change — —

**Mr Cameron** interjected.

**Mr RYAN** — The minister says it is to bring it within *Richards v. Wylie*. Let us have a look at that because I do not think he is right — indeed, I think he is palpably wrong.

Clause 30 of the bill proposes the following insertion following section 93(17) of the Transport Accident Act:

> ‘(17A) For the purposes of the assessment of “serious injury” —
>
> (a) the psychological or psychiatric consequences of a physical injury are to be taken into account only for the purposes of paragraph (c) of the definition of “serious injury” and not otherwise;
>
> (b) the physical consequences of a mental or behavioural disturbance or disorder are to be taken into account only for the purposes of paragraph (c) of the definition of “serious injury” and not otherwise.

The proposed amendment will change clause 30 to insert a new subsection as follows:

> (17A) For the purposes of determining whether there is an impairment or loss of body function as defined in paragraph (a) of the definition of serious injury in sub-section (17), psychological or psychiatric consequences are not to be taken into account.

That provision is not, with respect, reflective of the decision in *Richards v. Wylie*. The Court of Appeal went on to examine the position that was applicable in that instance without tracing the totality of it.

I continue my reference to the material put to me by Mr Martin, in which he quotes the relevant portion of the determination made by the President of the Court of Appeal. It states:

> … thus, the serious injury defined by subparagraph (a) of subsection (17) can, I think, have its seriousness measured in part by a mental response to a physical impairment. What it will not recognise is that the mental disorder itself can constitute or be the producer of the impairment of a body function.

The amendment will take out that component of psychological or psychiatric consequence to which the amendment refers. It flies directly in the face of the decision of the Court of Appeal in *Richards v Wylie*. The amendment does not reflect *Richards v. Wylie*. On the contrary, it makes much tougher the capacity for any poor individual who suffers an injury to obtain a serious injury certificate. It makes the assessment much tighter.

In a letter of 16 October Mr Terry Casey, QC, enumerated a number of matters. Because the amendment has been dropped on me at the last moment, it is pertinent to read Mr Casey’s comments, although I am conscious of the time factor. Mr Casey examined the provision in the bill and provided an analysis of it. He talked about the decision of the Court of Appeal. His letter states:

> However, the President also stated that the serious injury defined by subparagraph (a) can have its seriousness measured in part by a mental response to a physical impairment. What it will not recognise is that the mental disorder can itself constitute or be the producer of the impairment of a body function.

In continuing his reference to the President of the Court of Appeal, Mr Casey says:

> He gave the example of the amputee, which I think is a good one.

I will read this to the house because it shows up the fallacy of the position sought to be advanced by the minister and the government.

> A person who loses a limb may react to such loss in a number of ways — such a person may be quite comfortable with the wearing of a prosthesis, get back to full-time work and engage in sports and pastimes with a good deal of enjoyment and success. Such a person may not qualify for serious injury as the consequences of the loss to him or her do not result in financial disadvantage or loss of enjoyment of life. In the passage which is taken to be the ratio decidendi of *Humphries v. Poljak* … the majority of the Full Court said '… to be 'serious' the consequences of the injury must be serious to the particular applicant. Those consequences will relate to pecuniary disadvantage and/or pain and suffering'.

Mr Casey continues:

> What of another person who has an identical amputation but who cannot cope psychologically with the loss? The person becomes depressed, cannot work and has poor relationships with family and friends. In the latter amputee the consequences of the amputation would undoubtedly lead to a finding that the physical injury was a 'serious injury'. And so in *Richards v. Wylie* the President, after giving the example of the amputee, said 'Thus, the "serious injury" defined by subparagraph (a) of subsection (17) can, I think, have its seriousness measured in part by a mental response to a physical impairment. What it will not recognise is that the mental disorder can itself constitute or be the producer of the impairment of a body function'.

Mr Casey concludes that the proposed amendment goes much further than the cases of functional overlay referred to in the second-reading speech.

The government botched its endeavours to destroy the essence of the decision in *Richards v. Wylie*. On page 7 of his second-reading speech the minister talks about:

> … amending the definition of serious injury to clarify that the reference in paragraph (a) to physical injuries is confined to consideration of those injuries and not the impact of the injury on the claimant. Psychological effects and physical injuries are to be considered separately under paragraph (c), which deals explicitly with long-term mental and behavioural disturbances. This will reflect the existing understanding of the treatment of functional overlay in the determination of serious injury, as outlined in the recent decision of Wylie and Richards.

That is simply not the case. It is a misstatement of the position, and the minister either knows it or should know it. In the bill as it appears before the house the government has tried to amend paragraph (c) of the relevant section of the principal act to achieve its end. Having realised that that would not do it, the government has tried to make it even tighter by moving this amendment at 5 minutes to midnight. The government has the temerity to roll in here and say this is only a drafting change.

This is a cruel hoax being visited on people who are likely to suffer injury that will require them to be able to make application under section 93 of the act. It is a disgraceful thing to do anyway, and it is all the more disgraceful that the government has tried to do it through this form of subterfuge in rolling in here at the last minute and dropping it on us.

Mr Martin, who has commented on this on behalf of the Common Law Bar Association, Terry Casey, whose comments I have specifically referred to, the Plaintiff Lawyers Association and others to whom I have spoken say that if it is the intention of the government to truly give effect to the decision in *Richards v. Wylie* and to honour the commentary of the President of the Court of Appeal, it should stay out of it. As a matter of common decency the government should withdraw this provision altogether. It should continue to have apply the position that the law has under control. That way people who have the dreadful misfortune to come within this category are able to be dealt with on their merits and in accordance with the basis set out by the Court of Appeal.

Rather than painting this amendment, as it does on pages 7 and 8 of the second-reading speech, as being intended to 'address anomalies and restore the original intent of the legislation', instead of slinking in here and trying to deal with this issue in this way, the government should withdraw the provision and let the law continue to act in the way the Court of Appeal has determined. Under no circumstances should this or any other minister or the government of the day come in here purporting to make a change supposedly reflective of the Court of Appeal's decision when they know, or should know, that that is not the case.

The next area I want to turn to concerns clauses 31 and 32. A couple of the provisions in those clauses will have serious consequences for people wishing to make applications under the act. A provision in clause 31 relates to the determination of serious injury. In essence clause 31 is a statement of the law as it stands. It states:

> … a court must not give leave unless it is satisfied on the balance of probabilities that the injury is a serious injury …

That is the law. The clause goes on to say that:

> … no finding (other than a finding that the injury is a serious injury) made on an application for leave to bring proceedings shall give rise to an issue estoppel.

That apparently innocuous provision is an absolute disaster. It will have a deliberate consequence in that the process of finally determining these cases will inevitably be extended. At present an application must be made under the act to obtain a serious injury certificate before a common-law claim can be mounted. It is a bit like getting the keys to the car: to get hold of the keys one must go to the County Court and seek a certificate if the TAC, as keeper of the gate, is not prepared to authorise the particular injury as being serious under the terms of the act. If the person concerned is refused that certificate by the authority, he or she must go to the County Court and go through the proper process by way of an application to obtain the certificate.

An enormous amount of evidence is called for those hearings. It may not be only medical evidence, it may be evidence to do with issues surrounding causation — for example, did the injury of which the plaintiff complains actually arise from the accident in which he or she was involved? More often than not there is a protracted examination of causation with witnesses being called accordingly. At the end of that process the court determines whether a certificate should be issued to say that it is a serious injury.

Under the amendment, when the thing gets on for a hearing and the parties appear before the Supreme Court, all the contests held in the County Court for the purpose of determining whether it is a serious injury must be fought again — all the issues must come before the Supreme Court and the whole thing has to be re-tried. What a stupid thing to do! What possible explanation can there be for visiting this on a person who has already been faced with the trauma of having to go through the initial application before the County Court to get the certificate? Then there is the cost element, the time, if one wants to put it in raw clinical terms, that is consumed in the court process in having to deal with this and all the effort that goes into it.

People will go through all of that in the County Court to get the certificate in the first place. With the court having made that initial determination — given them the keys — they will go on to run their common-law cases. When they get to the Supreme Court or wherever the case is being heard they will find that they have to refight the whole saga. How stupid is that? This is a classic example of what I mean when I talk about the TAC seeking to make changes which will be onerous for the people for whom the system is meant to have been devised.

Mr Casey has made extensive reference to this issue. I will not go through all the correspondence he has provided to me. Suffice it to say that at the end of his commentary on this component he says:

> The changes proposed will lead to greater expense in applications which already go for far too long and cost far too much money. I fear that the only litigant which will be able to pay for those expensive procedures will be the Transport Accident Commission. At the end of the day that might be the rationale underpinning these proposals.

In my view that is an irresistible conclusion.

Clause 32 deals with the capacity of a party which has been subject to a determination on a serious injury application to appeal to the Court of Appeal as of right rather than having to seek leave as is presently the case. It is as plain as a pikestaff that that provision is in the bill for the benefit of one party and one party only, and that is the TAC. The poor mug punter out there, having been mauled in an accident, will never be involved in this. This is specifically designed to enable the TAC to starve people out. Worse than that, when the case gets up there the Court of Appeal is meant to consider the situation on the basis of a rehearing.

Mr Casey has made some sensible observations on the difficulties the Court of Appeal will face in doing justice in a hearing de novo because it will not have all the material that is available to the court in the first instance.

As Mr Casey observed, the proposal is that the judge will hear the evidence and then give full and detailed reasons, yet the findings on the issues raised in the trial — say, for the serious injury finding — are not to give rise to an issue of estoppel. That relates to Mr Casey's earlier concerns, which are reflected in my commentary on the issue.

He also notes that the Court of Appeal is faced with the prospect of not having witnesses before it. It will not be able to assess the demeanour of witnesses: it will not be able to see how they stand up to cross-examination. As Mr Casey concludes, the only fair way of complying with the provision would be to have the original hearing filmed so the Court of Appeal could make a full assessment. Again I say that the provision is not needed for the operation of the legislation.

I turn to another area of concern. The intention of clause 28, which deals with evidence about alcohol or drugs, is to enable the findings from breathalyser tests to be introduced into evidence in civil proceedings. Currently that cannot happen, which for some time has been a source of frustration to the TAC. So long as it is done fairly and properly, in this day and age there cannot be any reasonable objection to it.

It is appropriate to consider the provisions in the Road Safety Act that will imported into the bill. Section 55 of the Road Safety Act provides for the taking of breath tests; section 56 provides for the taking of blood samples; section 57 contains the evidentiary provisions covering blood tests; and section 58 contains the evidentiary provisions covering breath tests. Sections 55 and 56 describe the facts and circumstances that must exist for a driver to be required to provide samples of his or her breath or blood. As Mr Casey has observed:

> If there is some non-compliance with procedure does that mean that the sample has been obtained unlawfully?

His comments relate to the expression used in clause 28, which talks about allowing the results of analyses to be admitted so long as they have been lawfully taken. He goes on to say:

> I doubt it. The evidentiary sections are designed to facilitate proofs by means of certificates. A defendant may give notice of cross-examination of the experts in some circumstances. I am not aware of any legislation or procedures which deal with blood or breath samples being used to prove the presence of any drug other than alcohol.

Mr Casey makes some recommendations that I commend to the minister and the government because they would enable the provisions to be applied more appropriately. I am happy to make the material available. He recommends that proposed section 93(6A) should read:

> If in proceedings under this section a party alleges that the capacity of a driver of a motor vehicle involved in a transport accident was affected by the consumption of intoxicating liquor evidence shall be admissible in the proceedings of the taking of a breath sample or blood sample from the driver, the analysis of such sample and the concentration of alcohol in the driver's blood as indicated by the analysis of the sample provided that the taking and the analysis of the sample was done in compliance with the provisions of the Road Safety Act 1986.

That would remove the uncertainty about admissibility and deal with the vagueness of the term 'lawfully taken' in the bill.

Mr Casey goes on to recommend that proposed section 93(6B) should read:

> The evidence referred to in subsection (6A) shall not be admissible unless the party who is seeking to rely upon such evidence
>
> (i) provides to all other parties in the proceedings copies of the documents which form the evidence at least six weeks before the commencement of the trial of the proceedings; and
>
> (ii) causes the person who supplied the information contained in the document to attend the trial of the proceedings for the purpose of cross-examination if notice is given to that party by another party at least two weeks before the commencement of the trial of the proceedings.

His purpose is to address the issue of fairness. The bill allows trial by ambush. If the relevant provision is interpreted literally, a party could turn up at court and, at the last moment, drop material that is said to establish the proof to which the subsection refers.

On the contrary, the position should be that if a party to the proceedings is intending to call that evidence, all the parties should have appropriate notice. That reflects my position on the amendments that have been dropped on us today. As a matter of fairness and commonsense, amendments should be provided in time to allow everybody to give them due consideration.

Furthermore, as an adjunct to the same point, the provision flies in the face of many other evidentiary provisions governing the conduct of civil proceedings. A plethora of both Supreme Court and County Court rules provide that appropriate notice of evidence that is intended to be called must be given to the other side. That evidence may include witnesses, medical reports, expert reports or a summary of the expert evidence. Any one of a number of areas are now subject to that process. As it appears in the bill, the provision completely contradicts those initiatives. I urge the government in its considerations and deliberations when the bill is between the two houses to have regard to amending it.

The other clause I refer to is clause 29. As Mr Casey states in his correspondence to me:

> The amendment proposed by the introduction of (18A) —
>
> in section 60 —
>
> would seem to allow for a windfall to the TAC.

I do not have the principal act with me, but section 60 sets out a number of benefits that are prospectively payable to persons injured in accidents. The amendment provides that if any one of those benefits has been the subject of proceedings taken at common law by a plaintiff, all of the categories of benefit defined in section 60 — regardless of whether the plaintiff has claimed under those heads — will no longer be available to a person who is injured.

I have just been handed the principal act by the shadow minister for major projects. Numerous categories come under the heading 'Medical and like benefits'. There are about a dozen different categories for which a

person may seek to obtain a benefit. Clause 29 provides that if a plaintiff in his or her common-law action seeks to obtain a benefit as contemplated under section 60 of the principal act the TAC will be released from liability for a raft of payments contained therein as opposed to only those that are the subject of the common-law claim. That would bring a windfall benefit to the TAC. I believe it is appropriate for the provision to be reviewed when the bill is between houses.

I refer to one other issue that reflects the sort of attitude being taken by the minister and the government to the amendments and to the operation and overall supervision of the TAC generally. About four weeks ago I obtained material indicative of a proposal being contemplated by the TAC about the impact on the ability of people who use farm utes being able to obtain their full measure of damages. I issued a press release on Tuesday, 10 October. By that date the bill we are now debating was before the house — it was read a second time on Thursday, 5 October. My press release was not based on the content of the bill; rather it was based on a document provided to me by a couple of people from different sources.

**Mr Hulls** interjected.

**Mr RYAN** — The minister asks who provided it. I would happily tell him, but I am concerned that in these days of open, honest and accountable government the person's business may no longer see the light of day in this fair state!

**An honourable member** interjected.

**Mr RYAN** — It is 12.58 p.m. so we will not get involved in that debate. We may be able to talk about that at length on other occasions. I will leave aside the fallacious comment of the Attorney-General.

I based my press release on a TAC document headed 'Outline of legislative proposals under consideration'. That document lists a number of prospective areas of consideration, and many of the proposals are contained in the bill.

In a subsequent letter to the media the minister said that:

> Your readers may be aware of recent media reports where the National Party outlined its opposition to legislation which will improve the Transport Accident Commission (TAC) scheme.

That is absolute garbage, and he should have known that. The National Party supports the bill, subject to the comments I have made. The minister goes on to state in the letter:

> The National Party claims the legislation introduces compulsory deductions from compensation.

That is not what I said in the press release. I said:

> The National Party has spoken out against proposed changes to the TAC damages payouts that it believes would discriminate against farmers and country people.
>
> …
>
> The proposal, currently being floated by the TAC, would see mandatory deductions made from common-law damages payouts for people injured while riding in the back of a ute.

That is exactly what appears in the document to which I have referred. It is one of the areas that was contemplated by the TAC, albeit it has not been wrapped up in the bill before the house.

The minister is sloppy in the way he conducts his affairs. That is reflected in the terms of his second-reading speech and in the way he has dropped the amendments before the house. He needs to clean up his act in the interests of the people who need this important legislation so they can be compensated properly and receive the ongoing benefits they deserve.

**Debate interrupted pursuant sessional orders.**

**Sitting suspended 1.00 p.m. until 2.04 p.m.**

## QUESTIONS WITHOUT NOTICE

### Industrial relations: reforms

**Dr NAPTHINE** (Leader of the Opposition) — I refer the Premier to today's Victorian Employers Chamber of Commerce and Industry economic impact study, which shows that the Labor government's planned reintroduction of a state-based industrial relations system will cost Victoria 22 000 jobs and be a crushing blow for small business. Will the Premier now concede that Labor's industrial relations legislation, which is designed to pay off its debts to its union mates, will significantly damage Victoria's economy?

**Mr BRACKS** (Premier) — In response to the question of the Leader of the Opposition, I say that the Victorian Employers Chamber of Commerce and Industry (VECCI) figures — and I only heard about them about 15 minutes before I came into the chamber — are not just wrong, they are absolutely and totally wrong. Not only that — —

*Honourable members interjecting.*

**Mr BRACKS** — I have actually had some discussions with members of VECCI, and they will be

admitting they are wrong, too. What they have done is apply those so-called job loss figures over those people who are employed under the Australian workplace agreements and the federal act. So VECCI has applied it right across the board. We are talking about 200 000 workers, but it has done its sums over the whole lot. So it is totally inaccurate.

*Honourable members interjecting.*

**Mr BRACKS** — Yes, in this case it is. The economic study will be released today. The legislation will be read a second time in the house, and I believe I am prevented from debating it in total until that occurs. As I said, the economic study will be released. It is an objective study, which the Leader of the Opposition can certainly examine, as can VECCI.

## Parliament: Bendigo sitting

**Ms ALLAN** (Bendigo East) — I refer the Premier to the celebrations to mark the centenary of Federation, including the 100-year anniversary of the first sitting of the Victorian state Parliament. Will the Premier inform the house of the action the government is taking to take the people's house out to the Victorian community?

**Mr BRACKS** (Premier) — As the honourable member for Bendigo East said, next year marks an important year in the history of Victoria and Australia. Prior to 1851 Victorians were governed from Sydney — not a prospect we would ever welcome again, of course! Following its formal separation from New South Wales in 1851 Victoria became an independent colony, as did Tasmania and South Australia. From 1851 to 1901 Victoria, as a self-governing colony, had a colonial Parliament, not a state-government run authority or Parliament.

On 18 June 2001 we will mark the 100-year anniversary of the first sitting of the state Parliament — that is, the Legislative Assembly of the Parliament of Victoria — following the Federation of the Australian states on 1 January 1901.

To mark that important event, Honourable Speaker, I am pleased to say that in response to my letter you have agreed to support the notion that on or close to that day the Legislative Assembly be taken to the people for an historic one-day sitting to celebrate the centenary of Federation and Victoria's 100 years as a state.

Just before question time I communicated this information to the Leader of the Liberal Party and the Leader of the National Party. It is proposed that for the first time ever in Victoria — I think it is the first time ever for an Australian Parliament — the Legislative Assembly will sit outside Melbourne, in this case in Bendigo.

*Honourable members interjecting.*

**Mr BRACKS** — I appreciate and understand the comments of honourable members on all sides of the house. There are many places where the event could occur. Bendigo's position, as the geographic centre of Victoria, is the ideal place.

Bendigo has also been chosen because of its pivotal role in the events leading to Federation. Sir John Quick, the first federal member for Bendigo, was an author of the Australian constitution. Many other places lay claim to some of our founding fathers — for example, Alfred Deakin was the first member for Ballarat. There are many claims, but the centrality of Bendigo makes it the appropriate place.

I am delighted that by taking the Parliament to Bendigo next year we can recognise the crucial role that regional Victoria played in the history of Victoria, the nation and the formation of the Federation. I understand it will be an Australian first and apparently one of the few times it has happened anywhere in the world.

The historic sitting will occur as close a practicable to the 100-year anniversary date of 18 June 2001. Again that demonstrates the commitment of this government and the Parliament to ensure it works closely with the Victorian public and meets its needs. Taking the Parliament out to country Victoria is a very welcome step.

## Schools: funding

**Mr RYAN** (Leader of the National Party) — Given the commitment of the Minister for Education when she terminated the self-governing schools program that no school would be disadvantaged and noting that regional school budgets are being required to meet 50 per cent of the cost of her action, thereby denying funding to regional school programs, will the minister honour her undertaking and ensure that regional schools are spared the cost they are now being forced to bear as a result of the closure of self-governing schools?

**Ms DELAHUNTY** (Minister for Education) — The Leader of the National Party might be a little confused about the arrangements entered into by the government with the former self-governing schools. The house will recall that the government took to the election a policy of terminating the flawed self-governing schools model because it created winners and losers and many of those losers were in regional Victoria. As a result of the implementation of the policy, the government agreed to

honour all contracts that had been entered into by the self-governing schools. Those contracts have all been honoured and are being honoured and that applies to schools wherever they are — whether in metropolitan Melbourne or regional Victoria.

On the contrary the government is adding money to the global budgets of schools. The Leader of the National Party will be aware that since coming to office the government has added $300 million to schools budgets. The government has added to schools global budgets for the special learning needs index and that has certainly meant that schools in regional Victoria have increased their budgets quite substantially. As a result of that particular investment, students across Victoria whose schools are receiving the special learning needs index money have increased from 40 per cent under the last government right up to 60 per cent under this government. Many of those needs are, of course, in schools in regional Victoria. So, Mr Speaker, I confirm — —

*Honourable members interjecting.*

**The SPEAKER** — Order! The honourable member for Mordialloc!

*Honourable members interjecting.*

**The SPEAKER** — Order! I ask the house come to order, particularly the Deputy Leader of the Opposition and the Leader of the National Party.

**Ms DELAHUNTY** — Honourable Speaker, just to be quite sure that the Leader of the National Party understands, regional schools have never been so well off as they have been since the election of the Bracks Labor government.

## Victoria Institute of Biotechnology

**Ms GILLETT** (Werribee) — Comrade Speaker — —

*Honourable members interjecting.*

**The SPEAKER** — Order! I ask the house to come to order. I also invite all members of the house to read my statement in November 1999 about the correct form of address to the Chair. The honourable member for Werribee.

**Ms GILLETT** — Thank you, Honourable Speaker. I refer the Minister for State and Regional Development to the launch last week of the Victoria Institute of Biotechnology at Werribee and ask: what progress is the Bracks Labor government making in establishing Victoria as the biotechnology capital of Australia?

**Mr BRUMBY** (Minister for State and Regional Development) — Honourable Speaker — —

**Ms Asher** interjected.

**Mr BRUMBY** — I think I am the first one to get it right today.

*Honourable members interjecting.*

**Mr BRUMBY** — Apart from the Premier, of course. Last week I had the pleasure, with the honourable member for Werribee, of jointly launching the new Victoria Institute of Biotechnology at Victoria University's Werribee campus, which is known as VIB and is part of the Werribee technology precinct. It is worth pointing out to honourable members that the joint venture between the Austin Research Institute and Victoria University is something like a $40-million investment in research and development capabilities in the state. It is also part of the broader Werribee technology precinct, which represents more than $115 million in research and development and employs more than 750 researchers and graduate students.

I am delighted to release today publicly and for the house a report entitled *Victorian Biotechnology and Bioscience Based Industry*, which has been prepared by a Canberra-based biotechnology and bioscience business research organisation, Bioaccent Pty Ltd.

All honourable members can be proud of the conclusions that are drawn from this report because it is truly great news for Victoria. It places Victoria fairly, squarely and unambiguously as the biotechnology capital of Australia.

Among the report's findings are that Victoria has 55 per cent more dedicated biotechnology companies per capita than the rest of Australia; Victoria is home to over a third of Australia's 185 dedicated biotechnology companies; some 59 per cent of all Australian biotechnology companies by market capitalisation have made their homes in Victoria; and most pleasing of all is that if you look at the growth that has occurred in biotechnology start-ups across Australia in calendar year 2000, you see that more than 50 per cent of them — this is in the year 2000 — have occurred here in Victoria. So no matter whether you look at the number of start-ups, the size of the industry or market capitalisation by index, all of those things confirm that Victoria is the lead state for biotechnology and that we are leading the way in investment and policy settings for the future.

The Bracks government has made a number of announcements to support the growth of biotechnology. I have already mentioned the new VIB in Werribee, but there is also the establishment of the Knowledge, Innovation, Science and Engineering Council, the establishment of Bio 21, supported by the government with $50 million of funding towards that $400 million project, and of course the $20 million technology commercialisation program that is already achieving outstanding results for the state.

One of the key areas on which this government wants to focus in the future is science and biotechnology — the whole knowledge economy agenda. We are at the forefront in this area. This report, which I am proud to release today, will I believe be welcomed by all members on both sides of the house as a great vote of confidence in Victoria's future, particularly in the area of biotechnology.

## Public sector: wage increases

**Ms ASHER** (Brighton) — I refer the Treasurer to the government's May budget and a contingency, including wage increases, of $250 million for this financial year, and I ask: will the Treasurer assure the house that wage increases this year will not exceed his budget contingency?

*Honourable members interjecting*

**Mr BRUMBY** (Treasurer) — Honourable Speaker, the government made provision in the forward estimates for wage increases and they are built into the forward estimates across all departments.

What the government has made clear in those forward estimates is that, consistent with its wages policy, wage determinations awarded by the government outside that amount will be covered by productivity improvements.

*Opposition members interjecting.*

**The SPEAKER** — Order! The honourable member for Glen Waverley!

**Mr BRUMBY** — I am intrigued by the interjections from the shadow minister opposite, who I might point out yesterday raised in the Parliament a matter about — —

*Honourable members interjecting.*

**The SPEAKER** — Order! The house will come to order!

**Mr BRUMBY** — About — —

*Honourable members interjecting.*

**The SPEAKER** — Order! I ask all members of the house to cease interjecting, particularly members on the opposition centre benches and more particularly the honourable members for Glen Waverley and Forest Hill. An exorbitant amount of time is being wasted today by interjections that are disorderly. I remind the house of the power of the Chair through sessional order 10 to restore order.

**Dr Napthine** interjected.

**The SPEAKER** — Order! I ask the house to come to order or I will commence using sessional order 10 to bring order to the house. Order! The Deputy Premier!

**Mr BRUMBY** — The matter the shadow Treasurer earlier found so interesting about wages policy is the same principle and the same wages policy that was applied by the former government.

*Honourable members interjecting.*

**Mr BRUMBY** — Yes, by the former government, and that policy is that if there are movements outside a particular band, those agencies are required to provide productivity improvements to cover the costs. Isn't it extraordinary! Here we have a political party that supports enterprise bargaining and individual contracts, all based around productivity improvements, and what the government has put in place is a budget cap.

Beyond that, for outer sector agencies, if there are movements in excess of that, the agencies are required to cover the costs by productivity. All the agreements that have been entered into by the government comply with those principles.

This morning the honourable member made an assertion to the media that just goes to show how inaccurate the shadow Treasurer is with her claims.

A claim was made yesterday in Parliament about the wages — —

*Honourable members interjecting.*

**The SPEAKER** — Order! I ask the house to come to order. I ask the Treasurer to cease debating the question and to come back to answering it.

**Mr BRUMBY** — I am answering the question, Honourable Speaker, but in relation to the assertions that have been made, perhaps the house needs to be advised that over the last financial year, which was the first financial year of the Bracks government — —

**Ms Asher** — On a point of order on the issue of relevance, Mr Speaker, yesterday's question needed an answer yesterday. I would like an answer to today's question, today.

**The SPEAKER** — Order! I do not uphold the point of order.

**Mr BRUMBY** — It is easy to see why the opposition is embarrassed by this issue. The reason it and the shadow Treasurer are embarrassed is that the financial reports tabled yesterday show that for the — —

*Honourable members interjecting.*

**The SPEAKER** — Order! The Leader of the Opposition! I warn the Deputy Leader of the Opposition.

**Mr BRUMBY** — The reason the opposition is so embarrassed about the matter is that the financial report of the state shows that for the year 1999–2000 the Bracks government brought in a budget result on wages, salaries and entitlements that was $207 million lower than that budgeted by the former government. Where does that leave you? Looking stupid!

*Honourable members interjecting.*

**Mr BRUMBY** — When it comes to wages policy, the government has set the forward estimates and set the target. If the government agrees to increases beyond that, they will be agreed to in relation to productivity improvements. That is the same policy that has been in place in Victoria for many years. As I said, in terms of the wages outcome for the financial year just concluded, the government came in $207 million lower than the forward estimates provided under the previous government. Who is the prudent financial manager? Who is providing savings in this area of the budget? The answer is the Bracks government!

## Children: placement changes

**Mr CARLI** (Coburg) — I refer the Minister for Community Services to issues raised in the 1995 audit entitled 'Placement changes project' and ask what action the government has taken to make the information publicly available and what action the minister has taken to improve the child protection system in Victoria?

**Ms CAMPBELL** (Minister for Community Services) — In December 1995 the Department of Human Services sponsored an audit of 93 children in its placement system. The aim of the audit was to investigate the out-of-home placement changes of those children. The review was conducted after serious concerns were raised by regional and head office staff and the non-government sector about the large number of changes within the placement system.

In November 1996 the previous minister received a brief from his department about the project; and as all honourable members know, the previous minister is now the Leader of the Opposition.

The government has before it the results of that audit, which were presented to the previous minister. The brief outlined some key findings of the research project. It showed that 30 children had experienced 2 placements; 34 had experienced 3 to 5 placements; 20 had experienced 6 to 10 placements; and 9 children had 10 or more placements — in a two-week period.

The report also shows that the majority of the changes were a result of placement breakdowns.

*Honourable members interjecting.*

**Ms CAMPBELL** — It is important information for the Parliament to know and understand. The placement changes were predominantly for behavioural reasons, and the report outlined that 72 per cent of the children were rated as exhibiting two difficult behaviours.

At the conclusion of the briefing note there is a recommendation to the previous minister that he should endorse the release of the research project across the sector. The minister's note is 'Not endorsed'. It appears that he had some issues regarding flaws in the report. As a result the department went through all the issues relating to methodology thoroughly, not one of which changed the results of the findings — not one.

The department came back to the minister again, and guess what! The report and its important points were shelved. Serious issues raised were left in the department. The report was not released in 1997, 1998 or 1999.

The document is about ensuring that children's placements are addressed and better practice is put in place. Had the former minister released the report and taken action the situation for children such as Clara whose story was recently outlined in the *Age* may well have been different.

*Honourable members interjecting.*

**The SPEAKER** — Order! The honourable member for Doncaster!

**Ms CAMPBELL** — If the opposition would like a copy of the report I am happy to provide it.

*Honourable members interjecting*.

**The SPEAKER** — Order! The honourable member for Doncaster!

**Ms CAMPBELL** — As it appears that the opposition is now interested in the report, I am happy to provide it. If honourable members opposite are too busy to read the complete report I have a copy of the conclusion and the executive summary.

*Honourable members interjecting*.

**The SPEAKER** — Order! The house will come to order. The honourable member for Doncaster!

**Mr Seitz** interjected.

**The SPEAKER** — Order! The honourable member for Keilor! The minister should conclude her answer.

**Ms CAMPBELL** — In spite of the findings of the research project that the government of the day and the non-government sector needed to address in the placement and out-of-home system, the former minister refused to release the research results. I now table the report for any member of the opposition who may wish to have a copy.

The audit of residential services implemented by the Bracks government has one further week before it concludes. The report will not be shelved in the Department of Human Services but will be publicly available.

## Snowy River

**Mr McARTHUR** (Monbulk) — I refer the Premier to his comment on Tuesday when he said there will be no net loss of water to Victorian irrigators resulting from the Snowy River agreement and to his further statement on Wednesday in which he assured the house that no water will be purchased from Victorian irrigators for the first 10 years.

Will the Premier guarantee that the agreement he has signed or will shortly sign with the New South Wales government will not allow the proposed authority to purchase water from Victorian irrigators to achieve the initial 21 per cent flow target?

**Mr BRACKS** (Premier) — I thank the honourable member for Monbulk for his question. In achieving the 21 per cent flow in the next 10 years the government does not anticipate, nor does it have plans to examine, the purchase of water. The proposal — not signed off as the honourable member for Monbulk said but agreed to with the New South Wales government — is for $300 million, with each state contributing $150 million. That money will go to improvements to conserve the supply of water, and that which is conserved will go into the flow down the Snowy.

The agreement has received the support of the Snowy River Alliance and the Australian Conservation Foundation, and the Honourable Peter McGauran, the federal member for Gippsland is full bore on the matter. It is a great plan to restore the flow to the Snowy. It appears the agreement will also have the support of the federal coalition and the local National Party member. The only group that appears not to support it is the Victorian Liberal Party. The deal is fantastic for future generations of Victorians.

## Nursing homes: standards

**Mr HELPER** (Ripon) — Will the Minister for Aged Care inform the house of the progress being made by public sector agencies to improve residential aged care services?

**Ms PIKE** (Minister for Aged Care) — I am pleased to inform the house that the government has established a new aged care quality improvement program. The new team of aged care experts includes senior clinical nurses, nurse educators, dietitians, counsellors, therapists, occupational health and safety experts and experienced managers. For the first time the government has a real capacity to support Victoria's residential aged care services in the public sector to provide better care for residents and to strengthen local communities.

The team is available to travel to all parts of the state ensuring that communities in rural and regional Victoria have equal access. The experts will work together with local providers to assist them to make the improvements they are striving for and which communities across Victoria wish to see.

The commonwealth government's accreditation system announced in 1997 provided the aged care industry with a wake-up call. Unfortunately, the former government did not heed the call, because its main work in aged care, its main energies and efforts, were put into the privatisation program.

The establishment of a new quality improvement program is a financially responsible initiative. Savings have been made by abolishing the unit specifically implemented by the former government to privatise

4000 aged care beds, mostly in rural and regional Victoria.

It is also a timely initiative, because it is no secret that a number of public nursing homes have fallen behind as they have expected to be privatised.

The government is investing $47.5 million to ensure that the services achieve the building certification requirements so they are not forced to close. But there is more. We are also providing $2.4 million for new cleaning and infection control programs — a first for aged care in this state — and around $1 million to assist all public sector agencies to participate in the commonwealth's accreditation program. These initiatives will mean better services for older Victorians, no matter where they live.

## Nursing homes: standards

**Mrs SHARDEY** (Caulfield) — Will the Minister for Aged Care reaffirm her commitments of 24 November 1999 and 9 December 1999 — and, by implication, in her previous answer — when she guaranteed that all state-owned nursing homes would achieve the required commonwealth standard by January 2001?

**Ms PIKE** (Minister for Aged Care) — The accreditation and certification of nursing homes and hostels across Australia is the responsibility of the commonwealth government, which provides the funding for those services.

*Honourable members interjecting.*

**The SPEAKER** — Order! The honourable member for Malvern!

*Honourable members interjecting.*

**The SPEAKER** — Order! The honourable member for Monbulk!

**Ms PIKE** — The previous government had known since 1997 that accreditation and certification standards had been established. However, the Bracks government discovered a demoralised sector that had been ignored by a government that had put its best energies and efforts into getting rid of public sector aged care facilities in this state.

We discovered letters that had been sent directly to the Department of Human Services identifying existing care problems — —

*Honourable members interjecting.*

**The SPEAKER** — Order! The house will come to order! The honourable member for Geelong North!

**Mr Maclellan** — On a point of order, Honourable Speaker, with some reluctance I point out that the minister was asked whether she stood by the guarantees that she gave. The question seeks an answer to that. She is debating whether the commonwealth is in charge of the standards or whether the previous government did or did not do something. She gave the undertakings, and she is being asked whether she stands by them.

**The SPEAKER** — Order! I am not prepared to uphold the point of order. However, I remind the minister that it is her obligation not to debate the question and to come back to answering it.

**Ms PIKE** — The previous government had been aware since 1997 that those accreditation and certification requirements needed to be met, but it did nothing. It offered absolutely no support to public sector residential services.

Since the Bracks government has been in power, it has provided additional funding for certification. It has been out talking with public sector agencies, putting in resources and working with them to bring them up to the position where they can meet the commonwealth standards.

We have put in money for infection control, and we have provided nearly $1 million in support for training kits to help them reach those accreditation standards. We have put a number of — —

**Mrs Shardey** — On a point of order, Honourable Speaker, the minister is debating the question. She has a simple question to answer: does she stand by her commitment — yes or no?

**The SPEAKER** — Order! I uphold the point of order and ask the minister to cease debating the question and to come back to answering it.

I remind the honourable member for Caulfield that in raising a valid point of order she should not spoil it by proceeding to repeat the question.

**Ms PIKE** — The Bracks government is doing everything it can to help public sector aged care facilities to reach — —

*Honourable members interjecting.*

**The SPEAKER** — Order! The house will come to order! The Leader of the Opposition! I warn the honourable member for Bennettswood!

**Ms PIKE** — The government is supportive of the commonwealth's accreditation and certification system. We are providing support and working with public sector agencies to help them meet those requirements, but the decision on accreditation and certification belongs with the other Bronwyn!

## Spring Racing Carnival

**Ms DUNCAN** (Gisborne) — With the Spring Racing Carnival upon us, I ask the Minister for Racing what measures he has taken to ensure that punters, particularly in country Victoria, enjoy a successful and uninterrupted season?

**Mr HULLS** (Minister for Racing) — I am sure all honourable members would agree that the wet weather we have had has been welcomed in rural Victoria, but the Geelong Racing Club has not welcomed it. I guess every cloud does have a silver lining, because the Geelong Cup will now be held on Sunday and members of this house will be able to attend. I am sure many will attend. I will be there and will be privileged to present the cup. As my experience at the Avoca Cup on the weekend shows, country racing is the backbone of racing in this state. The Avoca Cup was a great family day and a fantastic reminder of the importance of country racing to Victoria.

Two issues threatened to interfere with punters' enjoyment of the spring carnival. I am happy to report to the house that those issues have now been resolved. Earlier this year Tabcorp introduced changes to its betting operations — including a $3 minimum bet — to relieve congestion at certain times and to encourage greater use of touch-phone technology. I am sure many honourable members have received letters from constituents about this matter. The changes were the subject of complaint by members of the betting public, particularly disabled members of the community and elderly people who had difficulty using touch-phone services.

I contacted Tabcorp in response to those complaints, and I am pleased to advise that Tabcorp responded positively. It has agreed to waive the new limit for customers who can show that their disability or age reasonably causes difficulty in using the touch-phone betting service. That is a victory for Victorians who wish to place a telephone bet.

I am also pleased to announce news just in on the dispute involving Pubtab operators who had threatened to close their doors on Derby Day if their demands were not met.

*Honourable members interjecting.*

**Mr HULLS** — Let's not talk about the races. I am pleased to say that that dispute has been resolved. When I heard about the dispute, which involves a commercial arrangement between the Pubtabs, Sky Channel, Tabcorp and the Australian Hotels Association, I wrote to all the groups and said it would be inappropriate to have Pubtabs preventing ordinary punters from getting a bet on during the Spring Racing Carnival because of a commercial arrangement. I offered the resources of my department to mediate the dispute. I am pleased to advise that that offer seems to have got the parties to focus. The matter has now been resolved and the Pubtabs will not be closed during the spring carnival.

We have a number of country cups coming up, including the Werribee Cup, the Mount Wycheproof Cup, the Kyneton Cup and the Ballan Cup, as well as meetings at St Arnaud, Bendigo, Traralgon, Dunkeld, Donald, Ballarat, Ararat — I could go on.

**An Honourable Member** — And you'll be at all of them.

**Mr HULLS** — I hope to be at most of them.

*Honourable members interjecting.*

**Mr HULLS** — Members are asking for tips. I do not think that is the role of the Minister for Racing, but I make it clear that omen bets can sometimes prove worth while. I said Diatribe was a horse to be followed as it summed up Liberal Party policies, and as we know it won the Caulfield Cup.

In conclusion, there are two horses running throughout the spring carnival that sum up the current leadership of the Liberal Party — Make Me A Miracle and She's A Pretender. I suggest they be followed during the Spring Racing Carnival.

**The SPEAKER** — Order! The time set down for questions without notice has expired and a minimum number of questions has been asked and answered.

**Mr Thompson** — On a point of order, Mr Speaker, pursuant to the rules of debate in this chamber standing order 84 states:

> Every member desiring to speak shall rise in his place and address himself to Mr Speaker.

Earlier in today's sitting reference was made to a ruling from the Chair last November. That ruling states:

> … following inquiries from a number of honourable members about the correct term of address for the Deputy Speaker, I have ascertained that the correct terminology is simply 'Deputy Speaker' or 'Madam Deputy Speaker', or perhaps

the house could adopt the gender-neutral term 'Honourable Deputy Speaker'. That sort of terminology can be applied to the Deputy Speaker and Acting Speakers.

That ruling is silent on the form of address for the Speaker, and I am concerned that the members of the government may be one ruling ahead of themselves.

**The SPEAKER** — Order! I uphold the point of order raised by the honourable member for Sandringham in that he is correct in saying that the November 1999 ruling in which the Chair referred to the Deputy Speaker gives no ruling in regard to the Speaker.

As Speaker I have indicated to the Standing Orders Committee that I believe the terminology 'Honourable Speaker' is acceptable. For the information of the house I point out that the Standing Orders Committee is currently examining this and many other issues including a review of all standing orders. It will report to the house at an appropriate time.

## TRANSPORT ACCIDENT (AMENDMENT) BILL

*Second reading*

**Debate resumed.**

**The SPEAKER** — Order! Before calling the next speaker I wish to advise the house that the clock at the front of the chamber is not functioning properly and speakers should rely on the clock located behind the Speaker's Chair.

**Mr LENDERS** (Dandenong North) — I rise to join the debate on the Transport Accident (Amendment) Bill. I will confine my comments essentially to the amendments that will be before the house shortly. I will also give some responses to the two lead speakers for the opposition parties in view of the fact that the minister will probably not get an opportunity to sum up the debate because the sessional orders will take effect at 4.00 p.m.

The intention of the government in clause 30 of the bill was to confirm the court's current understanding of the interpretation of the definition of serious injury in the context of the Transport Accident Act 1986. Amendment of the principal act is required to ensure that consideration is not given to the psychiatric consequences of a physical injury when making the initial inquiry about whether a person has an impairment or loss of a body function under paragraph (a).

That is required to give effect to the interpretation of *Humphries v. Poljak* by the Court of Appeal in the case of *Richards v. Wylie*. During the course of consultation on the bill with members of the legal profession, representations were made to the government that the amendment, as drafted, may have gone further than the government intended and had the effect of tightening the definition of serious injury further than the current understanding. Following those representations, legal advice was sought; it confirmed that the current wording of clause 30 could go further than the government intended. It was recommended that a new form of words be used for the definition to give effect to the government's intention.

The amendment inserts a new form of words into proposed subsection (17A) which will give effect to the objective of codifying the current understanding of the definition of serious injury. Legal advice on the proposed form of words confirms that the amendment does not go beyond any of the reasoning contained in any of the judgments in Wylie's case.

I turn to the non-carer provisions raised by the Deputy Leader of the Opposition and the honourable member for Prahran in the so-called private member's bill. I remind the house that the minister flagged these issues in July. It is good to see that the honourable member for Prahran has jumped on the bandwagon, albeit months later.

I refer to the comments by the Deputy Leader of the Opposition on clause 24. The government's response is that it will always be true, that if an injury can be linked to an accident, it will be compensable. The Deputy Leader of the Opposition also referred to proof of nervous shock. These claims will be treated as any other claim — the circumstances will be investigated and, provided the terms of the definition are met, compensation will be paid.

The Deputy Leader of the Opposition asked when certain provisions would come into effect. The late automatic commencement provision of 1 July 2002 is required to enable substantial system changes to facilitate electronic claim lodgement. The government aims to have all the other provisions proclaimed by 1 March 2001, with many provisions targeted for earlier commencement as they become available online.

The Deputy Leader of the Opposition sought guarantees that a second opinion will always be accessible to a claimant for matters covered by clause 3. The minister has indicated in the second-reading speech that the commission does not intend to restrict the obtaining of a report from a treating practitioner, nor

the obtaining of a second opinion in a discipline in respect of which the commission has obtained or intends to obtain a report. Also on clause 3, the commission will develop and publish policy settings that the authorisation to obtain reports will be automatic. The commission will only seek to individually authorise and seek prior approval for additional opinions where a report is sought in a specialist field in which a report has already been obtained, or in a field where there is no demonstrable reason for believing that the impairment exists. The final answer to queries by the Deputy Leader of the Opposition on clause 3 is that TAC is willing to meet further with plaintiffs' legal representatives to cooperatively develop policy on the authorisation of medical reports including the majority of circumstances in which it is expected that prior approval will be a routine matter.

The Deputy Leader of the Opposition also asked about clause 23 and sought assurances that the information access provision will be reasonably applied. Clause 23 of the Transport Accident (Amendment) Bill confirms that the release of the form signed by the claimant cannot be revoked during the life of the claim. It is important to note that the release is confined to information that is relevant to assessment of transport accident and injuries. A trend has developed over recent times in which the authority to obtain information in a claim form is routinely withdrawn by the plaintiff's solicitors immediately on acceptance of a claim, resulting in delays in obtaining information necessary to facilitate the speedy delivery of benefits to a claimant.

I wish to make two more points on clause 23. In relation to concerns about the private nature of the information obtained by the Transport Accident Commission, I advise that the TAC is bound by its own act, section 131 in particular, to use information only as required to carry out functions for the purposes of that act. In addition, the commission is committed to putting into place appropriate guidelines to ensure the protection of individual privacy and will ensure it complies with all the relevant privacy laws in managing and using information from claimants.

In concluding my remarks, I point out that this is a complex piece of legislation. The Minister for Workcover has been working on it diligently for a long time. He is a competent and accomplished minister. The previous two speakers were uncharitable about the amendments. I advise honourable members that these complex amendments have come to the government late. They have been circulated in the house and I have commented on them simply to facilitate a response to the questions from the Deputy Leader of the Opposition. I commend the bill to the house.

**Mr CLARK** (Box Hill) — I join the debate to discuss the provisions of the bill that relate to Workcover and occupational health and safety. There are four such provisions. The first makes a referencing change in the Dangerous Goods Act to update a reference to the transport code to refer to the Australian Code for the Transport of Dangerous Goods by Road and Rail, also known as the ADG code.

The second amendment to which I will refer is that made by clause 42 which changes the provisions under which a self-insurer is entitled to obtain reimbursement from the Transport Accident Commission when that self-insurer pays compensation as a result of a death or injury occurring during the course of a work accident. That is not a journey to or from work, which falls wholly under the TAC, but injury when someone is going about his or her job and is injured in a motor accident. In such circumstances the amendment changes the provision that the government inserted by its bill during the autumn sittings. That amendment provided for a total reimbursement of the self-insurer by TAC. The amendment now made by this bill reduces that reimbursement by an amount equal to the employers' excess that would have been applicable under section 125A of the Accident Compensation Act if a Workcover insurance policy was in force — in other words, if the self-insurer were an insured employer.

The argument for the change is so it does not give an advantage to a self-insurer. However, that logic is open to doubt. In some respects it can be said that a self-insurer has taken on the entire responsibility for paying compensation to his or her workers, so the situation is analogous to that of an insured employer who has elected to buy out the excess under a Workcover insurance policy. If that is a fair analogy, it is questionable whether there is any logic or fairness in imposing the deduction on self-insurers. I will be interested to hear whether government speakers address that point.

The remaining two amendments dealing with Workcover and occupational health and safety relate to common-law legal proceedings. The first is clause 43, which also amends the legislation the government brought before the house in the autumn sessional period. That legislation enabled the minister to make legal cost orders under sweeping provisions that regulate the extent to which legal practitioners can obtain payment for the legal costs they incur when acting for plaintiffs in proceedings under the Accident

Compensation Act. The minister said he wanted that reserve power in case the legal profession abused the common-law provisions in order to obtain excessive remuneration.

Under the provision in the autumn legislation the minister's power applies only to what I would refer to colloquially as the new common law — that is, the so-called common-law regime that was brought in under that legislation. However, the minister has now decided that he needs to apply it to what I would refer to as old common-law power, which relates to the so-called common-law legal actions brought under the provisions that were in operation until 12 November 1997. That bears out the argument the opposition has been putting for a long time — that common-law legal proceedings are inherently prone to abuse through the making of dubious claims and that they are taken advantage of by some sections of the legal profession in order to earn excessive remuneration. A law firm cannot be reproached when a lawyer acts properly to assist his or her client and obtains appropriate remuneration as a result. If the system is inherently defective it is a matter for government and Parliament. However, as I said, a minority of law firms may abuse the situation to extract excessive remuneration.

The fact that the minister wants powers relating to both the old common-law and new common-law regimes goes beyond any concern about a minority of law firms seeking to abuse their position. It raises the issue of the common law being inherently prone to the running up of large legal costs — and the higher the legal costs that are incurred the less funds that are available for paying compensation to injured workers. That was one of the reasons for the opposition saying during the autumn debate that the government was being foolish in seeking a return to the regime of so-called common-law legal actions. The minister now seems to be fearful of a possible cost blow-out, and clause 43 is one means by which he seems to be attempting to address it.

The most significant aspect of the Workcover and occupational health and safety provisions appears in clause 41, which alters the time available for the authority or a self-insurer to make a determination about whether a worker has a serious injury. The procedures for making that determination are set out in the legislation. The worker has to apply for a determination and the authority has to say yes or no. The bill extends the time available for the making of a determination from 120 days to 210 days. That is another example of a measure being needed to patch up legislation put through the house by the government in the autumn sessional period.

The second-reading speech avoids making an admission that the bill deals with an error — or to be more accurate, a misjudgment — in the autumn legislation. It refers only to the 120-day period falling within the Christmas holidays and the need to deal with a large number of applications. The second-reading speech does not admit that a conscious decision was made when drafting the autumn legislation to change the method of operation of those provisions and to set a different cut-off date. Under the provisions that stood before the introduction of the autumn legislation, the cut-off time was based on the bringing of legal actions, and it was set at December this year.

That was revamped in the autumn legislation to say that a serious injury application needed to be made before 1 September. So a conscious decision was made in the autumn legislation to bring in an arrangement that would inevitably cause a last-minute flood of applications to be lodged up to the cut-off date.

Under the previous mechanism, where the cut-off was based on the issuing of writs rather than applications for determinations, the making of further applications would have been more spread out. So in bringing in its autumn legislation the government clearly miscalculated in not addressing the fact that its mechanism would tend to bunch the timing. That is not to say that its mechanism might not have been an improvement, but certainly this was a consequence that ought to have been addressed but was not.

More serious than that is the question of the total number of applications that came in during the last few weeks of the new cut-off period that the autumn legislation set. In his second-reading speech the minister said more than 2000 new applications were lodged during the last few weeks of August and that the increase was not predictable given the information available to Workcover and its actuaries.

If I recall correctly, during its briefing on the bill the opposition was told by departmental officers that 2200 new applications had been received. That flood of applications goes to the heart of the key policy issues involved in workers compensation, including common-law proceedings and the financial position of the Workcover scheme.

The opposition's argument all along has been that common-law proceedings for workers compensation have proved to be inherently prone to abuse. They are particularly prone to constant endeavours to broaden the scope of legal proceedings by finding new ways around whatever rules are prescribed by government and Parliament.

It is also an inherently unfair way of trying to provide compensation to injured workers, because the compensation depends not on the extent of the injuries and other personal circumstances of the workers but on the workers' ability to prove negligence. It also depends in fair measure on the skill of the law firm that the injured workers may engage and on a lot of other factors that do not go to the merits of the amount of compensation that injured workers should receive on account of their injuries.

Workcover has been constantly prone to attempts to broaden the scope of common-law proceedings whenever they have been available. That was the reason, alongside the unfairness to injured workers, that led the previous government in 1997 to conclude that the so-called common-law regime should be replaced with a system of guaranteed statutory benefits.

Of course, this government disagreed with that and has since insisted on bringing back that so-called common-law regime. The fact is that opposition members and other people experienced in the field have warned the government time and again that Workcover is inherently prone to that sort of escalation in claims. It is highly implausible for the minister to say in his second-reading speech that a sudden increase in the number of applications was not predictable.

There is a further twist to the matter. The minister's statement in his second-reading speech contradicts the line of argument he tried to run in a news release he issued on Monday last, 23 October. He tried to argue that under the previous government Workcover premiums were artificially suppressed. He did so on the basis of a recent actuarial valuation which, so the minister says, puts the revised estimate of the unfunded liabilities of the scheme at $579 million as at June 1999. From that the minister tried to say that the previous government kept the premiums artificially low. That totally contradicts the argument the minister put in the house that the increase was not predictable.

If what the minister said in his news release were correct — that the previous government had known of the build-up of common-law actions and artificially suppressed the premiums — he has misled the house. It is a pity that the minister is unlikely to be in a position to respond in closing the debate, because I would like him to tell the house and the public which statement he stands by — the statement in the second-reading speech or the statement in the news release issued on Monday — because he cannot have it both ways.

The flood of applications that have been received in the closing days of the old common-law period results from events that have occurred predominantly during the Labor government's term in office. Therefore the minister is not justified in automatically putting responsibility for all that has happened under the present government onto the previous government or, because of the way events have unfolded in his government's term of office, retrospectively calculating back to June 1999 and saying that the Kennett government ought to have known what that figure was.

But even more significant is the question of how candid, open and accountable the minister is being on the issue. We know from his news release of Monday last that there has been an independent actuarial reassessment of the financial position of Workcover. We know that because the minister has selectively released one figure from the reassessment — the figure as at June 1999. We also know that if an actuarial reassessment has been done there is much more information available than just the one figure.

**Mr Helper** — My point of order, Honourable Deputy Speaker, is on the question of relevance — or on the question of courteously informing the honourable member. Does he realise the house is discussing the Transport Accident (Amendment) Bill rather than Workcover-related matters?

**Mr CLARK** — On the point of order, Deputy Speaker, I am speaking to clause 41, which amends the Accident Compensation Act of 1985 in relation to common-law proceedings. That is the issue I am addressing.

**The DEPUTY SPEAKER** — Order! The debate has been wide ranging. As the honourable member for Box Hill says, section 41 specifically refers to the Accident Compensation Act, so I do not uphold the point of order.

**Mr CLARK** — As I was saying, the minister has made public one figure, but there will be many more figures in the actuarial review. He owes it to the Victorian people in the interests of informed debate to make public the entire actuarial review, particularly the most recent information. Although the recalculations as at June 1999 may be of historical interest and good for debating purposes, what really matters to the people of Victoria is the current financial position of the Victorian Workcover Authority, including the authority's current recalculated annual costs.

The government says it has set premiums at an average of 2.22 per cent of payroll. It has included a safety margin in that, but we do not know how much that safety margin is being eroded by the flood of claims

that has come in during the administration of this government.

The issue is so significant that the Auditor-General has qualified his audit report in the *1999–2000 Financial Report for the State of Victoria* because of what he refers to as the:

> … greater than initially anticipated claims lodged with the Victorian Workcover Authority under the provisions of the Accident Compensation (Common Law and Benefits) Act 2000.

He also says:

> At the time of preparation of the financial report, the impact of these claims on the state's liabilities and its operating surplus cannot be reliably determined.

The issue has held up the full and complete reporting of the entire state's finances. The minister now has — and presumably had on or about 19 October when the Auditor-General's certificate is dated — a full and recent actuarial review which contains not only historical but current and up-to-date data. In closing my remarks on the bill, I call on the minister in the interests of openness and accountability to immediately make public the entire actuarial report.

**Mr LONEY** (Geelong North) — The Transport Accident (Amendment) Bill is very important legislation. I am pleased that the government has introduced a bill which is aimed at addressing inequities in the current legislation, returning benefits that are in line with reasonable community expectations and standards, rectifying some anomalies in the act, tightening up some financial provisions to achieve cost efficiencies and, importantly, improving benefits for claimants in appropriate cases.

I will refer briefly to two clauses. They are instructive and in some way go to the heart of the difference between the attitudes of the opposition and the government to measures governing authorities such as the Transport Accident Commission. The TAC was a creation of a former Labor government and the previous coalition attempted to sell it off. When that did not happen, amendments were made to restrict benefits available under the act.

Clause 6 inserts a provision that makes clear the TAC is no longer a reorganising body. In simple language, it means that the government will no longer have a policy position that the TAC is an organisation earmarked for privatisation. The section was there for the purpose of establishing the TAC as a reorganising body to set it up and sell it off. Today the lead speaker for the Liberal Party, the Deputy Leader of the Liberal Party, talked a lot about the government considering the TAC to be a milch cow. I suggest that nothing could be a stronger expression of the view that the TAC is a milch cow than not caring at all about what benefit the TAC provides to people involved in transport accidents and considering that liquidation is the only benefit of the authority. That was the previous government's policy in 1992. Section 10 was inserted specifically for that purpose. It has remained there so it must be assumed that that was the previous government's policy, to be implemented when its members thought they could get away with doing so. To talk about things such as milch cows reflects hypocrisy of a fairly high order.

The other provision that goes to the heart of the matter is clause 4, which I am also delighted to see included in the bill. It will give coverage to cyclists who on a journey to or from work collide with a stationary vehicle. Honourable members who were here in the previous Parliament will understand that the history of the clause includes what happened in the case of Mr Dale Sheppard. In 1997 Mr Sheppard was seriously injured when, riding home from his part-time job, he collided with a parked car. He had no coverage under the Transport Accident Commission as it stood at that time because the previous government had transferred journey accidents as they were called to Workcover but had managed to exclude coverage for a person on a bicycle who collided with a stationary vehicle. Mr Sheppard and any other person who happened to be caught in a similar situation was left without coverage. In reinstating coverage to cyclists, clause 4 meets fully the commitment that the government gave prior to and during the election campaign that it would reinstate cover to cyclists who were involved in an accident while travelling to and from work. I welcome that provision, which is very important.

Today the lead speaker for the Liberal Party seemed to be welcoming the provision but was also suggesting that the government had done less than it ought or had waited too long. I point out that in 1992 the coalition government changed the legislation. It had seven years during which it could have addressed the matter. Mr Sheppard's accident happened in 1997, so if the problem had not come to the attention of the previous government before that, it certainly came to its attention at that time. Having said that the government had waited too long to introduce the amendment, the Deputy Leader of the Liberal Party admitted that immediately after Mr Sheppard's accident she received a letter from the then Leader of the Opposition, now the Minister for State and Regional Development, asking for a change to the legislation. What has the Deputy Leader of the Liberal Party done since then? Did she raise her voice in the party room or the cabinet, or is

this yet another of the many cases honourable members are hearing about lately? It appears that almost every member of the Liberal Party fought vigorously on certain issues but they were rolled in the party room under the former government!

I welcome the bill. It is a major step forward in providing coverage for people involved in or affected by road accidents. I hope the bill is passed speedily and that its benefits flow speedily to the people affected.

**Ms BURKE** (Prahran) — In speaking in the debate on the Transport Accident (Amendment) Bill, I indicate that for some time the issue has been particularly close to my heart. Many transport accidents have resulted in tragedies in more ways than one. The bill seeks to remedy some of the problems. Particularly close to my heart is section 57, which affects what is commonly known as the Phillpott case. As a member of the public I have been reading about that case over the years. It involved a long court case that did not finish until 1998. Anyone who reads the inch-thick clippings in the library could not help but be moved by that case.

On 6 September this year, when I sought leave to have introduce a private member's bill entitled the Transport Accident (Surviving Spouse Death Benefits) Bill, leave was refused. I understood that was because the minister had full intention of including the provisions of that bill in this measure. But when the government's bill was introduced I realised that the implication was purely political, based on my seeking to introduce a private member's bill, and that the minister's actions did not follow the rhetoric. When a member seeks to introduce a bill he or she ensures that the issues important to his or her heart are incorporated in it so that the bill will benefit those who have been discriminated against prior to the legislation being introduced and passed.

I would have to query how the minister could possibly leave out that most important part of the bill. Let me outline why it is so important to me, not because I am the shadow minister responsible for the TAC act, but because of my responsibility as shadow Minister for Women's Affairs.

These days there is much discussion in the broader community about the value of the home carer. There would not be one honourable member in this house who could say that his or her mother or grandmother — whoever took care of them — had not contributed to the high standard of his or her achievements in life.

Unfortunately, and I suspect unintentionally, in the past the principal act has discriminated against women who are carers and who undertake home duties, probably mainly due to the fact that it is only the earner that earns dollars that is valued.

That is demonstrated by figures from the Commonwealth Office of the Status of Women. In September 1998 more than 50 per cent of women were engaged in part-time or full-time home care work or looking after children. When I speak of carers I am also talking about people who look after the aged and are so valuable to this community. Volunteers are extremely valuable. Every time we have a volunteer celebration or an international volunteer year, everyone is up there saying how wonderful they are, but it rarely gets into the legislative framework.

The act recognises neither the financial nor the social worth of carers in our community. It does not recognise the impact of the loss to a family unit and the community at large when carers are injured or incapacitated. Nor does it recognise the enormous burden placed on a family when the prime care giver is killed as a result of an accident.

When I read some of the words in the articles about Mr Phillpott, it breaks my heart. I have never met Mr Phillpott, but the man has made an enormous impact on me and many others.

The bill I attempted to introduce sought to give formal recognition to people who provide home care because I believe the broader community now recognises that they have some worth. In my bill I talked basically about section 57 of the principal act.

Section 59 has some impact on what is happening with payments to the family and children. That could have been amended, if the government had wanted to go that way, but to me the most important part of the bill — I will read from my private member's bill that never actually got in — —

**Mr Thompson** — On a point of order, Mr Speaker, the honourable member for Prahran appears to be reading from a document. I ask whether she can make that document available to the house.

**The DEPUTY SPEAKER** — Order! The honourable member for Prahran had not started to read the document. I will take the advice of the Clerk. If the honourable member intends to quote from it, she needs to make it available to the house.

**Ms BURKE** — I am happy to do that. I am referring to clause 4, which states:

> In this section 3 of the Principal Act after the words "the person" in the definition of "surviving spouse" add —

> "and in section 57 includes a spouse that may not be a dependent spouse".

It goes on to deal with the matter of an earner as opposed to a person. It also goes on to the detail of the formula that has to be involved. The formula has been updated, so I will give that to the house.

As I said, I think the broader community today recognises the value of the home carer, and it is important that legislators like us also recognise it.

Reading about the lives of these people when the home carer dies makes you aware that the effect is devastating. Put yourself in the position of this family. The poor woman is driving down the road, perfectly innocently. Her two children are in the back of the car. A pole falls straight on her and she is killed in front of them. Not only have they lost their mother, but they have also suffered tremendous trauma. While the payments and all those things will assist — and I know you cannot do everything — it is extremely difficult for the partner to continue life as normal. I think the issue of the payment is absolutely vital.

It is most disappointing that the appropriate amendment was not made earlier. The former government was aware of the need for amendments to the TAC act and this is one that was with the former Attorney-General, Jan Wade, to look at. We can carry on about who brought it in and who was first and who was not first, but the important thing is that this bill is before the house today. There are not many people who would be in this situation. That is the strange thing about the government's failure to bring in an amendment. I understand that a tiny little word change can often have a dramatic economic effect on an organisation like the TAC, but when one takes into account the income of the TAC and the comparatively small amount that is actually involved in improving the quality of life for someone like Mr Phillpott, it is hard to work out why such a provision has not come into the house earlier.

I am not quite sure whether the bill covers the situation of the family of the gentleman who was killed on the Eastern Freeway when a rock was thrown from a bridge through his windscreen. Compensation was not payable. That is another area in which I think the principal act is most unfair. I cannot seem to find the amendment that deals with that problem.

I am most disappointed that the minister has at the last minute brought in an amendment to deal with something as serious as an election promise of the government. I think everybody believed it would be before the house much earlier than this.

I wish to leave time for other honourable members to speak, but I repeat that the issue that is important to me is the fact that from now on women will be recognised as contributors to society, and that after dreadful accidents there will be some sort of compensation to help those who are left behind to cope with their lives and to give them a much better quality of life.

**Mr HELPER** (Ripon) — It gives me great pleasure to support the Transport Accident (Amendment) Bill and far more unequivocal pleasure than it obviously gave the Liberal Party's lead speaker. One did not quite know whether at the end of her presentation she was going to oppose the bill or support it.

The opposition's attitude to the bill needs to be put into historical context. Honourable members remember, and certainly Victorians remember, the agenda of the privatisation of the Transport Accident Commission (TAC) peddled by the previous government. The then opposition and the Royal Automobile Club of Victoria should be thanked for their campaign to scuttle it. It was a campaign mounted at the height of the former Kennett government's frenzy to sell off everything that was not nailed down — and some of the things that were nailed down.

To put a historical perspective on that dark era I will quote from an article in the *Herald Sun* of 12 July 1993 headed 'RACV hits secrecy'. The RACV's chief executive, Mr Keith Blyth, said:

> They were hell-bent to do as they were told, which was to sell the TAC and get money into the government coffers.

He continued:

> They're flogging a product, they're flogging an entity to get money, and this is an entity that looks after paraplegics, looks after people who need instant hospitalisation.

The article concludes with a quote from Mr Stephen Mayne, who has become very much an expert on the psyche of the former government. It states:

> Mr Stephen Mayne, a spokesman for the Treasurer, Mr Alan Stockdale, said today the government had made it clear it would only privatise the TAC if it benefited the public.
>
> He said Mr Kennett's comments were simply that the RACV shouldn't 'go out and run a public campaign before we've made a decision'.
>
> We've told the RACV that we're open to discussions and that we're working up a preferred position, which we'll then discuss with the interested parties'…

It is typical of the former government's pattern of behaviour to work up a proposal, present a fait accompli and then talk to people. Fortunately

Victorians were spared the sale of the TAC because the RACV and the then opposition opposed it.

The bill has positive components. It reflects the government's commitment to the Transport Accident Commission and the improvement of benefits to injured motorists and their families. Some key provisions of the bill include a 4 per cent increase in loss-of-earnings payments backdated to 1 July and the introduction of the GST.

The payment of lump sums to non-earning spouses following the death of accident victims is a recognition of the contribution made to family wellbeing by a non-earning spouse. I could not quite understand the comments made by the honourable member for Prahran, but I would have thought the issue she raised sincerely and with compassion is addressed in the bill and again in the amendments.

The bill corrects some anomalies providing an entitlement to TAC benefits for cyclists travelling to and from work who hit stationary vehicles. This is an overdue and well-worthwhile provision. Again I reflect on the attitude of the then government, now opposition. The 1994 amendments introduced coverage for cyclists for the first time. At the time the present Treasurer raised the issue of cyclists hitting stationary vehicles. Why did the government of the day — some six years ago — not take up the issue?

**Mr Nardella** — Because they were hopeless!

**Mr HELPER** — They did not care and they were hopeless. The bill makes corrections and updates the lodgement of claims, which is welcome in this day and age.

I represent a country electorate to which the bill is important because it provides a spouse with an entitlement for visiting expenses when one partner is hospitalised more than 100 kilometres away. That is a particularly important provision for country Victorians, given the great distances that are travelled and the trauma the family as a whole goes through at the time of an accident and the hospitalisation of a family member. Removing the burden of transportation costs for visitation is something country Victoria will welcome.

Given that a number of other speakers wish to contribute to the debate before the house moves on to other business, I will conclude my remarks.

**Mr SMITH** (Glen Waverley) — The Transport Accident (Amendment) Bill is an interesting bill. Since its introduction the Minister for Workcover has circulated an amendment to section 57 of the principal act substituting the words 'a person' for the words 'an earner'.

The amendment is the result of the incredible amount of work carried out by the honourable member for Prahran, and I pay tribute to her. The amendment is a direct result of the Phillpott case where the deceased spouse was a non-earner. In modern parlance one would say she was a housekeeper because words such as 'housewife' are not used anymore; they are non-words. Perhaps one could say 'domestic services'.

**An honourable member** interjected

**Mr SMITH** — Do you call them housewives? What do you call them?

**The DEPUTY SPEAKER** — Order! The honourable member for Glen Waverley should return to the bill.

**Mr SMITH** — Everyone is trying to be so politically correct that I dare not put a foot wrong. However, the deceased did not work. The honourable member for Prahran identified the anomaly that because the deceased did not work her spouse was not able to benefit from the Transport Accident Commission. I am sure other honourable members who realise the work the honourable member for Prahran has done will add their congratulations.

I refer now to the poor performance of the Minister for Workcover who passed the amendments over the table as the debate commenced.

**Mr Nardella** interjected.

**Mr SMITH** — The honourable member for Melton must take criticism as everyone must — that is, provided it is constructive. Due notice of amendments should be given so that those who understand the technicalities are able to examine them. If they are circulated at the last minute mistakes may not be detected.

I turn now to the issue of lump sums. I know of a case — I will refrain from giving details for fear of identification — where millions of dollars were given to a person who when a boy was involved in a bicycle accident while delivering papers and became a quadriplegic. When enormous sums are allocated, I am concerned for people who do not have the necessary family support.

In those cases many seemingly professional people are involved in buying properties and investing the money

in ways that concern me. I should have thought the TAC would be more careful in the appointment of trustees when huge sums of money are distributed. A person with a good brain may be able to convince the TAC that he or she has the ability to make decisions that will ensure the money awarded will last for the remainder of the incapacitated person's life.

I am trying to speak about the issue in a general way for fear of identifying the case to which I am referring, but I hope the minister will take my remarks on board and ensure that the TAC tightens the rule about how large sums of money are administered. People awarded huge sums of money possibly feel at the beginning that they have had an extraordinary win. However, the bottom line is that they should have access to every facility available for the remainder of their lives. If a person is incapacitated to the extent that they must be fully cared for both day and night, it is incumbent on the TAC to ensure that the way the money is spent is continually monitored.

I am getting close to the bone on this issue, but I am trying to say that I am concerned that the TAC has no responsible hold on the money it awards. The people awarded the money probably have people close to them such as solicitors, medical carers and the like but they too must be prevented from misusing the money.

On the passage of the bill I seek an assurance from the Transport Accident Commission that large sums of money will be continually monitored to prevent any possibility of funds being misused or misappropriated.

Earlier I referred to a case where a huge amount of money, running into many millions of dollars, was passed across to a person who is a quadriplegic and is responsible for spending it. In situations involving vast sums of money there should be a trustee provision within the legislation that stops a person from making unwise decisions or, even worse, preventing other people who are very close to the recipient seeking to selfishly profit from the arrangement. Honourable members are probably aware of the case involving the fellow in a wheelchair: his mother got the money, took it down to the casino and gambled it away. The fellow in the wheelchair lost the lot. His mother was in the newspapers and the whole world was there to condemn her. The point is that provisions are needed to ensure that there is a public responsibility — —

**Debate interrupted pursuant to sessional orders.**

**The SPEAKER** — Order! The time ordered by the house for consideration of bills has expired.

As the required statement of intent has been made pursuant to section 85(5)(c) of the Constitution Act 1975, I am of the opinion that the second and third readings of the bill require to be passed by an absolute majority. As there are fewer than 45 members present, I ask the Clerk to ring the bells.

**Bells rung.**

**Members having assembled in chamber:**

**Motion agreed to by absolute majority.**

**Read second time.**

*Circulated amendments*

**Circulated government amendments as follows agreed to:**

1. Clause 3, page 5, after line 21 insert —

   '(a) In section 57 of the **Transport Accident Act 1986** —

   (a) for "an earner" (wherever occurring) **substitute** "a person";

   (b) for "the earner" (wherever occurring) **substitute** "the person".'.

2. Clause 30, omit lines 4 to 17 and insert —

   '(17A) For the purposes of determining whether there is an impairment or loss of body function as defined in paragraph (a) of the definition of serious injury in sub-section (17), psychological or psychiatric consequences are not to be taken into account.'.

*Third reading*

**Motion agreed to by absolute majority.**

**Read third time.**

*Remaining stages*

**Passed remaining stages.**

## FAIR EMPLOYMENT BILL

*Second reading*

**Mr BRACKS** (Premier) — I move:

That this bill be now read a second time.

The Fair Employment Bill is the result of a comprehensive consultative process for the development of a fair system to govern Victorian workplaces not covered by federal awards or agreements.

The bill is an integral part of this government's commitment to fairness and equity and to restoring the balance in Victorian workplaces. It represents a significant turning point to redress the plight of the working poor in Victoria. It also signifies this government's commitments to improving the delivery of employment information and services for all Victorians.

The key elements of the new fair employment system maintain the current unitary system of industrial relations in Victoria for agreement making, unfair dismissals and freedom of association. It does, however, replace the unfair and inequitable schedule 1A safety net of five minimum conditions contained in the federal Workplace Relations Act for employees not covered by a federal award or agreement in Victoria.

This schedule 1A system applies to approximately 33 per cent of the Victorian work force — some 561 000 employees. Of these, some 205 000 are professionals and managerial employees who earn in excess of the minimum conditions and are largely regulated by common-law contracts of employment.

Of the rest — some 365 000 employees — it is estimated that two-thirds receive only the five minimum entitlements. These approximately 240 000 employees, or 14 per cent of the Victorian work force, will see an improvement in their conditions of employment. The others will receive formal protection for the entitlements they are already receiving.

**Federal or Victorian regulation**

Before turning to the key features of the bill, it is important to note the reasons why the government is introducing Victorian legislation rather than pursuing changes to the existing federal laws.

The policy of the Victorian government is to support a unitary approach to industrial relations in Victoria, but only if that system is fair and reasonable. In this light, discussions were held earlier this year with the commonwealth to discuss how the Victorian government's policy could be implemented with respect to schedule 1A workplaces. However, the commonwealth did not agree to proposals that, consistent with our policy, would have made the federal industrial relations system fair for Victorians.

Around the same time as those discussions, the Growing Victoria Together summit unanimously recommended the establishment of an independent task force to review the current industrial relations framework that applies in Victoria, and to report to the government on how to improve the system.

This independent task force, with employer organisations, unions and community representatives, undertook an extensive and comprehensive review of Victoria's system of industrial relations. They assessed the adequacy of Victoria's laws, particularly in light of the social and economic effects of deregulation experienced since 1992.

The task force found that the industrial laws governing Victorian workplaces not bound by a federal award or agreement are inadequate and that since the deregulation of the industrial system in 1992, Victorian schedule 1A employees are subject to the least number and lowest level of entitlements of any industrial system in operation in Australia. Schedule 1A employees are also lower paid compared with the Australian average and have been described as Victoria's working poor.

The task force found that in comparison to other states there was also no significant increase in jobs growth or a decrease in unemployment levels in Victoria since 1992 as a result of deregulation.

The majority of the task force concluded that the pursuit of further federal regulation was not a viable option at this point in time and accordingly, in the absence of a fair national system of workplace laws, the Victorian government should establish a fair employment system for Victorian workplaces not covered by a federal award or agreement.

It is significant that nothing has been done by the commonwealth to redress the significant disadvantage experienced by Victorian schedule 1A workers under the federal Workplace Relations Act since this system was introduced in 1996.

The task force further recommended that industrial relations developments at a national and state level should be closely monitored and that as far as possible there should be cooperation and harmonisation of commonwealth and state arrangements.

The government agrees with this view. The Victorian government will review its position if and when the commonwealth Parliament introduces a fairer and more equitable system of workplace laws which would apply to all Victorian workplaces and that are consistent with the policies of this government.

I now turn to the key features of the Fair Employment Bill.

**Objects of the bill**

The principal object of the bill is to provide a framework for fair employment standards that supports both economic prosperity and social justice.

The legislation will achieve this through a number of key objects, including promoting, as far as possible, consistency with the federal system, but also through ensuring fairness and equity for those covered under the Victorian system.

Appropriate and fair employment standards for new industrial relations laws must be relevant for both today's and the future work force.

**The ACTING SPEAKER (Ms Davies)** — Order! There is too much audible conversation in the chamber. I ask members to lower their voices or leave the chamber.

**Mr BRACKS** — The fair employment system has been developed to suit the needs of both employers and employees, to accommodate emerging trends in employment patterns and arrangements, and to balance both economic and social needs.

**Who does the bill apply to?**

The Fair Employment Bill will provide protection to persons currently not protected by federal awards and agreements.

Clothing outworkers and home-based clerical workers will also be covered as employees for the purposes of the Fair Employment Bill.

Many clothing outworkers are subjected to low wages, long hours of work, poor workplace health and safety practices, job and income precariousness and underpayment or non-payment of remuneration. The fact that many of these workers are living and working under Third World conditions in our own community cannot continue to be allowed.

The Fair Employment Bill represents part of this government's commitment to addressing the plight of outworkers in this state.

The Fair Employment Tribunal will also be given the jurisdiction to determine whether or not a class of persons working as contractors would be more appropriately regarded as employees. This provision has been designed to protect the low paid and vulnerable who have been forced, either directly or indirectly, to enter into contractual arrangements to perform work that has traditionally been undertaken by employees. It will prevent the undermining of the fair employment system.

**Legislated minimum standards**

The centrepiece of the new Fair Employment Bill is the introduction of a fairer system of employment conditions, which includes a new legislative safety net of standards for Victorian employees.

This safety net will only apply to employees covered by federal awards where particular legislated minimum conditions of employment, such as long service leave, are not provided in such federal awards and are intended to have no application to employees covered by federally registered agreements. This is consistent with the way schedule 1A and other state legislation currently interacts with federal awards.

Victorian employees will be entitled to minimum standards of annual leave entitlements, personal leave (sick and carer's leave), bereavement leave, parental leave, long service leave, hours of work provisions, public holiday entitlements, clear definitions of employment categories, notice on termination of employment, and a general requirement to consult with employees over workplace changes which will impact on jobs and security of employment.

The Fair Employment Bill will contain simple but fair hours of work provisions for employees. Currently, there is no provision to regulate the hours of work for employees. Schedule 1A workers have no entitlement to even be paid for work in excess of 38 hours in a week — no entitlement!

This issue will be rectified in the Fair Employment Bill by setting a minimum standard for employees to work 38 hours per week averaged over a four-week period. Any variations to this, including the determination of appropriate forms of remuneration or compensation for work undertaken in excess of the minimum, are to be set and determined by the Fair Employment Tribunal on either an industry or occupational basis.

Simple but clear definitions will also be provided for the basis of engaging a full-time, a part-time and a casual employee. The Fair Employment Tribunal will have the capacity to vary or add to these definitions on an industry or occupational basis to take account of the variances in work across industries and businesses in Victoria.

Employees will be now able to access personal and bereavement leave. These provisions are consistent with minimum federal award standards. Eight days sick leave will be available. Employees will be able to

access up to five days in each year of their accrued sick leave to care for a member of their immediate family or household in the event of illness. They will also have access to two days leave per occasion of bereavement. This is an important step which recognises the need for flexibility and protection for employees at these pivotal moments in family and community lives. These basic and fair employment entitlements have previously been denied to schedule 1A employees.

In recognition of the changing patterns of the work force and the high proportion of women in Victoria who work as casual employees, it is also proposed to give long-term casual employees access to unpaid carer's, bereavement and parental leave. A long-term casual is defined as a casual employee who has been employed for at least 12 months on a regular and systematic basis for a sequence of periods of employment.

These conditions will enable many casual employees to have a better balance between their work and family lives. It recognises that longer term casuals should not face discrimination because they are unavailable to work as a result of a bereavement or having to care for a family or household member who is ill.

This represents an important and progressive response to the changing nature of the work force, in particular by addressing the growth in the numbers of working women who are employed on a casual basis.

In addition, the Fair Employment Bill will clarify the rights of casual employees' entitlement to long service leave.

**Industry sector conditions**

In addition to the legislated minimum conditions, the Fair Employment Tribunal will be able to declare a condition of employment in relation to employment matters, including matters such as remuneration, allowances and related issues.

The existing 18 industry sector orders which currently regulate minimum wages and work classifications for schedule 1A employees will be maintained on an interim basis and will form the regulatory basis for these conditions. The tribunal will then have the capacity to amend, vary or add to these sectors on an industry or occupational basis.

In considering whether to make an industry sector condition of employment, the tribunal must consider whether a federal award applies to the relevant employees. If there is a federal award that substantially governs the employment conditions of particular employees, the tribunal must exclude those persons from the application of the order unless it is satisfied that the exclusion would not be in the public interest.

In those cases where employees are covered by a limited or single issue federal award or agreement, for example one that relates only to superannuation or to wage rates, the legislated minimum conditions and the industry sector conditions will apply where they are not inconsistent with federal conditions.

Employees who earn in excess of a designated amount of remuneration in each year — 'ineligible employees' — will be excluded from the application of industry sector orders. The remuneration limit is linked to the annual remuneration cut-off rate for accessing a remedy for an unfair dismissal for a non-award employee under federal laws, which is currently $71 200.

**The Fair Employment Tribunal**

The Fair Employment Tribunal will be headed by a president and supported by vice-presidents and commissioners sufficient for the size of the jurisdiction and its workload. Requirements for appointment to the tribunal will be consistent with those for the Australian Industrial Relations Commission.

The bill also contains provisions to facilitate the dual appointment of tribunal members to both the Fair Employment Tribunal and the Australian Industrial Relations Commission.

The major functions of the tribunal are to administer the fair employment conditions; to settle workplace grievances and provide mediation for industrial disputes; and to provide a low-cost, efficient small claims jurisdiction.

The tribunal will also have a general educative role to promote the tribunal, its role and functions within the broader community. This will supplement, rather than replace, the educative role about the fair employment system provided by the information services agency.

**Grievance resolution and mediation powers**

The Fair Employment Tribunal will be provided with appropriate powers to ensure that employers and employees may obtain the prompt resolution of employment-related grievances. Grievances are generally required to relate to how the terms and conditions of employment under the act or an industry sector order apply to an employee.

Other employment-related grievances will also be able to be heard by the tribunal provided they are not trivial or against the public interest. The parties will be required to have made a genuine attempt to resolve the grievance themselves. Conciliation and mediation powers will then be exercised before any arbitral powers to resolve a grievance, unless the tribunal considers that this would not assist.

The Fair Employment Bill will also provide for a system of mediation or conciliation for industrial disputes.

**Small claims jurisdiction**

In addition to resolving workplace grievances, the Fair Employment Tribunal will provide a small claims jurisdiction for the non-provision of wages and conditions of employment and will be able to provide monetary remedies up to a specified limit (currently $20,000). Independent contractors will also have access to this avenue of redress to recover their contractual entitlements. This jurisdiction will provide an alternative mechanism to pursuing actions through the civil courts on these matters. It will be more accessible, low cost and focused on the resolution of the matters at hand.

**Recovery of wages from principal contractors**

Under the Fair Employment Bill, employees of contractors are able to recover unpaid wages and entitlements directly from the principal contractor where the contractor has not paid entitlements, unless the principal contractor has a written statement from the subcontractor that wages have been paid. The principal contractor may also withhold any payments due to the subcontractor under contract without penalty, until a guarantee has been received that wages have been paid.

This provides a simple procedure for employees to secure funds for work undertaken for a principal contractor.

**Unfair contracts**

An important mechanism included in the Fair Employment Bill is the ability of the tribunal to review a contract for services which is alleged to be unfair. An unfair contract is defined as a contract that is harsh, unconscionable or unfair; is contrary to the public interest; or provides for remuneration less than the person would have been entitled to as an employee under the act, an industry sector order, or a federal award or agreement.

A contract may become unfair either at the time it was entered into, or at a later period of time. This will provide an avenue for redress for independent contractors whose contracts have become unfair because of the behaviour of the contractual parties or their agents, or because of outside factors. For instance, a contract may become unfair if external costs that impact on the provision of the contract for services increase and were not accounted for in the level of remuneration agreed to within the contract.

**Compliance**

One of the underlying themes of the new fair employment system is improved services and resources for Victorian employers and employees in the area of information and advice on their rights and entitlements.

Since the contracting out of the Victorian industrial laws in 1996 to the commonwealth government, compliance resources for Victoria have effectively decreased by 25 per cent, with offices now available only in Melbourne, Geelong and Bendigo to service the needs of the entire state.

The new information services agency will provide an invaluable service for the metropolitan, rural and regional areas of the state. This will be a particularly important service for small businesses and vulnerable employees, many of whom are not members of employer organisations or unions, and require information, advice and assistance on employment matters.

**Recognition of organisations and right of access**

Rather than replicate the registration provisions for employer and employee organisations that currently exist under the federal Workplace Relations Act, the Fair Employment Bill makes provision to simply recognise organisations that are registered under the federal act for the purposes of the fair employment system. A recognised organisation will be able to appear before the Fair Employment Tribunal in matters which affect their members or eligible members. In addition, it will provide the basis for an organisation having the right to enter a workplace based upon the eligibility rules of the federally registered organisation.

Authorised representatives of organisations are to have the same right of access into workplaces covered by the Fair Employment Bill as currently applies for those workplaces governed by federal awards and agreements under the Workplace Relations Act. This right of access is given to inspect records with respect to compliance matters, or to converse with members or eligible

members during their non-working time or meal breaks.

**Summary**

The Fair Employment Bill will provide for a system of fair employment standards, in particular for those Victorian employees not covered under a federal award or agreement. It will replace the current dual safety net of minimum wages and conditions that applies in Victoria that is unfair and inequitable for many low-paid and vulnerable workers.

These reforms will deliver on this government's commitments to look after the working poor in Victoria and to provide legislation in the absence of a fair national system of workplace laws.

They also provide overdue protection for the most vulnerable of workers who have fallen totally through the cracks of federal regulation — outworkers and low-paid dependent contractors.

The fair employment system will provide for surety and business confidence by providing a fairer and more consistent safety net of minimum wages and conditions for all Victorian businesses.

It will also provide more certainty for the Victorian community by providing a stronger independent umpire — the Fair Employment Tribunal — to mediate industrial disputes.

I commend the bill to the house.

**Debate adjourned on motion of Dr NAPTHINE (Leader of the Opposition).**

**Mr BRACKS** (Premier) — I move:

That the debate be adjourned until Thursday, 9 November.

**Dr NAPTHINE** (Leader of the Opposition) — On the question of time, Honourable Acting Speaker, the opposition is not proposing to amend the motion moved by the Premier, but it wishes to raise some issues concerning the adjournment period of two weeks. The legislation consists of 185 pages — —

**Mr Bracks** — On a point of order, Honourable Acting Speaker, the Leader of the Opposition is speaking on the question of time, but he has not put forward an alternative.

**An honourable member** interjected.

**Mr Bracks** — The form of the house is to put forward a proposition as an alternative to that proposed by the government. That has not been done.

**Mr McArthur** — On the point of order, Honourable Acting Speaker, when the Leader of the Opposition initiated this discussion he made it clear to the Premier that he was not seeking to amend or oppose the motion moved by the Premier. He was seeking advice about the procedures to be undertaken during the two-week adjournment period, and that is entirely in order. That has happened many times in the past, but has never been ruled out of order previously. Those occupying the Chair have allowed opposition members, including members of the Labor Party when in opposition, to ask for assurances and undertakings about the period of adjournment. It has always been held to be in order and should be held to be in order today.

**Mr Batchelor** — On the point of order, Honourable Acting Speaker, the procedures of the house provide that honourable members may move amendments to procedural motions — which the Leader of the Opposition said he was not doing — or for honourable members to speak in support of or in opposition to the motion. The Leader of the Opposition is not speaking in opposition to the motion. The Leader of the Opposition must speak within those constraints. If he speaks on the motion he must do so in opposition to it. I ask you, Honourable Acting Speaker, to determine whether he is speaking in opposition to the motion, and if he is not doing so, to rule that he is out of order.

**Dr NAPTHINE** — On the point of order, Honourable Acting Speaker. Unfortunately, the Premier has misunderstood that the motion before the Chair is for the debate to be adjourned for two weeks.

That is the motion before the Chair. I am entitled to speak on that motion. My entitlement is not jeopardised in any way, shape or form by whether or not I have moved an amendment. I am entitled to speak on the motion before the Chair. I would have thought the Premier had been here long enough to know that.

**The ACTING SPEAKER (Ms Davies)** — Order! I have heard sufficient on the point of order. There is no point of order.

**Dr NAPTHINE** — As I said, the bill is some 185 pages long, it contains 276 clauses and 2 schedules. The second-reading speech itself is 13 pages long. Material provided by the Victorian Employers Chamber of Commerce and Industry (VECCI) suggests that the bill has the potential to affect 80 000 businesses across the state and even the second-reading speech suggests that it has the potential to affect more than 250 000 employees.

So it is a very significant piece of legislation. It has the potential to have a devastating effect on jobs, businesses and the fundamental Victorian economy. Already we have received — —

**The ACTING SPEAKER (Ms Davies)** — Order! I remind the Leader of the Opposition that he should be discussing the motion, which is that the debate be adjourned, rather than beginning the debate on the legislation.

**Mrs Peulich** — That is absolute rubbish.

**The ACTING SPEAKER (Ms Davies)** — Order! The honourable member for Bentleigh should hold her tongue.

**Mrs Peulich** — You should open your ears. That is the most biased ruling.

**The ACTING SPEAKER (Ms Davies)** — Order! The Leader of the Opposition, without interruption.

**Dr NAPTHINE** — I am debating the matter of time — that is, the period for which debate on this bill is to be adjourned. The motion before the house is that the debate be adjourned for two weeks. I am pointing out that the bill has the potential to have a devastating effect on Victorian jobs and the Victorian economy. The minister in the other house has admitted that the bill will cost Victorian jobs. VECCI says it will put more than 22 000 jobs at risk.

Specifically on the issue of time to consult on the bill, VECCI said in a press release today:

> Only weeks after receiving a lengthy set of recommendations from the industrial relations task force and after even less time to commission and analyse a promised economic impact study, the government is now acting with indecent haste to rush through the new IRS in Parliament.

One can only ask why such haste.

VECCI went on to say that businesses have got a lot to lose. It is incumbent on all members of Parliament, with this very large bill and long second-reading speech, to have time to circulate the bill to the 80 000 businesses and the many employers and employees across Victoria who could be affected.

I seek from the Premier an assurance that if more time is required to allow adequate consultation with the community of Victoria about this matter he will give more time to the Liberal Party, the National Party and the Independents to enable them to conduct appropriate consultations within their own electorates and with business communities, employer groups, trade unions and employee groups across Victoria.

This is a very large bill, and although as I said at the outset I am not seeking to amend the period suggested by the Premier I seek an assurance from him that, if more time is required for these adequate consultations, more and appropriate time will be provided to the opposition to do so.

**Mr BATCHELOR** (Minister for Transport) — In speaking in support of the motion I can only agree with the Premier that it is a bit of a catch 22 situation for the Leader of the Opposition to get up after the Premier and then demand assurances in the knowledge that the Premier cannot respond. I understand the opposition will provide leave, and I am sure the Premier will consider that.

However, I can give an assurance to the opposition on behalf of the government that it already has sufficient time to carry out its consultations. The bill will not come back for debate until the middle of November. That will be after a break in parliamentary sittings, during which time the opposition will be able to go out and consult. The government has deliberately brought the bill on at this time in order to enable the opposition to go out and consult the community without having to use up a parliamentary sitting week in an effort to carry out that consultation. There is a break in the parliamentary schedule that will help the opposition. It will provide sufficient time because there has already been extensive consultation on the matter.

The ideas contained in this bill came out of the Growing Victoria summit, which the Leader of the Opposition attended. He understood what was being debated there. The whole of Victoria was brought together — the community, employers, community organisations and unions — to develop ideas to be put forward to Parliament. This sort of thing came out of the Growing Victoria summit. The Leader of the Opposition was there.

But much more than that has occurred. The matter has been before an industrial relations task force, on which employer organisations, trade unions and community leaders worked to bring their views forward. There has been a forum, if you like. Community consultation in which all these issues were worked through has already taken place.

There has been plenty of time already, and in addition to that we are providing the opposition with the — —

**Mrs Peulich** — You are about as credible as a $3 note.

**The ACTING SPEAKER (Ms Davies)** — Order! I remind the honourable member for Bentleigh that her interjections are disorderly.

**Mr BATCHELOR** — There are plenty of opportunities in the future and there have been in the past to allow for consultation. VECCI has been involved in the development of these ideas. It has its own views, that is true, but it has been involved in the development of the ideas right from the genesis.

What we are seeing here, in effect, is the opposition playing catch-up. It has been left out of the process and is pleading for time not to consult but to play catch-up. There is plenty of time for consultation. The opposition is behind the eight ball. It is seen by everybody as being irrelevant, and it thinks performing like this will make it more relevant. That clearly will not be the case.

The opposition will have every opportunity to consult with the wider community. The fact that it has not done so thus far is really a measure of its irrelevance, and we should not pander to that now.

**Mr BRACKS** (Premier) (*By leave*) — I thank the opposition for granting leave. I reiterate the statement of the Leader of the House that there is certainly sufficient time between now and the middle of November for further discussion and consultation. I add that this consultation has been going on for a very long time. In fact, the very body to which the Leader of the Opposition referred, the Victorian Employers Chamber of Commerce and Industry, has been involved in the task force.

**Dr Napthine** — It disagreed with you.

**Mr BRACKS** — It is true that it had a disagreement and produced a dissenting report. Therefore, let us come to the question of time. The issue here is about consultation. There is disagreement from a group about the content of the bill, but that is a different and distinct matter.

*Honourable members interjecting*.

**The ACTING SPEAKER (Ms Davies)** — Order! The opposition gave leave for the Premier to speak. I suggest its members sit there and listen to what he has to say.

**Mr BRACKS** — Clearly there is a difference between someone who disagrees with the bill and someone who requires consultation. The government will be consulting further, as the opposition will be, with all employer groups around Victoria, including VECCI and the Australian Industry Group. It will also consult with groups like the Victorian Automobile Chamber of Commerce, which also supports the bill, and the Victorian Road Transport Association, which also supports it.

It is not as if this bill arose out of a consultation vacuum. I reiterate that, firstly, the bill arose out of the policy of the Labor Party on which it went to the last state election. Secondly, as the Leader of the House has said, it arose out of the Growing Victoria summit — it was one of the recommendations of the summit that was unanimously supported.

**The ACTING SPEAKER (Ms Davies)** — Order! For the second time I suggest that the honourable member for Bentleigh move to her seat. At the moment she is out of her seat and being disorderly.

**Mr BRACKS** — Thirdly, the matter was the subject of the McCallum report of the industrial relations task force, which was made up of employers, unions and community representatives. Therefore this is not new; it has been developed for some time. Moreover, there has been consultation with the federal government on the matter. The federal workplace relations minister, Mr Reith, with whom the government has discussed this matter regularly, both in one-to-one ministerial arrangements and also through correspondence, to try to get some assurance — —

**Mr Baillieu** interjected.

**Mr BRACKS** — The honourable member for Hawthorn asks if Mr Reith answered the calls. The answer is: not very often. He was busy on the phone most of the time!

Attempts were made to have the assurances in the bill included in the federal minister's Workplace Relations Act. The bill does not arrive here or come to the attention of honourable members with any surprise. Significant consultation has been undertaken on it.

I add also that I was a member of this place when it was proposed that the Employee Relations Act be referred to the federal government by the previous Premier and government. At that time the debate was adjourned for two weeks, as is proposed for this matter.

In response to a particular request by the Leader of the Opposition, I indicate that all the facilities will be available to the opposition for departmental briefings, and other details and other questions will be answered. Those briefings can be conducted during the week when the house is not sitting. Sufficient time is available for all that to occur. I give the Leader of the Opposition a guarantee and assure him and members of

the community that every effort will be made to give members of the opposition briefings in the intervening time.

**Motion agreed to and debate adjourned until Thursday, 9 November.**

## MELBOURNE CITY LINK (MISCELLANEOUS AMENDMENTS) BILL

*Second reading*

**Mr BATCHELOR** (Minister for Transport) — I move:

That this bill be now read a second time.

As its title implies, this bill proposes a diverse set of amendments to the Melbourne City Link Act 1995. This is a machinery bill.

Some amendments establish machinery for transitional administrative arrangements. The bill also proposes changes to the privacy and toll collection provisions of the principal act. Other amendments correct defects or omissions in the principal act. The bill implements recommendations of the report of the audit review of government contracts for the repeal of redundant provisions. When Transurban completes construction works, many highly technical provisions of the principal act will be redundant and can be repealed.

If the bill has themes, they are efficient management, fair enforcement and the community's right to know.

The Melbourne City Link Authority was established in 1994 to coordinate the state's role in the City Link project. Its first main task was to select a consortium to undertake the project and to negotiate the terms of the concession. Since the City Link concession was awarded to Transurban in 1995, the authority has coordinated the state's involvement in the project and monitored engineering, urban design and technical aspects of the project. It has also managed commercial and legal matters relating to the project on behalf of the state. With the imminent completion of construction, the authority's role is nearing completion. It is necessary to make transitional arrangements.

The bill therefore provides the legal machinery to repeal the Melbourne City Link Authority Act 1994, to wind up the authority and to transfer its remaining functions to the state. This will occur on a date to be fixed. Ongoing state functions will be reassigned to the appropriate government departments. These functions will include carrying out the state's obligations under the agreements, and ensuring that Transurban fulfils its own obligations.

I take this opportunity on behalf of the government to thank the members of the authority for their contribution. The state has been fortunate to have had the services of Mr John Laurie, a distinguished engineer, as chairman of the authority. I also wish to acknowledge the services of Mr Tony Darvall, Mr Barry Ireland, Ms Ann Keddie and Mr Alan Notley as board members.

The bill proposes several amendments to the tolling and tolling privacy provisions of the principal act.

Transurban is responsible for collecting tolls and detecting toll defaulters but does not have direct access to motor registration records. If Transurban detects a vehicle using a toll zone in breach of tolling requirements, Transurban can request the government enforcement agency to send a warning letter, an invoice or an infringement notice to the vehicle owner. Currently, first-time users receive warning letters.

In 1998, Parliament passed legislation repealing the provisions that enable Transurban to opt for warning letters or invoices instead of fines. If that legislation is not changed, the repeal will take effect at the end of this year, effectively leading to the fining of all toll defaulters, including first-time users, from 1 January 2001. This bill will retain the option for Transurban to request the state, with the state's consent, to issue warning notices until 1 July 2001. The option to send invoices instead of fines will be retained.

The principal act prohibits unauthorised use or disclosure of personal information from Transurban's records about tolling or about the use of City Link. Two changes to these laws are proposed.

First, the bill will authorise the tolling and traffic management systems to be used to detect breaches of laws governing the transport of dangerous goods. If, for example, Transurban detects a truck carrying dangerous goods through a tunnel illegally, Transurban could report this to the relevant enforcement agency.

Secondly, the bill will authorise police to use tolling information to investigate lost and stolen e-tags without keeping the full audit trails that the principal act requires for use of tolling information in serious criminal investigations.

The bill also makes several housekeeping amendments in relation to the legal machinery for tolling enforcement. The main one relates to the deadline for obtaining late day passes. Currently, late day passes

may be purchased up to noon on the day following travel. The government and Transurban have held discussions about the possibility of extending that deadline, and the bill will enable regulations to extend the deadline.

Copies of the contracts for the City Link and Exhibition Street extension projects are already available for public inspection, as are copies of amending agreements and other variations. However, the documents are large and complex, and consolidations of the agreements are not published. This makes it difficult for the public to obtain accurate and up-to-date information on these agreements, which, among other things, prescribe what tolls Transurban may charge for the use of the roads.

Consistent with the government's commitment to provide better information on contractual arrangements, the bill will authorise publication of reprints of the agreements. These will be published in reprints of the principal act. The existing schedules, which contain the original versions of the agreements, will be repealed. The act already requires copies of amending deeds and variations to be made available for public inspection. The bill will also enable certified copies of these amendments and variations, and of the exhibits to the agreements, to be used as evidence in legal proceedings.

In the meantime, working consolidations of the agreements have been provided to the Parliamentary Library for the use of members, and the Melbourne City Link Authority is taking steps to place as much material as possible on its web site.

The audit review of government contracts reported to government in May. This report commented on the highly technical nature of much of the City Link legislation. The report recommended that, on completion of construction, provisions relating to the construction phase of the project should be repealed. The bill implements this recommendation and provides for the repeal of the provisions of the principal act that facilitate land acquisition and construction.

The bill will also facilitate the disposal or future administration of surplus project land. Most of the land that is not leased to Transurban will revert to its former status, such as railway or port land. In the case of Olympic Park, the bill will amend the Melbourne and Olympic Parks Act 1985 to return surplus project land to the control of the park trust.

Commencement of the various provisions of the bill will be fixed by proclamation, with any unproclaimed provisions coming into operation on 31 December 2002. Commencement dates will be fixed having regard to the need to finalise the disposal of surplus land and a few outstanding land compensation cases. The provisions relating to warning letters are an exception. These provisions will come into operation the day after royal assent to avoid this option expiring on 31 December this year.

Although largely a machinery measure to wind up the Melbourne City Link Authority and repeal redundant construction provisions, the bill makes a number of worthwhile improvements to City Link legislation. It will improve public access to information on City Link contracts. It will facilitate enforcement of dangerous goods transport laws. Importantly, it will retain the option to use invoices and extend the option to issue warning notices as alternatives to issuing fines.

I commend the bill to the house.

**Debate adjourned on motion of Mr LEIGH (Mordialloc).**

**Mr BATCHELOR** (Minister for Transport) — I move:

That the debate be adjourned until Thursday, 9 November.

**Mr LEIGH** (Mordialloc) — Madam Acting Speaker, I noted yesterday that a series of documents was made available to the Parliament. I ask the minister whether he will provide my office with a set of the documents so that, as the opposition's lead spokesman on the bill, I will be able to go through the legislation and read the files without infringing the rights of other members who wish to peruse them. If the minister is prepared to accept that, perhaps his department will provide me with a copy of the material on the bill that has been provided to the Parliament.

**The ACTING SPEAKER (Ms Davies)** — Order! The motion is on the question of time. Is the honourable member asking for clarification from the minister?

**Mr LEIGH** — Yes, because if I cannot get access to that material I am concerned that within the time frame of two weeks I will not be able to do my job as the opposition spokesman. That is why I am seeking an assurance from the minister that he will provide me with the material so that he can have his two-week adjournment and we can all be happy.

**Mr BATCHELOR** (Minister for Transport) (*By leave*) — As always, the government will assist the shadow minister to fulfil his tasks and obligations as a member of this Parliament. We will provide him with a briefing as soon as one can be mutually agreed on. I ask

him to specify which documentation he would like and we will endeavour to make it available to him.

**Mr LEIGH** (Mordialloc) (*By leave*) — In thanking the minister, I point out that the documents I am seeking are the documents that were laid on the table of the Parliament yesterday.

**Motion agreed to and debate adjourned until Thursday, 9 November.**

## TRANSPORT (MISCELLANEOUS AMENDMENTS) BILL

*Second reading*

**Mr BATCHELOR** (Minister for Transport) — I move:

That this bill be now read a second time.

This bill will amend the Transport Act 1983 to facilitate the investigation of railway accidents and to generally improve the operation of that act, and will amend the Rail Corporations Act 1996 to improve the operation of the access regime relating to rail and tram transport services.

Division 3 of part 6 of the Transport Act 1983 provides for rail safety in Victoria and was introduced by the Transport (Rail Safety) Act 1996. This act implemented Victoria's commitment to the intergovernmental agreement on rail safety. Central to this agreement was the endorsement by the commonwealth, the states and the territories of the need for a cost-effective, nationally consistent approach to rail safety which ensures that there are no barriers to entry into the market for other operators.

As a result of a collision between two trains at Ararat on 26 November 1999, the Secretary to the Department of Infrastructure established an inquiry into the incident, exercising powers under section 129U of the Transport Act. The inquiry was conducted by investigators from the Australian Transport Safety Bureau, in accordance with recognised Australian standards. The inquiry report made a number of recommendations, some of which relate to [the] operation of the Transport Act 1983. That report was critical of the Victorian rail safety regime in the Transport Act in that, unlike the relevant legislation in other states, section 129S of the act entitles a person to refuse or fail to give information if the giving of the information would tend to incriminate the person. No other state's legislation affords the same protection in response to requests for information during an investigation of a rail incident or accident. Instead, other states' legislation generally provides that self-incrimination is not a reasonable excuse for failing to give information, and that information given is not admissible in evidence against the person in any civil or criminal proceedings (other than proceedings arising out of the false or misleading nature of the answer). In response to this criticism, clause 3 of the bill will amend section 129S to bring it into line with the legislation in other states.

The inquiry was also critical of section 129U of the Transport Act, which gives the minister the power to direct that an investigation of a rail incident be conducted, on the basis that it is silent on the powers to obtain information during the course of the incident investigation. In response, clause 4 of the bill will amend this section to bring it in line with other states so that there are sufficient powers in the act to obtain all information relevant to investigate a rail accident.

The remaining clauses of part 2 of the bill make various amendments to improve the operation of the Transport Act and correct some minor errors in the act and related legislation.

Part 3 of the act sets out amendments to the Rail Corporations Act 1996 that will clarify and improve the operation of the access regime relating to rail and tram transport services.

Under the access regime, if an access seeker and an access provider fail to negotiate the terms of access to rail infrastructure services which have been declared under the Rail Corporations Act 1996, either party may refer the dispute to the Office of the Regulator-General for determination.

The amendments will enable the Office of the Regulator-General to ensure that access seekers are provided with information approved by the office to assist them in negotiating access. It will also provide the Office of the Regulator-General with the powers to obtain the necessary information from operators to enable it to determine the appropriate price in the event that a dispute over the terms of access is referred to it for determination.

I commend the bill to the house.

**Debate adjourned on motion of Mr LEIGH (Mordialloc).**

**Mr BATCHELOR** (Minister for Transport) — I move:

That the debate be adjourned until Wednesday, 1 November.

**Mr LEIGH** (Mordialloc) — I thank the minister for agreeing to provide the material on the last bill. Similarly, there are three reports relating to the Ararat crash and the Hillside–Connex train incident at Holmesglen — a Workcover report, a Department of Infrastructure report and the report of the private operator.

I seek the same arrangements as before to make it easier for the opposition to agree to an adjournment until 1 November. I also seek the minister's assurance that he is prepared to provide the reports. I know there is a public report on the Ararat crash, but I seek copies of the other reports as well to assist the opposition in making up its mind on whether it is prepared to support the legislation.

**Mr BATCHELOR** (Minister for Transport) (*By leave*) — I will check with the department to see which of the reports can be provided to the shadow minister. With respect to the Holmesglen incident, I am not sure that the report has been completed. Some of the reports are not within my jurisdiction, but I am happy to have that followed up, and I will advise the shadow minister accordingly. I do not have the information with me at the moment.

**Motion agreed to and debate adjourned until Wednesday, 1 November.**

## NURSES (AMENDMENT) BILL

*Second reading*

**Mr THWAITES** (Minister for Health) — I move:

That this bill be now read a second time.

The Nurses Act 1993 provides an effective legislative framework for regulation of nurses.

The purpose of this amendment bill is to update the Nurses Act to ensure a responsive and modern legislative framework that supports the provision of safe and high-quality nursing services and to ensure compliance with competition policy principles.

In addition, the bill amends the Nurses Act to establish the role of the nurse practitioner and allow suitably qualified nurse practitioners to be authorised to prescribe a limited range of drugs and poisons under the Drugs Poisons and Controlled Substances Act (DPCS).

Since the passage of the Nurses Act in 1993, there have been revisions to the acts that regulate optometrists, osteopaths, chiropractors, podiatrists, physiotherapists, dental practitioners and Chinese medicine practitioners. There have also been recent amendments to update the Medical Practice Act 1994.

The national competition policy review process has provided the opportunity to review and, in some cases, strengthen provisions regulating nurses, as well as to introduce modern provisions to regulate advertising of nursing services, requirements for professional indemnity insurance, and an updated definition of unprofessional conduct.

The Nurses Board of Victoria will have powers to require that registered nurses and applicants for registration provide additional information to the board on:

- criminal convictions or committals to stand trial for indictable offences;
- any court-ordered settlements for medical negligence, either personally or through their employers.

This is intended to strengthen the board's ability to address any issues that might affect the nurse's ability to provide safe and competent nursing services to the community.

The nurses board will also have powers to require evidence of adequate arrangements for professional indemnity insurance as a condition of initial and continuing registration.

The board will have the power to issue guidelines about minimum terms and conditions of these insurance arrangements. Arrangements acceptable to the board may also vary depending on whether nurses are covered by their employer's insurance arrangements or are in non-clinical contact roles and may require a lesser level of cover.

The powers of the nurses board are strengthened and streamlined, to receive, investigate and conduct hearings into complaints of unprofessional conduct and to impose sanctions where necessary. Their powers under section 24 to conduct investigations and hearings on their own motion without receiving a complaint will also be clarified.

I do not propose to outline other provisions in detail. They are designed to ensure that the board has power to:

- receive and investigate complaints, conduct hearings and make findings and determinations in relation to nurses who have let their registration lapse;
- obtain warrants for the entry and search of premises;

select from a panel of experts appointed by Governor in Council members to sit on hearing panels;

in the interests of justice suppress the identity of a nurse who is the subject of a formal hearing, up until the hearing panel makes a determination;

require nurses to return their current certificates of registration for endorsement with any conditions, limitations or restrictions imposed;

The bill amends the provisions concerning appointment of board members to specify in detail the categories of nurse members that Governor in Council is to appoint. This amendment is designed to ensure that the board has members with expertise in the range of nursing roles and duties, work settings and practice environments.

The most significant changes proposed in this bill are the provisions that establish the role of the nurse practitioner. The nurse practitioner is a registered nurse educated for advance practice.

The bill creates an offence for anyone other than a registered nurse with the required endorsement from the nurses board to use the title 'nurse practitioner'. A nurse practitioner must also identify the category of practice to which their endorsement relates.

Some categories of nurse practitioner will be authorised under the Drugs, Poisons and Controlled Substances Act to obtain, possess, use, sell or supply scheduled 2, 3, 4 and 8 drugs and poisons.

The bill will amend the Drugs, Poisons and Controlled Substances Act 1981 to include nurse practitioners as authorised persons under that act to obtain, possess, use, sell and supply drugs and poisons in schedules 2, 3, 4 and 8.

The bill also amends the DPCS Act to empower the Governor in Council to make regulations to prescribe the list of schedule 2, 3, 4 and 8 poisons that members of each identified category of nurse practitioner are authorised to prescribe. There may be categories of nurse practitioner approved by the nurses board for entry on the nurses register that are not included in regulation under the DPCS Act and therefore are not authorised to prescribe scheduled drugs and poisons.

The authorisation of nurse practitioners is to be limited to the list of drugs prescribed in regulation under the DPCS Act for the relevant category of nurse practitioner. In addition, an endorsed nurse practitioner can prescribe from the identified list of drugs only for purposes of treatment associated with the context of practice within which they work and within established clinical practice guidelines. They must also comply with any conditions, limitations or restrictions imposed by the nurses board on their endorsement.

There will be a carefully managed process for establishing the initial lists of drugs and associated clinical practice guidelines for each category of nurse practitioner and I may seek the advice of the poisons advisory committee.

I expect this process to include the following steps:

the educational and clinical practice requirements for nurse practitioners endorsed in each category are established by the Nurses Board of Victoria in consultation with key stakeholders including relevant medical and nursing experts and specialist medical and nursing bodies;

clinical practice guidelines for each nurse practitioner category have been developed in consultation with relevant medical and nursing experts and specialist medical and nursing bodies and comply with the national health and medical research council guidelines published from time to time on development of clinical practice;

the clinical practice guidelines specify procedures and/or protocols for safe prescribing of the identified formulary or list of relevant schedule 2, 3, 4 and/or 8 drugs and poisons approved for prescribing by qualified nurse practitioners in that category of nurse practitioner.

There has been sufficient consultation with key parties in the development of the clinical practice guidelines and that there are adequate mechanisms in place to ensure these guidelines are regularly reviewed and kept up to date.

This process will ensure that this extension of the scope of practice of registered nurses is introduced in a planned and considered manner and that public health and safety is protected.

It will be an offence under the DPCS Act for a nurse practitioner to prescribe drugs and poisons that are not included in the list that they have been authorised to obtain, possess, use, sell, supply, or for a purpose outside the category of practice to which their endorsement relates. It may also constitute unprofessional conduct under the Nurses Act.

In other measures to enhance public safety the board will have the power to issue and publish codes for the

guidance of nurses as to recommended standards of practice. The board may refer to these codes as evidence when determining whether unprofessional conduct has occurred.

It is expected that development of these codes will be done with appropriate consultation with the profession and be based on sound evidence.

The bill provides for registration protection for those nurses who cross into Victoria from other states and territories to assist in organ recovery, patient transport or to provide emergency treatment.

The bill establishes for the first time powers for the nurses board to regulate advertising of nursing services. These provisions are modelled on those in the Medical Practice Act and other health practitioner registration acts, and are considered necessary as more nurses choose to work in private practice.

The bill creates a power for the board to prepare guidelines for registrants on minimum acceptable standards for advertising of nursing services, and for these guidelines to be published by order of Governor in Council in the *Government Gazette*.

There are powers for courts to order corrective advertising and impose penalties for continuing offences, with a three-year limitation period for prosecution of such offences.

The bill complies with Victoria's obligations under the national agreements on mutual recognition and competition policy.

Development of the bill has involved an extensive process of consultation and discussion. The current board and professional associations have been most helpful and constructive in shaping these amendments.

I commend this bill to the house.

**Debate adjourned on motion of Mr DOYLE (Malvern).**

**Debate adjourned until Thursday, 9 November.**

## GAMING ACTS (GAMING MACHINE LEVY) BILL

*Second reading*

**Mr BRUMBY** (Treasurer) — I move:

That this bill be now read a second time.

During last year's election campaign the Labor Party committed itself to providing additional funding for drug and alcohol programs to be partly funded by a levy on the gaming operators. Honourable members will be aware of the significant social, family and personal costs that ensue from drug and alcohol abuse. In particular, honourable members will know about the tragic loss of life — of lives cut prematurely short — from drug overdoses that regrettably occur all too frequently in Victoria. There is an urgent and overwhelming need to deal with this blight on our community. The government will do its duty to minimise the enormous damage and harm caused by drug and alcohol abuse.

The drug and alcohol programs form part of an overall strategy designed to assist the community in improving its health outcomes. The drug and alcohol programs are community education programs aimed at alerting vulnerable members of the community about the risks of drug and alcohol abuse. The underlying principle of these programs is that educational programs to prevent drug and alcohol abuse is a much more cost-effective way of using resources than having to deal with the consequences of drug and alcohol abuse.

The government's election promise to raise additional funds from the gambling industry to deal with drug and alcohol abuse reflects the government's belief that the community should be able to share in the gains of the gaming operators resulting from their ownership of gaming machines, which they operate on an exclusive basis under licence from the government. The government recognises the importance of tackling the problem of drug and alcohol abuse and the money raised from the gaming machine levy will go towards the government's strategy of reducing drug and alcohol abuse. This will contribute to reducing the number of lives lost to drug and alcohol abuse each year, helping families and ensuring the safety of the community.

The precise nature of this Labor Party's commitment in relation to the gaming machine levy was spelt out in *Labor's Financial Statement*, where it is stated that 'Labor is proposing to restructure the tax on electronic gaming machines (EGMs) so that the gaming operators (Crown, Tattersalls and Tabcorp) make a small additional contribution to Victoria's health system. Labor is seeking to raise $10 million in revenue each year'. It was subsequently announced in the 2000–01 budget that 'funding of $10 million will be raised through a flat rate levy on the owners of each of the 30 000 EGMs in Victoria, i.e. Tabcorp, Tattersalls and Crown. The levy will be $333.33 per annum per machine commencing in financial year 2000–01. Equivalent spending of $10 million has been approved for allocation to drug and alcohol programs'.

The purpose of this bill is to give legislative effect to Labor's election commitment and to the budget initiative. It is proposed to impose a levy of $333.33 per gaming machine on each of the gaming machines operated by the gaming operators — Tattersalls, Tabcorp and Crown — on 30 September each year. The levy will be payable in two equal instalments by 15 December and 15 June in each financial year. The gaming machine levy will be hypothecated by standing appropriation to the Hospitals and Charities Fund, and will be channelled for use in drug and alcohol programs. The bill contains a provision requiring the gaming operators to pay interest in the event of the late payment of the gaming machine levy.

I am convinced that the drug and alcohol programs, which will be partly funded by the gaming machine levy, will make a significant contribution to alleviating the problems associated with drug and alcohol abuse.

I commend this bill to the house.

**Debate adjourned on motion of Ms ASHER (Brighton).**

**Debate adjourned until Thursday, 9 November.**

## ESSENTIAL SERVICES LEGISLATION (DISPUTE RESOLUTION) BILL

*Second reading*

**Mr BRUMBY** (Treasurer) — I move:

That this bill be now read a second time.

The purpose of this bill is to enable the establishment of an essential services ombudsman. The essential services ombudsman will provide a customer dispute handling mechanism for utility industries that is independent, fair and cost effective.

This bill fulfils a key government election commitment to establish an independent ombudsman to handle customer complaints and make rulings in relation to compensation in the utility industries. It represents an important part of the government's overall strategy to ensure that the introduction of competition and commercial provision into the delivery of these services is balanced by appropriate protections for customers. Utility services such as electricity, gas, water and sewerage are fundamental to the daily lives of all Victorians. The creation of the ESO complements other government initiatives including its customer protection framework for full retail competition in electricity and its proposal to establish an Essential Services Commission which will regulate the utility industries to ensure that they operate in the interests of consumers and society at large.

Following an extensive public consultation process involving customer groups, the utility businesses, and other key stakeholders, the government has come to the view that the ESO is best established by building on the existing energy industry scheme to include water and sewerage customer complaints. At this stage, the government will not be including public transport within the essential services ombudsman.

The government's approach to establishing the ESO reflects its confidence in the current operation of the Energy Industry Ombudsman and builds on broad community support for these proposals expressed during the consultation process. The new ESO scheme will ensure that:

customers of government-owned water authorities across the state have access to an independent external complaint handling scheme if they cannot receive satisfaction from their local water supplier. The current arrangements for complaint handling in the water industry inherited by the government are inadequate;

electricity, gas, and water customers can go to a one-stop shop for dispute resolution, at no cost to themselves;

the scheme is funded by the utility suppliers rather than the taxpayer, and provides a strong incentive for them to resolve any complaints speedily; and

the new scheme can be established at least cost by building on and improving existing customer complaint mechanisms rather than incur the disruption and cost of starting from scratch.

The government is now working with the Energy Industry Ombudsman, the Regulator-General, the energy and water businesses, and customer group representatives to implement the new ESO scheme. As part of this process, the government is looking for some changes to the operation of the current scheme to ensure its effectiveness and independence.

This bill establishes the formal legislative underpinning for the scheme. The government believes that the right of customers of utility businesses to have access to an independent low-cost external complaint handling mechanism is of such fundamental importance that it should be enshrined in the law. The bill will, therefore, impose the requirement on relevant electricity, gas, and water businesses to be members of such a dispute resolution scheme as a matter of law.

The government also believes that the ongoing effectiveness of the scheme should be subject to independent oversight to ensure that it continues to provide customers with an independent, effective and low-cost dispute resolution process. To this end, the government will retain — and indeed strengthen — the role of the independent Regulator-General in overseeing the scheme. The bill provides that the Regulator-General certify that the scheme is operating in accordance with a number of specific criteria, including:

the scheme is accessible and there are no cost barriers to consumers for its use;

the scheme is independent from its members;

the scheme's decisions are fair and seen to be fair;

the scheme is accountable, by ensuring the publication of its decisions and information about complaints received; and

the scheme is operationally efficient and effective, by ensuring that the scheme undertakes regular reviews of its performance.

Finally, the bill provides for the licences of the gas distribution businesses — in addition to gas retail businesses — to require membership of a dispute-resolution mechanism approved by the ORG. This is to ensure that end customers are not disadvantaged in having a complaint resolved because of a contractual or other dispute between their gas retail and distribution businesses.

*Honourable members interjecting.*

**The ACTING SPEAKER (Mr Loney)** — Order! The house would be assisted by some order from members on both sides.

**Mr BRUMBY** — This provision will put gas distribution businesses on the same footing as electricity distribution businesses, which already have this obligation. The ORG will be consulting extensively with the industry in determining the best approach to meeting this obligation — which may or may not involve membership of the ESO.

I now turn to the specifics of the bill.

Part 1 of the bill states the purpose of the bill and its commencement date.

Part 2 provides for the amendment of the Electricity Industry Act 1993 to require that the licences issued to the electricity retail and distribution businesses include an obligation to be members of a customer dispute resolution scheme approved by the Office of the Regulator-General, in accordance with specified criteria.

Part 3 provides for a parallel amendment to the Gas Industry Act 1994 in respect of the gas retail and distribution businesses.

Part 4 provides for amendment of the Water Industry Act 1994 to require that the licensees (the three metropolitan water retail businesses: South East Water, City West Water, and Yarra Valley Water) enter into a customer dispute resolution scheme approved by the Office of the Regulator-General with regard to the specified criteria.

Part 5 provides for amendment of the Water Act 1989 to require that the 15 non-metropolitan and 3 rural water authorities (which do not operate under a licensing regime) enter into a dispute resolution scheme approved by the Office of the Regulator-General with regard to the specified criteria.

Part 6 provides for amendment of the Melbourne Water Corporation Act 1992 to require the Melbourne Water Corporation to enter into a dispute resolution scheme approved by the Regulator-General, again in accordance with specified criteria.

I commend the bill to the house, and in so doing I note that although the bill provides for essential services legislation it does not provide a name for the dispute resolution mechanism. It is the government's view that the most appropriate name for the dispute resolution mechanism would be the Energy and Water Ombudsman rather than the essential services ombudsman. Following representations from the members of the existing energy scheme and other sectors of industry the government has decided that that should be the name. I add that to the second-reading speech because the bill has passed through the upper house and the second-reading speech makes reference to an essential services ombudsman. The government will be naming the occupier of this position the Energy and Water Ombudsman.

**Debate adjourned on motion of Ms ASHER (Brighton).**

**Debate adjourned until Wednesday, 1 November.**

## RACING AND BETTING ACTS (AMENDMENT) BILL

*Second reading*

**Mr HULLS** (Minister for Racing) — I move:

That this bill be now read a second time.

This bill amends the Racing Act 1958, Lotteries Gaming and Betting Act 1966 and Gaming and Betting Act 1994.

The purpose of the bill is to effect a wide range of improvements to the governance and regulatory framework of the racing industry.

The value of the racing industry to this state is immense in terms of economic impact, employment and community benefits — particularly in rural and regional Victoria. Over 30 000 people are employed by racing in this state. The economic impact of the Spring Racing Carnival alone is more than $230 million. The industry generates around $140 million per annum in wagering tax revenue.

Good governance and regulation underpin public confidence in the probity and fairness of the industry and it is essential that the best possible structure is in place. This bill will enhance that structure in several different areas.

Firstly, the bill proposes to expand the size of the Harness Racing Board from five to seven members. Harness racing is facing a critical period as it strives to move forward within the highly competitive gambling, sports and entertainment markets. The board is currently formulating a five-year strategic plan which will set clear targets for the industry to work towards. The additional skills and knowledge of two new members will boost the board's capacity to meet these challenges and create a higher level of communication and presence within the industry — particularly in rural Victoria. The expanded board will have good balance, with the chairperson being joined by three members with experience in business or marketing and three members with experience in the harness racing industry.

The next main purpose of the bill is to ensure that participants in the racing industry such as jockeys, trainers and bookmakers have a fair right of appeal against licensing decisions of the three controlling bodies — the Victoria Racing Club (VRC), the Harness Racing Board and the Greyhound Racing Control Board.

At present, the Racing Appeals Tribunal can hear appeals in relation to certain types of decisions to suspend, disqualify or fine a person. However, the legislation provides no right of appeal in relation to decisions to revoke a licence, refuse an application to issue or renew a licence or to impose a condition on a licence. There is also no right of appeal against licensing or penalty decisions of the Bookmakers and Bookmakers' Clerks Registration Committee.

The bill will address this deficiency by providing racing industry participants with a right of appeal to the Victorian Civil and Administrative Tribunal in relation to these types of licensing decisions. VCAT deals with many different occupational licensing appeals and will be well placed to provide an effective review process for the racing industry.

There will also be changes in respect to the jurisdiction of the Racing Appeals Tribunal:

- stewards are to be granted a right of appeal to the tribunal if they are dissatisfied when a controlling body upholds appeals against penalties originally imposed by the stewards;

- there will be a right of direct appeal to the Racing Appeals Tribunal in the case of any penalty involving a drug offence under the VRC's rules of racing;

- the jurisdiction of the Racing Appeals Tribunal is to be clarified that it can only hear penalty decisions in relation to racing rules and has no capacity to hear appeals against business or other types of decisions made by the controlling bodies.

Another major purpose of the bill is to restructure the regulatory arrangements in the greyhound racing industry. The National Coursing Association of Victoria (NCAV) is presently recognised as the body that registers greyhounds. The NCAV has diligently performed this task since 1873 along with administering the traditional greyhound sport of plumpton coursing.

The bill will transfer the greyhound registration function to the Greyhound Racing Control Board and thereby consolidate all regulatory roles within the one body. This will bring Victoria into line with the structural arrangements in every other Australian jurisdiction. The board is making arrangements with the NCAV to ensure that this change has no impact on the ongoing conduct of plumpton coursing.

Further, the bill is to clarify that the current range of offences in relation to unlawful betting and related

activities will apply to betting that is being facilitated in Victoria but is technically occurring outside Australia. Victoria is being used as an administrative base by some offshore operators who primarily target the Australian betting market yet provide no financial return to Australian governments or to the Australian racing industry. The leakage of betting to tax advantaged offshore locations such as Vanuatu also drains the pool of betting money available to the local bookmaking community. The proposed change aims to prevent betting operators situated in these offshore tax havens from using Victoria as a base for activities such as mailing out promotional material and receiving and paying money in relation to betting accounts.

Another objective of the bill is to provide new codes of racing such as Arabian and quarter horse racing with greater opportunities to conduct their meetings. These amateur racing groups are allowed to hold meetings subject to being issued with a mixed sports gathering consent. However, consents cannot be issued for any event being held within 25 kilometres of the Melbourne General Post Office. The removal of this geographic restriction will provide these racing enthusiasts with the potential to race in the metropolitan area.

The remainder of the bill contains various housekeeping changes aimed to generally streamline and improve the regulation and management of the racing industry. These changes include:

removing unnecessary legislative restrictions in respect to mixed sports gatherings, picnic race meetings and restricted harness racing meetings that are more appropriately administered through the respective rules of racing;

increasing the maximum penalty that can be imposed by the Bookmakers and Bookmakers Clerks Registration Committee from 20 to 60 penalty units;

providing the committee's members with statutory immunity so that they cannot be personally liable for anything done or omitted to be done in good faith;

deregulating the operation of betting information services to bring Victoria into line with the rest of Australia;

recognising the Harness Racing Board's and Greyhound Racing Control Board's adopted trading names of Harness Racing Victoria and Greyhound Racing Victoria;

introducing a more practical approval process in relation to racing clubs that change their rules of constitution;

clarifying the capacity of the Victorian Casino and Gaming Authority to provide information to the minister in respect to licensed racing clubs and their office-holders;

ensuring that Victorian bookmakers can bet on the same range of non-sporting events that Tabcorp is allowed to conduct betting on — such as the Academy Awards.

The government is fully committed to supporting the Victorian racing industry for the benefit of its many participants and patrons and for the positive impacts the industry has across the wider community. The bill reflects this commitment and makes a most useful contribution to the ongoing good governance and regulation of the industry.

I commend the bill to the house.

**Debate adjourned on motion of Mr MULDER (Polwarth).**

**Debate adjourned until Thursday, 9 November.**

## MAGISTRATES' COURT (INFRINGEMENTS) BILL

*Second reading*

**Mr HULLS** (Attorney-General) — I move:

That this bill be now read a second time.

This bill introduces a number of reforms to the system for enforcing unpaid infringement notices (or on-the-spot fines as they are commonly known).

The Victorian infringement notice system is a principal feature of the criminal justice system. It is the most common way of addressing less serious breaches of the criminal law. By addressing minor offences with infringements, they are diverted from the courts, freeing up their time to deal with more serious offences. Prosecuting these minor offences in court would be a very inefficient use of court and prosecution resources.

An infringement notice gives a person a choice about how their alleged offence is processed. A person issued with an infringement notice has the option of electing to pay a reduced fine. This also saves them the expense and time of going to court. Alternatively, the person may dispute the matter in open court.

When a person receives an infringement notice, they can write to the enforcement agency (which is usually Victoria Police or a local council) that issued the notice if they wish to dispute the offence. If they do not pay, they are notified a second time by a reminder notice, and then a third time by a letter from the PERIN (penalty enforcement by registration of infringement notice) Court.

If this third notice is ignored, a warrant is issued. This warrant authorises the Sheriff to seize and sell personal property to cover the fine and costs of enforcing the fine. Ordinary household items that are considered the necessities of life and some cars cannot be seized. If there is insufficient property to pay the outstanding amounts on the warrant, the Sheriff may arrest the defendant.

Under the current system, when a defendant is arrested they are taken into custody. Most defendants are then released on a custodial community permit (CCP) to do community work in lieu of serving a term of imprisonment. Defendants who do not qualify for a CCP serve a term of imprisonment. There is no opportunity for a court to determine whether prison and the automatically set prison term are suitable sanctions in the particular case.

In contrast, when a person does not pay a fine imposed by a court in other summary matters, they are brought before a magistrate to determine whether prison is appropriate. It is anomalous that a final hearing prior to imprisonment is mandatory for failure to pay fines imposed in open court for more serious summary matters, but is not available in the PERIN system for failure to pay infringement penalties issued for minor offences.

The most important reform in this bill is the introduction of a Magistrates Court hearing to consider whether imprisonment is an appropriate final sanction for infringement defaulters. Imprisonment as a sanction should only result from the exercise of judicial power. This bill will ensure that infringement defaulters who are arrested and do not obtain a CCP are brought before a court.

When a person is brought before a court under the new provisions, the court will have a number of options. Unfortunately, some people incur infringements or go through the infringements enforcement system as a consequence of a mental disorder or an intellectual impairment that prevents them from fully understanding or being responsible for their conduct. The current system can result in a very harsh outcome for these people. This bill will reform the system to take into account the special needs of these vulnerable people.

Where the court is satisfied that the offence or the default in payment is as a consequence of a mental disorder or an intellectual impairment, and the defendant has no means to pay or a reasonable excuse not to pay, the court may dismiss the matter in whole or in part. Alternatively, the court may adjourn the matter for up to six months on any conditions it thinks fit. Conditions could include attendance at an appropriate program. Thus the bill creates an opportunity to help people who have fallen foul of the infringements system due to a mental disorder or intellectual impairment. After such an adjournment, if the conditions have been satisfied and the defendant has no means to pay or a reasonable excuse not to pay, the court may dismiss the matter in whole or in part.

Where there are exceptional circumstances, the court may grant the person a community-based order. This reform recognises that there may be exceptional circumstances applying to a person who does not suffer from a mental disorder or intellectual impairment but who does not deserve to be imprisoned for default in payment of their infringements.

In ordering imprisonment, the court may impose a maximum term at the default rate (one day per every $100 or part thereof owing). Alternatively, the court may reduce the term by up to two-thirds of the original term, taking into account the defendant's circumstances.

The sentencing options available to the court are more limited than the sentencing options that are generally available to the court. This is important to ensure that defaulters are encouraged to go to open court at the outset if they wish to seek alternative sanctions. It is also important to ensure that defaulters are encouraged to act when faced with infringement notices, reminder notices, enforcement orders and warrants in the knowledge that if they do nothing, they will get to the end of the line and still have all of their options open. The bill strikes a balance between:

encouraging infringements to be paid early;

encouraging defaulters to seek alternative sanctions early on; and

giving the court suitable options for dealing with infringement defaulters.

The bill makes a number of other important reforms. The bill grants the registrar of the PERIN Court a power to revoke an enforcement order and refer a matter to open court. This is to ensure that in circumstances where a case may be better dealt with in open court, the enforcement order may be revoked and the case sent to open court despite the defaulter not seeking such a revocation.

The act currently prevents part-paid infringement notices from being registered for enforcement with the PERIN Court. This discourages issuing agencies from helping people to pay their infringement penalties by offering instalment arrangements. Issuing agencies are encouraged to offer instalment arrangements to infringement defaulters. The bill also enhances the enforcement powers of Sheriff's officers

The introduction of a court hearing to consider whether imprisonment is an appropriate ultimate sanction for infringement defaulters is an important reform to the Victorian justice system. It makes the infringements enforcement system fairer, and increases access to justice for the disadvantaged. People should not be imprisoned without a judicial hearing. This bill overcomes this fault in the infringements enforcement system.

I commend this bill to the house.

**Debate adjourned on motion of Dr DEAN (Berwick).**

**Debate adjourned until Thursday, 9 November.**

## MAGISTRATES' COURT (COMMITTAL PROCEEDINGS) BILL

*Second reading*

**Mr HULLS** (Attorney-General) — I move:

That this bill be now read a second time.

This bill contains important improvements to the operation of committal proceedings.

The primary purpose of a committal proceeding is to enable the Magistrates Court to determine whether there is sufficient evidence to require a defendant to stand trial for a serious offence in either the County or Supreme Court.

However, an effective committal system can achieve much more. It can also:

- filter out cases which should not proceed to trial;
- ensure adequate disclosure of the prosecution case;
- define the issues in dispute;
- clarify issues relevant to a potential plea of guilty;
- clarify issues to enable the prosecution to decide whether to continue or discontinue with the charges; and
- ensure a fair trial.

When a committal system also achieves these objectives it:

- assists all people connected with a matter, including the victim, witnesses and the defendant; and
- ensures that resources in the courts, the Office of Public Prosecutions, Victoria Legal Aid and Victoria Police are used more effectively.

Significant changes to the committal system were made in 1999 both by the previous government's amendments to the Magistrates' Court Act and by rules made by the Magistrates Court.

In March 2000 the Department of Justice established the Committal Proceedings Monitoring Committee to monitor and identify any problems with the committal system. The committee was comprised of representatives from the Magistrates Court, the Criminal Bar Association, the Victorian and commonwealth directors of public prosecutions, Victoria Police, Victoria Legal Aid, the Victorian Aboriginal Legal Service, the law institute, the Victorian bar, and the Department of Justice. The government would like to thank the committee members for their dedication, expertise and the quality of their analysis and recommendations for improving the committals system.

The committee members indicated that there is general support for the key elements of the committal proceedings system. However, the committee identified a number of problems, including that:

- the extensive focus on compliance with the procedural steps in the new system has been at the expense of achieving the objectives of committal proceedings;
- the time frames are too tight and inflexible;
- defence applications for leave to cross-examine a witness at a committal proceeding often take considerable time to prepare, for limited gain in terms of the objectives of committals;
- hearings of applications for leave to cross-examine are protracted — rulings as to what can and cannot be asked are by necessity departed from at the committal hearing;
- too many applications for leave to cross-examine witnesses (particularly young witnesses) are being refused, leading to more young people being cross-examined at trial, thereby increasing the trauma to young witnesses;

to avoid the procedural difficulties, there has been an increased number of defendants bypassing the committal process altogether by electing to proceed directly to trial without a contested committal.

Whilst the primary purpose of committals is largely being achieved, the system is not achieving its other purposes as well as it should. As a result, an increased amount of time is being spent by the County and Supreme courts on issues which previously had been effectively dealt with in the Magistrates Court.

The primary aims of the bill are to:

ensure all participants are focusing on achieving the purposes of committal proceedings; and

introduce flexibility into the system and streamline procedures.

**Leave to cross-examine a witness**

The bill changes the test for obtaining leave to cross-examine a witness at committal. Currently, leave to cross-examine a witness will only be granted where the court is satisfied that the scope and purpose of the proposed questioning has substantial relevance to the facts in issue. As indicated earlier, the committee concluded that this test inappropriately restricts cross-examination, is cumbersome and wastes resources.

The bill provides that the defence must identify an issue and give a reason why that issue is relevant. If the court is satisfied that cross-examination of that witness at committal is justified, then leave to cross-examine the witness will be granted. This is a much simpler test and one that more appropriately balances the needs of the various participants.

Under the bill, once leave has been granted to cross-examine a witness, the court retains a power to call upon the defence to indicate why a question is being asked and may disallow a question if, for instance, it is not satisfied that question is justified.

**Witness under 18 years of age**

The previous government's amendments have proved to be too restrictive, having led to more witnesses under the age of 18 (young witnesses) being cross-examined at trial. Cross-examination at trial is widely accepted as being more traumatic than at a committal. The amendments are designed to reduce the number of young witnesses being cross-examined at trial. This may lead to more children being cross-examined at committal proceedings. However, if a young person gives evidence at a committal proceeding, this often enables either the defence to determine whether to plead guilty or the prosecution to determine whether to withdraw the charges because of insufficient evidence. If a trial is avoided, this will minimise the trauma to the young witness.

As indicated above, the test for obtaining leave to cross-examine a witness has been changed. When application is made to cross-examine a young witness, the bill requires that the court must consider a range of other factors, including:

the need to minimise trauma;

the age of the witness;

any relevant characteristic of the witness including age, culture, personality, education and level of understanding.

The court will also be provided with stronger powers to control inappropriate cross-examination of young witnesses at committal proceedings. The factors that are relevant in determining whether to grant leave to cross-examine may also be considered by the court in determining whether to disallow a question. Further, a question may be disallowed because it is misleading, confusing, annoying, intimidating, oppressive or repetitive.

These proposals provide measured and appropriate restrictions concerning the cross-examination of young witnesses. These restrictions are much greater than those which applied at any time prior to the 1999 amendments.

**Compulsory examination procedure**

If a witness refuses to make a statement, the police may apply to the court for an order to examine that witness under oath in open court. This procedure is sometimes necessary in fraud cases where employees of financial institutions are increasingly reluctant to provide statements because doing so may breach a confidentiality agreement with their client. There is a clear public interest in ensuring that investigations are not stopped because of such arrangements. This power was provided by the previous government in its amendments introduced in 1999.

However, when strong powers are provided it is important that appropriate safeguards are also provided. This bill provides those safeguards. The court will be provided with important information, such as whether the witness is a suspect in the proceedings and whether the witness has received legal advice concerning the

proposed examination. Further, the defence will now be able to be present when this examination takes place and may, in exceptional circumstances, address the court concerning this proceeding.

**Miscellaneous amendments**

The bill also makes a number of procedural changes and other amendments:

time limits for the service of documents have been made more flexible;

the categories of people who may witness statements have been expanded;

following a committal proceeding, the defence will be able to apply for leave to call a witness who was unavailable at the time of the committal or who provides a supplementary statement. This right was removed in 1999, resulting in problems arising at the trial stage in some cases.

The amendments contained in this bill will be complemented by changes to the rules. The combined aim of these changes is to ensure that the committals system not only achieves its primary purpose of enabling the Magistrates Court to determine whether there is sufficient evidence to require a defendant to stand trial but can also more effectively achieve its broader purposes, such as filtering cases and identifying issues in dispute.

The improvements to the criminal justice system provided by this bill further implement the government's policies of achieving a justice system that is fair, accessible and understandable and in which the community has confidence.

I commend the bill to the house.

**Debate adjourned on motion of Dr DEAN (Berwick).**

**Debate adjourned until Thursday, 9 November.**

## GAMBLING LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

*Second reading*

**Mr PANDAZOPOULOS** (Minister for Gaming) — I move:

That this bill be now read a second time.

The government is pleased to announce this further step forward in the implementation of our gaming policies. This bill builds on steps already taken to introduce responsible gaming initiatives and objects into gaming legislation and establish new processes for community consultation and input into decisions of the Victorian Casino and Gaming Authority.

The government is committed to openness and accountability in regulation of the gaming industry. This bill will enable more information about gaming regulation to be made available to the community.

It proposes a number of ways to inject openness and transparency into the decision-making processes of the Victorian Casino and Gaming Authority.

The authority will be required to conduct open hearings in relation to a range of matters. These hearings will allow the public to be present whilst submissions and evidence are taken from the parties, persons with a statutory right to be heard and witnesses required by the authority. The matters to be the subject of such hearings will include applications for venue operator's licences, premises approvals and bingo centre operator licences, 24-hour gaming issues and amendment of casino licence conditions. If there are special circumstances, the authority may hold all or part of the hearing in private. The authority will also retain the ability to hold open hearings on any other matter. However, it may hear any matter in private if it involves the personal affairs of a person or because it is necessary in the public interest or in the interests of justice. These exceptions are consistent with Freedom of Information Act principles.

In addition, the authority will be required to conduct some of its business in open sessions where the public can witness the decision-making process.

The authority will also be required to provide written reasons for its decisions. Currently, a number of provisions of gaming legislation state that the authority is not required to give reasons for its decisions. These provisions are being replaced with requirements that the authority must provide written reasons for decisions both —

on request to a person whose interests are affected by an authority decision; and

in respect of every decision which was determined in public.

The reasons, however, must not disclose information about another person who is an associate or nominee.

The bill also relaxes unnecessarily restrictive secrecy provisions in gaming legislation. The Victorian Casino and Gaming Authority will be able to release a broad

range of regulatory information. Examples of such information are:

- the names of licensed persons and their associates;
- licence expiry dates;
- information that applications have been received from industry participants;
- applications which the authority has approved or refused; and
- the results of disciplinary action and gambling expenditure data aggregated by local government area.

The authority will also be able to exchange information with other law-enforcement and regulatory agencies, subject to safeguards designed to ensure that the provision of the information is appropriate.

Amendments to the Gaming Machine Control Act will ease the resource burden on applicants for gaming premises approvals. They will be able to have their applications determined prior to obtaining any necessary liquor licensing and planning approvals. This means that they will not have to spend time and money in pursuing those applications, without knowing whether they will ultimately succeed in being allowed to use their premises for gaming.

The bill also contains amendments to strengthen probity and enforcement provisions applying to the gaming industry, including —

- providing for the authority, when it cancels a special employee's licence, to set a maximum four-year period during which that person must not apply for another gaming licence or permit;
- requiring testers of gaming machines and software to be listed on the roll of suppliers, and requiring the licensing of testing staff;
- requiring associates and nominees to provide updated personal information and creating an offence for those who provide false information;
- allowing the authority to require associates of licensed persons to provide enforceable undertakings about their future conduct.

Two taxation amendments are made by the bill:

- an amendment to the Gaming and Betting Act to increase the maximum deduction rate for totalisators for racing and sports betting competitions from 20 per cent to 25 per cent. This will give Tabcorp the same commercial flexibility as the New South Wales TAB and enable it to pool funds with other Australian wagering operators; and
- the removal of an ambiguity in the Interactive Gaming (Player Protection) Act, in relation to provisions about carrying forward tax losses.

Other miscellaneous amendments are made in relation to licensed persons to ease unnecessary administrative burdens without compromising probity standards or the integrity of gaming. These include:

- extending the period for the lodging of appeals and objections from 14 to 28 days;
- establishment of a system of licence endorsements to cover situations where a venue operator's licence may otherwise lapse. This amendment will enable a person other than the licensed venue operator to manage the gaming business. It will cover circumstances where, because the nature of the gaming business is essentially unchanged, it would be too onerous to require gaming to cease until a new licence is obtained. Examples of such circumstances are the death of a licence-holder or the changing of a club into an incorporated association. The authority will only be able to endorse a licence where it is satisfied that all associates are already currently approved by it; and
- new provisions relating to the authority's regulation of controlled contracts, that is, contracts with suppliers entered into by the casino operator. The authority will be able to tell Crown how Crown should choose its contractors, how it should go about making sure that the contractor is honest and not have criminal connections, and how Crown should administer each contract. The authority can audit Crown's process and decide which contracts it wishes to investigate, instead of being required to approve each one beforehand. This amendment will reduce the administrative burden of investigating every controlled contract and allow the authority to focus its investigations as required. However, the authority will retain its powers to require termination of a controlled contract on public interest grounds.

The government is proud to introduce these amendments. They aim to ensure that the regulation of gaming continues in a way which applies rigorous probity standards, without imposing undue burdens on participants in the industry.

In particular, the introduction of open hearings and public sessions for the Victorian Casino and Gaming

Authority, the requirement for the authority to give reasons for decisions and the removal of unnecessary secrecy restraints will make openness and transparency key features of the gaming industry in this state.

I commend the bill to the house.

**Debate adjourned on motion of Mr BAILLIEU (Hawthorn).**

**Debate adjourned until Thursday, 9 November.**

## GAMING No. 2 (COMMUNITY BENEFIT) BILL

*Second reading*

**Mr PANDAZOPOULOS** (Minister for Gaming) — I move:

That this bill be now read a second time.

This bill continues the government's commitment to the responsible regulation of gambling in the community interest, with a particular focus on community and charitable fundraising through minor gaming activities.

One of the issues raised in the responsible gambling consultation paper released early in 2000 was whether permit-holders using a common venue should be allowed to place their proceeds of bingo into a common pool. The operator's fees would be paid from the pool, with the balance being divided equitably. The purpose of such schemes is to enable all permit-holders playing bingo in the same place to receive some return.

There was some support for pooling schemes, and the government is aware that informal schemes have operated from time to time, although their legal status is unclear.

This bill provides —

Pooling schemes are only legal if they comply with the act.

There will be an auditable money trail, subject to the existing routine monitoring regime.

The pooling arrangements will be scrutinised by the Victorian Casino and Gaming Authority.

Information contained in bingo permit-holder returns has made the government aware that, in some cases, community or charitable organisations conducting sessions of bingo in bingo centres were obtaining minimal benefit from the proceeds of their sessions, while the centre operators were being paid 14 per cent of the turnover. In at least one case, the permit-holder indicated that it had lost money on the bingo games in the relevant period.

One way of addressing this issue is to make regulations to place the operators and permit-holders on the same basis of remuneration. However, advice available to the government indicated that the current regulation-making power is limited to remunerating operators on the basis of gross receipts. If this bill is passed, the government proposes to prepare regulations to split the proceeds of ticket sales, after the payment of prizes, between the permit-holder and the operator. Subject to the outcome of the regulatory consultation process, the government's favoured option is a fifty-fifty split.

A parallel regulation-making power is proposed for lucky envelopes. The favoured option is also a fifty-fifty split.

In the course of focusing on responsible gambling issues, it has come to the government's attention that certain arcade games played by children in amusement centres may have compulsive characteristics when a cash prize is offered. Consistent with the government's decision to ban minors from having access to electronic gaming machines, we will ban cash prizes on amusement machines in amusement centres.

Bodies become eligible to participate in minor gaming by satisfying the Victorian Casino and Gaming Authority that they are genuine community or charitable organisations. However, the present act provides little guidance on the appropriate procedure for this gatekeeper role. This bill introduces a process which clearly sets out the rights and obligations of organisations, including the manner in which the privilege of declaration can be removed.

The authority presently approves approximately 1000 such organisations each year. In this context, it is more appropriate for the Director, Gaming and Betting, to make the initial decision, with the Victorian Casino and Gaming Authority acting as an appeal body in relation to refused applications and as a disciplinary body in relation to bodies which have been declared.

The authority will have the final say on the suitability of bodies to be declared as community or charitable organisations, subject only to an appeal to the Supreme Court.

Although the Gaming No. 2 Act provides for bingo centre operators to charge a fee for professionally conducting bingo on permit-holders' behalf, it requires

the operator to obtain a separate licence (involving no greater probity assessment) to do so. This is an unnecessary licensing requirement and the bill will remove the anomaly.

Experience from the ongoing monitoring of licensees has shown that it is no longer necessary to require employees to renew their licences every three years. Bingo employees will now be licensed for 10 years. This is consistent with amendments proposed for employees licensed under other gaming legislation.

The bill also contains amendments to strengthen probity and enforcement provisions applying to the gaming industry, including —

providing for the authority, when it cancels a bingo employee's licence, to set a maximum four-year period during which that person must not be issued with another gaming licence or permit;

requiring associates and nominees to provide updated personal information and creating an offence for those who provide false information; and

allowing the authority to require associates of licensed persons to provide enforceable undertakings about their future conduct.

Consistent with proposed amendments to other gaming legislation, this bill also enables the authority to exchange information with other law enforcement and regulatory agencies, subject to safeguards designed to ensure that the provision of the information is appropriate.

The government is pleased to introduce these amendments. They offer the maximum opportunity for organisations with community or charitable purposes to benefit from conducting minor gaming activities. They continue the government's commitment to responsible gambling practices. Further, these amendments relieve licensees of certain unnecessary burdens while strengthening already rigorous probity standards.

I commend the bill to the house.

**Debate adjourned on motion of Mr BAILLIEU (Hawthorn).**

**Debate adjourned until Thursday, 9 November.**

## COUNTRY FIRE AUTHORITY (AMENDMENT) BILL

*Second reading*

**Mr HAERMEYER** (Minister for Police and Emergency Services) — I move:

That this bill be now read a second time.

The purpose of this bill is to implement amendments to the Country Fire Authority Act 1958.

The Country Fire Authority is a statutory authority established by legislation, with provision for a board of management consisting of 12 members who are appointed by the Governor in Council.

The act precludes the chairman from undertaking any other paid employment, and currently the chairman also operates as the chief executive officer of the authority.

The remaining 11 members of the authority are appointed and paid as part-time members, and in a majority of cases are representative of organisations with an involvement in the functions of the Country Fire Authority.

In 1994 the Public Bodies Review Committee of the Parliament conducted an inquiry into the Metropolitan Fire Brigades Board. The committee recommended that the structure of that board be changed and in particular that the roles of president of the board and chief executive officer be separated. This recommended change was effected in 1997, with amendments to the Metropolitan Fire Brigades Act 1958. History has shown that the change has worked well.

The separation of these roles is essential in any organisation if openness and transparency in management are to be attained and appropriate checks and balances are to be assured within the corporate structure. This is of greatest importance at board level to prevent undue influence or concentration of power. The separation of the roles of chairman and chief executive officer avoids an excessive concentration of power in the hands of a single individual and strengthens the independence of the board. This is now accepted as a principle of good corporate governance in Australia.

This bill now extends that principle to the Country Fire Authority. The restriction placed on the chairman from involvement in other employment will be removed, allowing for a part-time appointment and a full-time chief executive officer, with duties and responsibilities established in the act.

The chief executive officer will be appointed by the authority, subject to the approval of the minister. There is further provision for the appointment of an acting chief executive officer. The bill will also transfer some functions from the chairman to the chief executive officer to enable urgent decisions to be made without unnecessary delay.

To ensure probity within the authority, provisions requiring members to declare a conflict of interest or disqualify their participation in circumstances where a conflict may arise will be strengthened. This is also in line with current principles of good corporate governance.

I commend the bill to the house.

**Debate adjourned on motion of Mr WELLS (Wantirna).**

**Debate adjourned until Thursday, 9 November.**

## ASSOCIATIONS INCORPORATION (AMENDMENT) BILL

*Second reading*

**Mr HAERMEYER** (Minister for Police and Emergency Services) — I move:

That this bill be now read a second time.

The bill before the house seeks to deal with a technical oversight in the Associations Incorporation Act 1981 which was highlighted by the winding up last year of a non-profit association, the sale of its premises to a developer for $1.305 million, and the distribution of the proceeds to its members.

Like all non-profit, community associations, the association had rules preventing the distribution of assets to members and, on its dissolution, requiring surplus assets to be distributed to another non-profit body.

Rules preventing the distribution of a club's assets to members and requiring distribution of surplus assets on a dissolution to another income-tax exempt body are required by the Australian Taxation Office for income-tax exemption.

However, the act currently provides that on a voluntary winding up of an incorporated association, surplus assets may be distributed according to a special resolution. The act therefore allows a distribution contrary to a rule against the distribution of assets to members. If there is no special resolution or a rule about distribution of assets, the act currently provides for the assets to be distributed by default equally among the members.

The distribution of the surplus assets of a non-profit, community association to its members raises issues of abuse of income-tax-exemption status, windfall gains to members, and the legitimate expectations of local communities about the continued use of community assets.

If an association seeks income-tax exemption and complies with the Australian Taxation Office's requirement of a rule preventing distribution of surplus assets to members, the act should not be able to be used by the members effectively to flout that.

Many non-profit clubs are long established and are almost invariably income-tax exempt. Members come and go over the years. The members who decide to wind up a club, sell the club's premises and distribute the proceeds among themselves will either not have contributed to the purchase of the premises or not have been the only ones to have contributed, and therefore will usually have no greater right to those assets than ex-members of the club.

For these reasons, the further Australian Taxation Office requirement that on the dissolution of a club, the surplus assets should go to another income-tax exempt body, should also be supported. The club can, of course, choose the tax-exempt body to which its surplus assets go.

There is also the question of the possible use by charitable associations of the voluntary winding up-provisions of the act to circumvent other provisions of the act requiring them to have a rule distributing surplus assets to another charity, as a condition of their ability to trade.

The government believes that the act should be clarified to prevent the members of a non-profit incorporated association, or of a trading charity, from distributing the association's assets to themselves on a voluntary winding up. In doing so, the act would reinforce the Australian Taxation Office's requirements for income-tax exemption.

In effecting the necessary changes to the act, the government intends to continue the traditionally light-handed approach to the regulation of incorporated associations, an approach that has contributed to the relatively high number of incorporated associations in this state.

It also believes that it is unnecessary and undesirable to have a blanket prohibition on the distribution of assets

to members, which is a feature of the legislation of the states and territories that already regulate in this area, and that there should be recognition of private associations that do not seek income-tax exemption and whose members wish to retain the association's assets after its dissolution.

The bill achieves these aims:

firstly, by providing that if the rules of an incorporated association include, or have included at any time within five years prior to a voluntary winding up, a rule that prevents the distribution of assets to members on a voluntary winding up, a special resolution will be of no effect if it purports to allow such a distribution, or has that purpose or effect;

secondly, by providing that in the situation where no special resolution is passed dealing with surplus assets, the act does not allow a distribution to members by default, if the rules of the association include, or have included at any time within five years prior to a voluntary winding up, a rule that prevents the distribution of assets to members on a voluntary winding up;

thirdly, by providing that if a trading charity has the required rule providing for distribution of surplus assets to another charity, the members cannot resolve under the winding-up provisions to distribute assets in a contrary way; and

fourthly, by providing that if the minister does, in fact, approve of a trading charity changing that rule, the winding-up provisions do not fetter that power.

The five-year rule operates so that if an association no longer desires to be non-profit, any change to the rules to provide for members to receive surplus assets on a voluntary winding up will not be effective for five years.

The period of five years is sufficiently long to discourage opportunistic changes of rules and identifies those associations that have legitimately altered their basis from non-profit, community associations to private associations. It is also a sufficiently long break between the time the association received the benefits of income-tax exemption and the time when it would be permitted to distribute surplus assets to members.

The government believes that the bill achieves a balance between the interests of the community in seeing that the non-profit or income-tax-exempt status of incorporated associations is not abused, and the interests of associations that are private in nature or that wish to change that status, for legitimate reasons.

Because the necessary changes to the winding up provisions of the act would have made the present layout of division 1 of part VIII of the act cumbersome and difficult to read, the bill reorganises the relevant provisions and substitutes a new division.

I commend the bill to the house.

**Debate adjourned on motion of Dr DEAN (Berwick).**

**Debate adjourned until Wednesday, 1 November.**

## LAND (FURTHER REVOCATION OF RESERVATIONS) BILL

*Second reading*

**Ms GARBUTT** (Minister for Environment and Conservation) — I move:

That this bill be now read a second time.

The bill provides for the revocation of permanent reservations of land described in the schedules to the bill. The bill removes these reservations either to facilitate disposal or because the purpose of the reservation is no longer appropriate for the future use of the land.

I turn now to the particulars of the bill.

Clause 3 of the bill deals with a 4462 square metre portion of public purpose reserve adjoining the Barwon Heads Golf Club at the end of Golf Links Road, Barwon Heads.

A formed road is present on the reserve which provides access to a housing estate at Stephens Parade. The road also encroaches onto Barwon Heads Golf Club land. However, as this road is not formally proclaimed, there is no legal access to Stephens Parade and the housing estate is essentially landlocked. Legislation is required to formalise access across the reserve to Stephens Parade. Due to the topography of the land, it was not feasible to locate the road entirely on the subject land and a portion of the access road is located on freehold land owned by the golf club. The opportunity is also being taken to formalise a longstanding occupation of part of the reserve by the golf club. In order to proclaim the road and properly rationalise property boundaries a series of land exchanges between the Barwon Heads Golf Club has been proposed.

Clause 4 of the bill deals with approximately 4 hectares of an asylum for indigent members of the Old Colonists Association Reserve at Ballarat. The land was reserved in 1929 and vests in the trustees of the Old Colonists Association of Ballarat Incorporated by virtue of a restricted Crown grant.

The Old Colonists Association of Ballarat is a benevolent organisation which was established in post-gold rush Ballarat to honour the 'enterprise and energy of the early settlers' and assist elderly and indigent old colonists, their widows and descendants.

The Charles Anderson Grove cottages at Gillies Street, Wendouree, comprise 27 houses/units providing accommodation for elderly members of the association and their descendants.

The association has applied to purchase the site to further its benevolent activities and the site has been assessed as having no public-land values to warrant its retention in the Crown estate.

Clause 5 of the bill deals with a 90 square metre sliver of a public purposes (wharf and associated tourist facilities) reserve adjoining the south bank of the Yarra River and adjacent to land controlled by the Docklands Authority. The reserve is managed by the Yarra River Maritime Reserve Committee of Management Incorporated.

As part of the upgrade of infrastructure for the Dockland development the Charles Grimes Bridge has been duplicated. Vicroads was engaged to project manage the contract on behalf of the Docklands Authority. Construction of the bridge was contracted to a private construction firm.

During the course of construction of the bridge, it became apparent in June 1999 that the eastern side of the structure encroached into the reserve as a result of the contractor proceeding with a non-conforming design. It was established that a redesign of the bridge would lead to substantial additional costs and time delays resulting in the bridge not being completed by the proposed opening date for Colonial Stadium.

The current government has sought and been given, an assurance by Vicroads that it will take all necessary steps to recover from the contractor the costs of the land acquisition and all other related costs.

Vicroads will be responsible for the management and maintenance of the Charles Grimes Bridge as a declared highway in accordance with the Transport Act 1983.

I commend the bill to the house.

**Debate adjourned on motion of Mr PERTON (Doncaster).**

**Debate adjourned until Thursday, 9 November.**

## DOMESTIC (FERAL AND NUISANCE) ANIMALS (AMENDMENT) BILL

*Second reading*

**Mr HAMILTON** (Minister for Agriculture) — I move:

That this bill be now read a second time.

The Domestic (Feral and Nuisance) Animals Act 1994 was assented to on 15 November 1994 and was proclaimed on 9 April 1996. Following an initial period of adjustment to the new legislation, the act has been widely accepted by end users, particularly municipal councils who are required to enforce the act, as providing a sound framework for the management of domestic animals. The act addresses community concerns particularly in relation to dangerous dogs and irresponsible owners of domestic animal businesses and has enabled these issues to be effectively managed by local government.

There have, however, been a number of submissions to government over recent years requesting changes to the legislation for a variety of reasons. In particular, the Municipal Association of Victoria has made several submissions relating to various aspects of the act in respect of which councils were having difficulty either in its application or enforcement.

A recent review by the Local Government Professionals Statutory Special Interest Group has also identified a number of areas where legislative amendment to the act appeared necessary to resolve problems being confronted by municipalities. The proposed amendments are mainly of a technical nature that would improve the effectiveness and enforceability of the current legislation.

I will now deal briefly with some significant features of the bill.

### Dogs and cats on private property without permission

The bill makes it an offence for dogs and cats to be on private property without permission. Currently under the act, a landholder or occupier is required to notify the owner of an animal that the animal is not permitted on

the property. If the animal is a stray and has no owner, the process cannot be followed; therefore no action can be taken. The bill will allow an owner to seize or allow the council to seize a dog or cat that is on private property without permission. The council will then have discretion to issue a notice to the animal's owner if the animal can be identified stating that the animal is not permitted on the person's property. Any entry on the property by the animal after this notice is issued will result in an offence. If an animal is not able to be identified it will be impounded.

**Dangerous dogs**

These amendments will rectify an inconsistency in the act where guard dogs had to be confined in prescribed enclosures during the day but could be let out at night to guard non-residential premises. In the latter situation, the type of fencing around the area being guarded was not required to be specified. The proposed amendments will provide for dogs that have received any form of attack training and dogs which guard non-residential premises to be automatically designated as dangerous dogs. This means the dogs will be subject to appropriate controls on housing and keeping which are provided for under the act and regulations.

**Pet shops**

The definition of 'a pet shop' will be amended to exclude from its ambit a stall at a casual market, consistent with the original intention of the current provision. This proposal ensures that such a stall cannot be registered as a domestic animal business, making such sales clearly an offence under the act. This ensures against excessive and/or improper handling, transporting and housing of animals, which is common in the market-sale situation, as well as aiding the prevention of impulse buying.

**Council orders regarding dogs and cats in public places**

Currently councils have the power to make orders prohibiting or regulating the presence of dogs and cats in public areas managed by the respective councils. The definition of 'public area' does not allow councils to make orders in places such as car parks at universities. The amendments will expand this power to allow the councils to make such orders in respect of private property, which is open to the public, with the consent of the owner.

**Dogs rushing or chasing people**

Research in the last two years indicates that 52 per cent of incidents reported to councils as dog attacks involve rushes and chases, which result in no physical injuries to the victim. Councils regard these as relatively minor offences and are reluctant to take court proceedings. However, these early signs of antisocial behaviour by dogs often lead to more serious attacks in the future. The bill will enable a proactive council to effectively deal with this type of dog by enabling either the council or the court to declare the dog to be a menace. This declaration will allow the council to require that when the dog is off the owner's premises, the dog be on a lead or muzzled if it is in an off-leash area. If the dog continues to display this type of threatening behaviour on a minimum of two further occasions, a council will be able to declare the dog to be a dangerous dog, with the further restrictions on the control of that dog applying.

**Seizure of dogs involved in attacks from private residences**

The amendments will allow an authorised officer, with assistance and with a court order, to enter a private residence to seize a dangerous dog where an offence relating to the dangerous dog has occurred or is suspected or where a dog is suspected of having attacked a person. The act then requires a council to hold the animal until the outcome of the court case is known.

**Registration by council for commercial domestic animal businesses**

Currently, councils are exempted from having to apply for and pay a fee for registration of any domestic animal business they run. In compliance with the national competition policy review, an amendment is proposed which will restrict this exemption to council-run shelters and pounds. Any commercial enterprise run by a council such as boarding kennels will be subject to the same controls and provisions as apply to other businesses.

**Procedures for the recovery of a seized animal**

There is no statutory requirement for an owner or agent to provide proof of ownership or any identification before removing an animal from a pound. There is also no statutory requirement for a person to register or apply to register an animal before it is recovered. A purpose of the act is to have an effective registration scheme, and the deficiency in the current requirements does not fully achieve this purpose. The bill will require proof of ownership and evidence of current registration or application for registration to be made before an animal can be released.

The bill ensures that municipal councils can fully and effectively implement and enforce the provisions of the act for which they are responsible without imposing unnecessary restrictions on responsible dog and cat owners.

I commend the bill to the house.

**Debate adjourned on motion of Mr McARTHUR (Monbulk).**

**Debate adjourned until Thursday, 9 November.**

## COURTS AND TRIBUNALS LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

*Introduction and first reading*

**Received from Council.**

**Read first time on motion of Mr HULLS (Attorney-General).**

**Remaining business postponed on motion of Mr HAMILTON (Minister for Agriculture).**

## ADJOURNMENT

**Mr HAMILTON** (Minister for Agriculture) —

That the house do now adjourn.

### Ballarat: job losses

**Dr NAPTHINE** (Leader of the Opposition) — I wish to raise a matter for the attention of the Premier. I ask the Premier to take urgent action on behalf of the state government to protect a number of jobs that are at risk in Ballarat. The jobs are at risk due to the restructure of Goodman Fielder's operations across Australia. An article in today's Ballarat *Courier* states:

> Australia's largest food company Goodman Fielder yesterday announced that it would cut back operations at its Creswick Road site, placing about 70 full-time jobs in jeopardy.
>
> The announcement came following a trans-Tasman review of the company's flour milling and mixing operations.
>
> …
>
> Mr McKay said the review concluded that mixing production at Ballarat should be shifted to Kensington in Melbourne and Smithfield in Sydney.

This is a classic example of jobs being moved from regional Victoria to Sydney and Melbourne. I ask the state government, through the Premier, to immediately to meet with Goodman Fielder and protest this situation. I urge the government to take whatever action is necessary to ensure that these jobs are protected for the people of Ballarat.

It is possible that more than just these 70 jobs could be at risk in the Ballarat community because Goodman Fielder will continue to restructure its operations. These jobs are held by individuals who bring incomes into Ballarat, people who are supporting families in Ballarat. For these people to lose their jobs just before Christmas is a cruel blow for them and the regional centre of Ballarat.

If the government were really concerned about regional and rural Victoria and its economy it would be on top of this situation and would not need the opposition to draw the Premier's attention to these job losses. The government would already be aware of the restructure being undertaken by Goodman Fielder and it would have been acting to protect these jobs in Ballarat and the livelihoods of the people involved.

I call on the Premier to come into the chamber tonight and tell the house, the people of Ballarat and the Victorian community what his government is doing to protect those 70 jobs in Ballarat that could be lost through the restructure of Goodman Fielder and what it is doing to protect the families of the people who hold those jobs.

### Member for Geelong Province: correspondence

**Mr LONEY** (Geelong North) — I raise for the attention of the Minister for Transport a matter relating to a resident of Geelong, Mr Paul Turner, who has been very active in raising issues concerning Breakwater Road, an arterial road in Geelong that carries approximately 14 000 vehicles a day. The road has a number of significant traffic problems to which Mr Turner is trying to draw attention. I think the minister is aware of the issue.

The specific issue I raise is that Mr Turner corresponded with a number of local members about the issue, including the Honourable Ian Cover in another place. Mr Turner wrote to the Honourable Ian Cover on 13 April and received from him an acknowledgment of that letter. However, Mr Cover could not advise Mr Turner of his view of things related to Breakwater Road at that time and advised that he would reply in due course.

When Mr Turner had not been advised in due course by 24 July he wrote to the Leader of the Opposition. He said:

> On 13 April 2000 I wrote to Ian Cover, MLC, outlining my concerns with regard to Breakwater Road, Geelong.

> On 26 April 2000 Mr Cover wrote to me an acknowledgment of receiving my letter and would advise me of developments on this matter 'in due course'.
>
> Three months later I am still waiting for Ian Cover to advise me 'in due course'. As a resident, taxpayer and voter in Geelong and therefore Mr Cover's employer, I find this lack of response unacceptable.
>
> …
>
> I noted how fast Mr Cover was in having his photograph taken with you walking along the Barwon River and making public comments when the elite rowing fraternity bleated about the boys' Head of the River going to Nagambie.

Mr Turner asked for advice. The Leader of the Opposition wrote back and said:

> I appreciate your support for the appointment of Mr Cover to the Liberal shadow cabinet.

Amazing! The Leader of the Opposition sent Mr Turner two letters from, it would seem, Mr Cover, saying that he directed Mr Turner's letter to the Minister for Transport. The Leader of the Opposition says the problem is that the Minister for Transport does not answer correspondence.

## Echuca: dialysis services

**Mr MAUGHAN** (Rodney) — The matter I raise is for the attention of the Minister for Health and concerns renal dialysis at Echuca Regional Health. I had the pleasure of opening the very first dialysis unit in Echuca on 24 November 1995. There are currently three machines working two shifts and providing services for six patients. However, as with most of these things, demand has grown and there is now a need for more services.

I quote from a letter from Dr John Niall, a renal specialist at St Vincent's Hospital, who wrote to:

> … express his grave concern about the pressure on the dialysis unit at the Echuca Hospital. This is now well established, dialysing six patients with well trained staff and equipment.

He went on to say:

> Patients on dialysis already are under great stress, dependent for life on treatment which must be given three times weekly for 4–5 hours excluding travelling time.
>
> …
>
> Echuca and district residents have a right to expect such a facility to be available locally and Echuca Regional Health has provided the existing unit, which urgently needs expansion.

I also have another letter — this one is from Dr Peter Graham, the executive director of the Murray Plains Division of General Practice. He strongly supports the need for additional facilities at Echuca. I have a third letter, from Dr Heale, a renal physician. He says there is a statewide increase in dialysis patients. Dr Heale goes on to say:

> We have three patients who wish to dialyse at Echuca Hospital, and I gather there are a number of other patients. Solutions to the increasing demand may be to either increase the number of shifts or increase the number of patients who dialyse simultaneously. We would be happy to supply extra machines as well as replacing older machines.

Machines are not the problem. There are machines, trained staff and adequate facilities; what is lacking is funding. The weighted in-line equivalent separations (WIES) target for Echuca Regional Health is 4368. There has been a growth in demand and the hospital is already 100 over its target. Patients are having to go to Bendigo, Shepparton and elsewhere for dialysis.

I implore the minister: Echuca has the equipment, it has the staff, it has the facilities, it has the patients — and what it needs is the funding. It has trained nursing staff and it needs funding to enable that dialysis unit to work to its capacity to service patients in Echuca and the surrounding areas.

## Ballarat East Community House

**Mr HOWARD** (Ballarat East) — I wish to raise a matter for the attention of the Minister for Community Services. I seek assistance for the Ballarat East Community House, which needs to find new premises. The house is presently located in a rented property in Steinfield Street, Ballarat, but its success in attracting more funding to run more courses and more activities means the premises are no longer large enough to satisfy its needs. In addition, the owner of the premises is encouraging the community house to move.

The management committee of the community house is quite concerned. It has expended much energy in trying to find appropriate premises in the Ballarat East area. The premises need to be large enough to suit the needs of the community house and to be accessible to the many people who want to attend it and who rely on public transport to do so.

The management committee has identified one site as possibly meeting its needs, and that is the site of the former Golden Point primary school. The school was closed some six years ago, and sadly its buildings have languished unused since then. The former government did not find a new user for the site and the facilities have become quite degraded. Many of the windows have been broken in acts of vandalism, and other damage has been done because the school is not being

used. It is unfortunate that the school has languished. It was a valued school in the area but the facility now concerns the nearby residents as it attracts people who are up to no good.

This would seem to be an ideal opportunity to provide new premises for the Ballarat East Community House. I ask the minister to direct the energies of some of her departmental staff towards assisting the committee of management in exploring whether the site is suitable. It is a matter of some urgency because the community house requires premises to provide it with a secure future.

The committee and I, as the member of Parliament for the area, are concerned to ensure that the premises do not deteriorate any longer as they can provide a useful community resource. I trust that with support from the minister's department we can find a satisfactory resolution to this issue for the Ballarat East Community House.

I commend the staff and the committee of management of the Ballarat East Community House for the great efforts they have put in over many years in providing services for their clients and providing an improved quality of life for the many who benefit from the courses offered. I wish them well for the future.

## Nurses: medication administration

**Mrs SHARDEY** (Caulfield) — I raise a matter for the Minister for Health, although it is by implication an issue that also affects aged care. The residential aged care sector is currently going through a crisis because many facilities are in breach of the legislation governing the administration of medication by staff. The problem arises because although they are the people mostly staffing our aged care facilities division 2 nurses cannot legally administer medication.

The Nurses Board of Victoria has conducted a review and the report of that review is currently with the Minister for Health. I ask the minister to urgently make a decision on the issue and announce it to the industry.

By way of background, I mention that Victorian legislation regulating the administration of medication does not allow division 2 nurses to administer medication to patients. Controls imposed by the Drugs, Poisons and Controlled Substances Regulations, the nurses board and the Australian Nursing Council make it illegal for them to do so. However, many division 2 nurses who are employed as personal care workers and who administer medication as part of their duties are now faced with the prospect of losing their practising certificates for doing so.

A letter from the nurses board to the Victorian Association of Health and Extended Care, or VAHEC, states:

> To date, all stakeholders consulted in the first phase of the project support the expansion of the division 2 register nurses' role in Victoria to include the administration of medication.

Given the shortage of division 1 nurses in nursing homes as a result of the movement of such nurses into the acute sector because of increased wages this problem is becoming pronounced. I call on the minister to make a decision and announce it to the industry.

## Community care: funding

**Ms LINDELL** (Carrum) — I ask the Minister for Community Services to seek additional support for the peak bodies of community organisations to assist them to provide their member organisations with stronger advocacy opportunities and an increased role in advising the government.

An excellent community organisation that operates in my area and across the south-eastern suburbs, Financial Counselling Service Southern, serves the cities of Kingston, Glen Eira, Stonnington and Bayside exceptionally well. Its premises are in Bentleigh and it is funded by the Department of Human Services. It is a community-based organisation that provides financial counselling to low-income families and individuals. Since 1999 it has provided 20 hours of counselling a week in Chelsea, as well as other counselling from the site in Bentleigh. Being able to access this fine service locally has made a remarkable difference to my constituents.

The essential aim of a community organisation is to assist those who need its help, and Financial Counselling Service Southern empowers its clients to improve and take control of their lives. Through the leadership of the chairperson, Helen Smallwood, and chief executive officer, Kit Hauptmann, and his team, the service provides a high-quality financial counselling service and is a strong advocate for over 1600 clients.

I ask the minister for any additional support she can offer the peak bodies of similar agencies and organisations to encourage them to continue their magnificent work.

## Natural Resources and Environment: tender

**Mr PERTON** (Doncaster) — I raise a matter with the Minister for Environment and Conservation. There is presently in place a tender process for the provision of managed telephone systems for the whole of the

Department of Natural Resources and Environment for the next three to five years with a contract value in excess of $5 million. The two competitors left in the race are NEC and Telstra.

There has been a serious breach of the government tender probity guidelines put in place by the Kennett government and adopted with amendments by the Bracks government. The departmental officers have breached the government's probity rules and have probably broken the law by giving NEC's confidential tender information, including the price, to Telstra.

Telstra is a competitor with NEC not only in this bid but in dozens of bids in the public and private sectors, so the damage to NEC not only affects the tender in question but potentially opens Victoria to a damages action for loss across a range of other tender situations. This is not to suggest any wrongdoing by Telstra. Like any competitor, it was probably grateful for the free kick.

The minister's failure to act calls into question the Bracks government's commitment to probity in government and its commitment to support Victorian-based companies such as NEC and Telstra by running tender processes that are beyond reproach and attack under the civil or criminal law.

## Swinburne University of Technology

**Mr ROBINSON** (Mitcham) — The matter I raise for the attention of the Minister for Post Compulsory Education, Training and Employment concerns Swinburne University of Technology, and in particular the university's Lilydale campus. In recognition of the joint federal–state responsibility for the administration and funding of TAFE institutes in Victoria, I seek the minister's action in making the strongest possible representations to the federal government to further assist the development of the Lilydale campus.

The Swinburne institute has a proud history in the eastern suburbs of Melbourne. It was founded by a former member of this place, George Swinburne, and was known for many years as a working man's college. For many years it was the only facility of its sort in the eastern suburbs.

The institute's campuses have developed over recent years, and the Lilydale campus was established in 1997, which all Victorians welcomed. The tradition of Swinburne's service to Victoria continues. A wide range of courses are offered at the Lilydale campus, including courses in e-commerce and multimedia. No-one should be unaware of the value of those courses to the future development of Victoria's economy.

Currently the institute has 1500 full-time student places, but the federal government is prepared to fund only 680 of them. That is an intolerable situation for the institute, and it is an intolerable situation for the eastern suburbs and their future development.

I urge the minister to take the matter up with the federal government to secure appropriate funding to allow the flow of students through that facility to reach its capacity and to enable that important tertiary facility to service Victoria in the best way possible.

## Police: response times

**Mr ASHLEY** (Bayswater) — I raise a matter for the Minister for Police and Emergency Services, and in his absence the Minister for Transport. The details I will relate to the house were provided to me in a letter from a constituent who lives in Heathmont. The incident occurred last Tuesday evening between the Box Hill and Blackburn stations on the train bound for Belgrave. The constituent writes:

> At 10.39 p.m. on Tuesday, 24 October, a youth at Box Hill station boarded the train bound for Belgrave.
>
> Within a few moments of departure from Box Hill, the youth's behaviour — shouting obscenities, waving his arms about, directing aggressive looks and remarks at passengers (who clearly wished to withdraw from the situation) deteriorated rapidly. He banged his head, with great force, a number of times against the window risking breaking the glass.
>
> Two young women (one of whom later said she was training as a social worker) attempted, without success, to placate him.
>
> His violence increased to the extent that blood was streaming from his body, splattering his clothes (and presumably the carriage) and he continued hitting the windows with his head and fists, moving around on the seats and the floor.
>
> Judging that his behaviour was putting passengers at serious risk, at Blackburn …

My constituent jumped out of the train, went to the front of the train and spoke to the driver.

> The driver … at 10.43 p.m. phoned Metrol seeking police assistance saying he would hold the train at Nunawading until they arrived.
>
> The train arrived at Nunawading station at 10.46 p.m. where it stopped and the driver informed the passengers that there would be a delay.

At 11.05 p.m. — the police had not responded by then despite the fact that Nunawading is a 24-hour station and is barely a kilometre away — the youth got out of the train and moved away from it erratically, putting himself at risk of being injured by the train and the road traffic.

My constituent discovered that the Nunawading police had been informed at 10.50 p.m., but no car was available, and as a result of a change of the shift at 11.00 p.m. there was a delay. My constituent is concerned about that delay and its effect on community confidence.

I ask the minister whether the change of shift took precedence over public duty, whether a police car was available and whether it is possible for a CAT team to be added to improve the rapid response capacity in dealing with instances such as this.

## Mansfield High Country Festival

**Ms ALLEN** (Benalla) — I direct to the attention of the Minister for Major Projects and Tourism the forthcoming Mansfield High Country Festival. My electorate of Benalla — God, I love saying that; it is absolutely fantastic! — is extremely well known for a number of fantastic festivals that are drawing more and more local, interstate and international tourists to the area every year. The beautiful town of Mansfield is one of the areas that is drawing those tourists.

**An honourable member** interjected.

**Ms ALLEN** — Yes, I can make it rain, too. The Mansfield area, which is part of the legends, wine and high country tourism region, is a vibrant, community-minded town whose people are passionate about their surrounds, which include the beautiful high country, Mount Buller and, of course, Lake Eildon.

Lake Eildon is filling up as a result of the rain we have had lately. It is now at around 45 per cent of capacity, which is up from 15 per cent in May. I wonder whether that has anything to do with the fact that since May the area has had a Labor member. Water is even coming back into Bonnie Doon, so there is water underneath the bridge.

One of the most exciting events held around Mansfield is the Mansfield High Country Festival, which originated 19 years ago as a result of the success of the movie *The Man from Snowy River*, and it has continued to be a wonderful tourism event for the area. The festival has many exciting and humorous events, including the Crack Cup, a bush horse race through the high country; bush markets — if you have never been to one, you should go; live music; bush poetry; exhibitions; and the Melbourne Cup picnic races. A new addition to the program is the Battle of the Rising Stars, at which 16 country music artists will have a play-off.

The activities take place predominantly in Mansfield, but there are tours to Mount Buller, which we all know has had its best snow season in 50 years. I invite all honourable members — I even extend the invitation to the opposition — to come to Mansfield in my beautiful electorate to enjoy the Mansfield High Country Festival.

I ask the minister what action the government is taking to ensure this event remains one of the area's most exciting festivals.

## Dairy industry: licence fees

**Mr McARTHUR** (Monbulk) — I raise with the Minister for Agriculture the cost of dairy industry licences since the passage of the Dairy Act 2000. I have with me copies of a couple of dairy licences. The first was issued to a dairy operation owned by J. W. and B. A. Brewer by the Victorian Dairy Industry Authority (VDIA) effective from 1 October 1991 to 30 September this year.

**Ms Lindell** — On a point of order, Honourable Acting Speaker, I thought the purpose of the adjournment debate was to ask for action. The honourable member for Monbulk is directing the minister's attention to something, but can he actually ask for action?

**The ACTING SPEAKER (Mr Seitz)** — Order! On the point of order, I rule that the honourable member is just giving an introduction and I am sure he will ask for action from the minister.

**Mr McARTHUR** — I can assure you, Mr Acting Speaker, I will be asking for action.

The fee for the one-year licence issued by the VDIA was $50. I now turn to a licence issued by Dairy Food Safety Victoria, the new authority, for the period 1 October to 31 December 2000, again to J. W. and B. A. Brewer. Again the fee is $50. I point out to the minister that that is the same amount as the annual fee the dairy farm faced last year. It is clear that this dairy farming operation is looking at an increase of four times the previous fee.

I remind the minister of comments made by the honourable member for Warrnambool on 26 May this year, when he predicted increases in licence fees as a result of the new legislation. He told the house that previously licence fees had been used solely to fund the dairy herd improvement scheme, that food safety regulatory costs at the processor end were likely to be passed on to dairy farmers and that that would result in a rapid increase in fees.

I ask the minister to urgently investigate this increase and to take what action he can to assure dairy farmers that they will not be facing a fourfold increase in licence fees this coming year and to assure honourable members that Dairy Food Safety Victoria will not be simply passing processing and regulatory costs on to farmers across country Victoria. I point out to him that sections 24 and 25 of the new act cover this matter, and I suggest he urgently contact his department and the industry association.

**The ACTING SPEAKER (Mr Seitz)** — Order! The honourable member's time has expired.

## Responses

**Ms KOSKY** (Minister for Post Compulsory Education, Training and Employment) — The honourable member for Mitcham raised with me the serious issue of insufficient commonwealth funding for student places at Swinburne University of Technology's Lilydale campus. I was invited to visit the Lilydale campus on 17 October, which I did. It is a beautiful campus. I met with Professor Barbara Van Ernst, who I must say is a very impressive deputy vice-chancellor. Together with the staff she has turned that campus into what I believe is a fantastic facility whose teaching connects incredibly well with the community. The university is using the facility there, the teaching and academic staff, to assist the Lilydale community. It is a dynamic organisation and I was very impressed with Barbara and her staff. As I said to her, I wish I could bottle her. She and her staff are very good.

The facility out there is also impressive. It was designed by Australian architect Glenn Murcutt. It is a fantastic facility. It was established under the previous Labor government, in recognition of the fact that many students in the Lilydale area were not accessing tertiary education for a whole range of reasons, which were described to me in great detail by the group that I met out there. As well as visiting the campus I met with some 20 school principals and career counsellors, all members of the outer eastern planning network.

They talked with me at length about their concerns in trying to get enough places funded at the university so that young people, older people and middle-aged people can access a university in their locality. They indicated to me that the demand for places at Lilydale has increased by around 30 per cent every year since it has been established and also that many of the students who are enrolled at Lilydale are the first in their families to access tertiary education. The Lilydale campus has played a significant part in expanding the tertiary qualifications and the access to tertiary opportunities in the Lilydale area.

The real concern, as has been mentioned by the honourable member for Mitcham and as was detailed by the people with whom I spoke, is that the campus has 1500 effective full-time places but funding for only 680 places, so it is covering a large number of students without adequate funding. The university staff are concerned that if funding is not forthcoming for those places, it will have a negative impact on the educational aspirations of members of the Lilydale community.

I advise the honourable member that I have written to the federal Minister for Education, Training and Youth Affairs, David Kemp, on this matter several times urging him to increase the number of fully funded student places at Lilydale. I am currently awaiting his response to my last letter; but I am really pushing the point that the federal government has to increase funding for full-time places at Lilydale. When one realises that there have been real cuts in commonwealth funding across the higher education sector of around 16 per cent over three years, it becomes clear that in trying to set itself up as a very good university in that area the Lilydale campus is struggling because it has not been recognised in terms of the additional funding that is required. Swinburne University is frustrated because David Kemp's response is simply to transfer places from Swinburne's other campus to Lilydale, which will not resolve the issue.

I am glad that the honourable member for Mitcham has raised this matter with me. It has not been raised with me by the local members, but it is incumbent on all honourable members who represent the electorates serviced by Swinburne University to raise this matter with their federal members so that it can be directed to the attention of David Kemp. If we are to have a clever country and an investment in education we must invest in the Lilydale campus to make sure that the people who have not previously had access to tertiary education are properly funded to do so. The Bracks government is putting the money into the TAFE component. It is incumbent on the federal government to properly fund the higher education component so that a proper education system is available for the Lilydale community.

**Ms GARBUTT** (Minister for Environment and Conservation) — The honourable member for Doncaster raised with me the issue of a tender for a managed telephone system involving NEC and Telstra and what he claims is a breach by departmental officers of the probity guidelines for tendering involving officers inappropriately giving information to one of the

bidders. I shall certainly follow up that issue and investigate the honourable member's claims. If he has any evidence, I would be pleased to receive it.

**Ms CAMPBELL** (Minister for Community Services) — The matter raised by the honourable member for Carrum goes to the importance of peak bodies in informing government and the community and acting on behalf of disadvantaged Victorians. In my portfolio I have had have good advice and support in terms of links in a partnership approach with four particular organisations.

The honourable member for Carrum mentioned Financial Counselling Services Southern. That wonderful service is well represented by the Financial and Consumer Rights Council. Ms Barbara Romeril does an outstanding job there. I can only reinforce the words of the honourable member for Carrum about Financial Counselling Services Southern and the importance of a peak organisation. I am happy to inform the house that peak body funding for the Financial and Consumer Rights Council will be increased by $11 500 to $126 763.

The government has also been able to provide added assistance to other peak organisations, all of which are extremely helpful to the government. The peak body funding for the Association of Neighbourhood Houses and Learning Centres will be increased by $6000 to more than $65 000. The Foster Care Association of Victoria, which is working so conscientiously with the government will have its peak body funding of $12 500 increased by $1500.

I point out also the importance of the Victorian Aboriginal Community Services Association, whose members have been doing outstanding work for their communities and advising the government in general and the Department of Human Services in particular on very important matters concerning the Koori community. Their peak body funding will be increased by $40 000 to more than $400 000. It is very impressive, and I know the Minister for Aboriginal Affairs is delighted about that increase in funding.

The honourable member for Ballarat East raised the important issue of an appropriate home for the Ballarat East Community House. He pointed out that there was one site that he and the committee support for that house — that is, the former Golden Point primary school which was closed under the Kennett government. Not many good things come from the closure of schools, but it would be nice if there were a considerable benefit to the Ballarat East Community House from that closure. I will ask the department to follow up that matter with the committee of management to identify with them and local government what would be a more appropriate home and see if it can be found for the Ballarat East Community House.

**Mr PANDAZOPOULOS** (Minister for Major Projects and Tourism) — I again thank the honourable member for Benalla, who regularly asks questions and makes comments about and supports the local tourism industry. Tourism is growing in that region, as it is across Victoria. It is an exciting region where the local community, working together, drives tourism. It is great that they have a local member who lives in the area, knows it well and works hard for it with the local communities. It is something they have not experienced for a long time.

The honourable member asked what support the government can provide for the Mansfield High Country Festival. Incidentally, my first official visit as minister responsible for tourism was to attend that festival. I was very appreciative of the comments made to me. People said that in the past tourism-related events in country and regional Victoria just could not get the sort of funding they needed. They were not given the opportunity they wanted because there was only a measly $75 000 available for the whole state.

I am pleased to be able to advise the honourable member for Benalla that, as a result of the new $200 000 funding for smaller events allocated to the Country Victoria Tourism Council as part of the country Victoria tourism events program, the organisers of the event have received the maximum grant of $5000.

The Country Victoria Tourism Council has assessed the event and believes there is an opportunity for it to grow, but it requires additional support. The extra money is available for the first time from the government and will be administered by peak regional tourism organisations such as the Mansfield High Country Festival, which has the opportunity to regularly seek support from government.

I wish the festival well and I thank the honourable member. I am aware that she is opening the festival. I look forward to seeing the festival grow over a number of years under the leadership of the Bracks government.

**Mr HAMILTON** (Minister for Agriculture) — I thank the honourable member for Monbulk for raising the matter with me. I am surprised and concerned about it, given the amount of work put in by the working party in getting the Dairy Foods Safety Authority

established and the spirit in which it was done. I will read briefly from page 1325 of *Hansard* of 4 May where the second-reading speech on the Dairy Bill states:

> The government will ensure that dairy farmer licence fees do not increase in the next licence period from December 2000. The government–industry working group adopted the principle that businesses should contribute to the costs of food safety services in proportion to the benefits they receive. The government endorses this general approach. The working group noted that 'the level of revenue raised in total from current farm licence fees is realistic in relation to the criteria of benefits received' by farmers.

I have no doubt about the spirit of the legislation or the way it was put forward and adopted by Parliament. The government agreed to transfer $1.8 million from the Victorian Dairy Industry Authority to establish Dairy Food Safety Victoria. That was done so that there would be no increase in the dairy farmer licence fees for a period of two years. That was the spirit of the legislation and the agreement reached with all sectors of the industry represented on the working party. Indeed, it was assumed that Dairy Food Safety Victoria would have a two-year period to negotiate with the various stakeholders — manufacturers, processors and dairy farmers — to ensure that licence fees and fee for service covered their costs. However, the costs for the first two years of operation, estimated to be about $1.8 million, plus what was collected from the current fee structure, with no further increase, was the agreement and the way the legislation was framed.

I hope the issue raised by the honourable member was a mistake in the issuing of the account by the authority in that it has calculated that the quarter represented a quarter of the fees, which may explain the mistake. There is no doubt in my mind, from what the honourable member has said, that there has been a significant mistake. I shall ask my department to follow up the issue.

**Dr Napthine** interjected.

**Mr HAMILTON** — That would be an even bigger mistake. It is a serious matter. I trust it is a miscalculation, but it shall be attended to and I will get back to the honourable member. I thank him for raising the issue.

**Mr BATCHELOR** (Minister for Transport) — The honourable member for Caulfield raised with the Minister for Health a matter relating to the ability of nurses in nursing homes to administer drugs. I will ask the Minister for Health to take up that issue with her.

The honourable member for Rodney also raised with the Minister for Health a matter relating to renal dialysis facilities in Echuca and requested additional funding to expand the programs and services of the unit. I will also refer that matter to the minister.

The Leader of the Opposition raised with the Premier a matter relating to jobs in Ballarat, and in particular to difficulties at Goodman Fielder. I will ask the Premier to examine that matter and get back to him.

The honourable member for Bayswater initially raised a matter for the Minister for Police and Emergency Services, but in his absence he referred it to me as it started with a public transport issue. He referred to an incident that occurred on a train travelling between Box Hill and Blackburn stations. The problem involved the inappropriate behaviour of a young passenger, the violence associated with that, the concern of other passengers and their attempts to try and get help. The issue was how the train driver contacted the police through Metrol. As I understand it, unless I misheard the honourable member for Bayswater, he was not so much seeking an explanation of what happened on the train as raising with the Minister for Police and Emergency Services the ability of the nearby police station to respond to the call. I will refer the issue to the minister and ask him to respond to the honourable member.

The honourable member for Geelong North raised with me an issue relating to correspondence from a member of the Geelong community who had written to a number of people about a particular problem. Mr Paul Turner has written to me directly, and I understand he has written to a number of local Geelong members of Parliament and the council. In a letter to the Leader of the Opposition dated 24 July Mr Turner indicates that he has done just that and states:

> All the Labor politicians in Geelong, Minister Batchelor, Vicroads, the Geelong transport strategy and the City of Greater Geelong council sent me prompt and supportive replies confirming the problems of Breakwater Road.

He went on to say that he noted how fast Mr Cover was in having his photograph taken and complained about the lack of response from Mr Cover about the substantive part of the issue. Breakwater Road is a declared main road and — —

**Dr Napthine** interjected.

**Mr BATCHELOR** — Are you saying that Mr Cover did not — —

**Dr Napthine** interjected.

**Mr BATCHELOR** — What was I going to do? He knows. The Leader of the Opposition says I was going to make an allegation that Ian Cover did not write to me.

**The ACTING SPEAKER (Mr Seitz)** — Order! Interjections are disorderly, and the minister should ignore them.

**Mr BATCHELOR** — The Leader of the Opposition seems to know a lot about what has gone on. I have not made an allegation. The first person in the Parliament to make that allegation was the Leader of the Opposition. We all heard the opposition leader say that tonight! I was going to give an explanation of the traffic issues; however, the first person in the Parliament to raise that allegation was the Leader of the Opposition. That is interesting. I smell a rat!

**Mr Leigh** — On a point of order, Mr Acting Speaker, firstly the minister is casting aspersions on a member in another chamber. Secondly, and more importantly, there are many honourable members on both sides of the chamber who have been waiting up to six months for the minister to send them a reply to correspondence. The minister has to stop making allegations about people who are not here to defend themselves!

**The ACTING SPEAKER (Mr Seitz)** — Order! I could not understand a word the honourable member for Mordialloc said in his rambling on the point of order. I ask him to repeat it slowly at an audible level.

**Mr Leigh** — I am simply making the point that, firstly, the minister is casting aspersions on a member in another chamber, and secondly, a large number of members in this chamber have been waiting more than six months for the minister to respond to their correspondence to him. It is an outrage that the minister attempts to assault someone else's reputation when he is not capable of delivering the goods and is a dud himself.

**Mr BATCHELOR** — On the point of order, Mr Acting Speaker, I did not say that the honourable member for Mordialloc was a smelly rat. I ask you to dismiss his point of order.

**The ACTING SPEAKER (Mr Seitz)** — Order! I do not uphold the point of order. However, I ask the minister to stick to answering the matters raised with him and to desist from responding to the interjections.

**Mr BATCHELOR** — Before I took up the interjection of the Leader of the Opposition I was trying to deal with the traffic issues raised with me. The Leader of the Opposition indicated that he knew a lot more about what was going on and whether or not letters were sent off to various people than almost anybody else.

Mr Turner wrote to me and I responded to him. The Labor politicians wrote to me, and I responded to them. The one member of whom I have no record of having corresponded with me is the Liberal member for Geelong Province in the other place, the Honourable Ian Cover. The other honourable member for Geelong Province in the other place corresponded with me, of course, but the Liberal member apparently did not. The opposition claims, through the involvement of the Leader of the Opposition, that he did. That is the oldest trick in the book: when you get caught out — —

**Mr Spry** — On a point of order, Mr Acting Speaker, I cannot sit here and listen to this. I happen to know that the Honourable Ian Cover, a member for Geelong Province in another place, wrote to the minister and is yet to receive a response. I take exception to the minister's comments.

**The ACTING SPEAKER (Mr Seitz)** — Order! There is no point of order.

**Dr Napthine** — On a further point of order, Mr Acting Speaker, I refer to standing order 108, which states:

> No member shall use offensive or unbecoming words in reference to any member of the house and all imputations of improper motives and all personal reflections on members shall be deemed disorderly.

I further draw your attention, Mr Acting Speaker, to the Speaker's ruling as circulated to members on imputations against members of either house, which states that that can be done only by substantive motion. Therefore, the Minister for Transport should withdraw the imputation he is making against an honourable member for Geelong Province in the other place, Mr Cover, and I ask him to do so. I know — because he has told me previously and again today — that the Honourable Ian Cover has written to the Minister for Transport on the issue and that the minister has failed to respond.

For the Minister for Transport to imply that the Honourable Ian Cover has not written to him or, to use his words, played 'the oldest trick in the book', is an imputation against the reputation and character of the Honourable Ian Cover, and I ask that the minister withdraw his remarks.

**The ACTING SPEAKER (Mr Seitz)** — Order! I do not uphold the point of order. The Leader of the

Opposition is correct in saying that a member in another place cannot be impugned. However, the Leader of the Opposition cannot on behalf of another member ask for a member to withdraw. I ask that the Minister for Transport be aware that a member in another place cannot be impugned.

**Mr BATCHELOR** — It should be me who is asking for the protection of the standing order because the Leader of the Opposition impugned me! He said I did not respond to the honourable member for Geelong. I could not respond because I never received a letter. All that goes to prove is that the Leader of the Opposition was part of the big stink.

**A Government Member** — Fingerprints all over it.

**Mr BATCHELOR** — Fingerprints all over it, that is right. I was prepared to give the Leader of the Opposition the benefit of the doubt.

**Dr Napthine** — On a point of order, Mr Acting Speaker, I refer to standing order 108. With his usual over-the-top language the Minister for Transport has implied that I was part of — to use his words — a big stink. That is attributing motive, and I ask that it be withdrawn. It is not only incorrect in my case but it is also incorrect in the case of the Honourable Ian Cover in another place. The Minister for Transport is misrepresenting the situation. He should learn to curtail his language and withdraw the imputation against my reputation.

**The ACTING SPEAKER (Mr Seitz)** — Order! The Leader of the Opposition finds the words 'the big stink' offensive and I ask the Minister for Transport to withdraw his remarks in relation to the Leader of the Opposition.

**Mr BATCHELOR** — If the Leader of the Opposition finds those words offensive I will withdraw them in relation to him. It takes me back to what may well have been the original interpretation of those events: the Leader of the Opposition has had nothing to do with this issue and he has also been taken for a ride.

**Mr Perton** — On a point of order, Mr Acting Speaker, I believe most honourable members on the other side of the house would like the Minister for Transport to cease his comments.

*Honourable members interjecting*.

**Mr Perton** — The minister is clearly flouting your three rulings. He is entitled to speak only about the substantive issue of the road, and if he deviates from that topic it is your duty as Acting Speaker to sit him down.

**Mr BATCHELOR** — On the point of order, you will recall, Mr Acting Speaker, that the honourable member for Geelong North raised with me the issue of whether correspondence had taken place. While the government regards the issue of the road as the most important matter and it should be the cornerstone of any debate in this place, I was asked to investigate and comment upon what happened to the correspondence. That is what I am doing.

**The ACTING SPEAKER (Mr Seitz)** — Order! I do not uphold the point of order. The minister should return to his remarks on the issue raised with him.

**Mr BATCHELOR** — As I said before the Leader of the Opposition intervened and implicated himself in those other events — —

**The ACTING SPEAKER (Mr Seitz)** — Order! I ask the Leader of the House to address the Chair.

**Mr BATCHELOR** — I was attempting to inform the house of the road traffic issues relating to Breakwater Road. It is a declared main road and is a strategic east–west link in South Geelong. It provides one of only a limited number of crossings over the Barwon River, and it also crosses the Geelong–Warrnambool railway line.

The difficulties are many because the river is subject to frequent flooding — on average about four times a year — and to add further complication to the situation the rail crossing is grade separated with rail over the road, and there is a restricted road height clearance of 3.8 metres.

Breakwater Road has a traffic volume of approximately 13 000 vehicles per day and demand for its use is growing each and every year at the rate of approximately 4 per cent.

I also advise the house that a planning scheme reservation has been included in the Geelong regional planning scheme for approximately 15 years to provide for future flood-free road access across the Barwon River in the area of Breakwater Road. The specific location of the reservation is between Fellmongers Road and Barwon Heads Road and it also provides for a grade separation of the railway line.

They are the issues that members of the Liberal opposition both in this and the other place should have been addressing, just as Labor members from the Geelong area have been directly raising them with me.

**Mr Paterson** — On a point of order, Mr Acting Speaker, I attended the public rally organised by Mr Turner at Breakwater Road. The Labor Party member for Geelong Province in the other place, Mrs Elaine Carbines, did not bother to turn up to the rally. Mr Turner advised me when I arrived that the Liberal Party member for the province, Mr Cover, had been in touch with him and had apologised because he was elsewhere in regional Victoria on the day. However, Mrs Elaine Carbines did not bother to turn up, and neither did the honourable member who has raised this issue tonight, the honourable member for Geelong North.

**The ACTING SPEAKER (Mr Seitz)** — Order! I do not uphold the point of order. The honourable member can raise the issue as a personal explanation. I ask the Leader of the House to complete his answer. Has he finished his answer?

**Mr BATCHELOR** — No, I have only just started.

There are important transport issues that Labor members would like addressed at some time in the future when the budget provisions provide for it. With so much concern apparent in the Liberal Party, one wonders why it did not do something about the issue during all its years in office. Members opposite did not do a thing about the issue. They were clearly negligent then as a government and by their actions they maintain that response in opposition.

In response to the honourable member for South Barwon, the government has not received correspondence from the Honourable Ian Cover, an honourable member for Geelong Province in the other place. The Leader of the Opposition seems to know all about it, and I do not know why.

**Mr Leigh** — On a point of order, Mr Acting Speaker, the minister is flouting your ruling about attempting to attack an honourable member in another chamber. If we are talking about reputations, we know his reputation from 1985 and the attempts — —

*Honourable members interjecting*.

**Mr Leigh** — Well, it's a big joke. We know Mr Cover — —

*Honourable members interjecting*.

**The ACTING SPEAKER (Mr Seitz)** — Order! The honourable member for Mordialloc is entitled to make his point of order. I do not uphold the point of order, but I ask the minister to wind up his remarks.

**Mr BATCHELOR** — I have responded to Mr Turner and the others. I suggest to the Leader of the Opposition that he counsel the Honourable Ian Cover, a member for Geelong Province, not to indulge in those sorts of sleazy activities ever again.

**Motion agreed to.**

**House adjourned 7.41 p.m.**

# QUESTIONS ON NOTICE

***Answers to the following questions on notice were circulated on the date shown.***
***Questions have been incorporated from the notice paper of the Legislative Assembly.***
***Answers have been incorporated in the form supplied by the departments on behalf of the appropriate ministers.***
***The portfolio of the minister answering the question on notice starts each heading.***

## Tuesday, 24 October 2000

### Workcover: telephone call centre

**215. MR WILSON** — To ask the Honourable the Minister for Workcover with reference to calls to Workcover's telephone call centre in each month from January to July 2000 — (a) how many calls were received in each month regarding Workcover; (b) what was the median time telephone callers waited; and (c) how many callers left messages and what was the median time in which the calls were returned.

**ANSWER:**

I am informed that:

(a) The number of calls received in each month from January to July 2000 were:

| Month | Calls Received |
|---|---|
| **January** | 7,227 |
| **February** | 9,912 |
| **March** | 12,709 |
| **April** | 8,478 |
| **May** | 10,500 |
| **June** | 8,954 |
| **July** | 8,299 |
| **Total** | **66,079** |

(b) The median time telephone callers waited were:

| Month | Median waiting time (min/sec) |
|---|---|
| **January** | 4.24 |
| **February** | 5.36 |
| **March** | 6.12 |
| **April** | 6.30 |
| **May** | 4.18 |
| **June** | 4.24 |
| **July** | 4.15 |

(c) The number of callers who left messages and the median time in which the calls were returned were:

| Month | No. Messages left | Median time to return call |
|---|---|---|
| **January** | 792 | Median time over the period is estimated at 2 hours, 20 minutes. |
| **February** | 1,482 | |
| **March** | 840 | |
| **April** | 895 | |
| **May** | 1,217 | |
| **June** | 1,335 | |
| **July** | 2,499 | |
| **Total** | 9,060 | |

Note : These calls are in addition to the number set out in (a) above. The calls were received as messages left on the Advisory Service's 'call-back' facility. This facility is offered to callers on the basis that they will normally receive a call back within 3 business hours

## Environment and Conservation: water supply chemicals

**220. MS ASHER** — To ask the Honourable the Minister for Environment and Conservation with reference to chemicals added to Melbourne Water supplies — (a) what are the chemicals; and (b) what are the total annual quantities of these chemicals.

**ANSWER:**

(a) Chemicals that need to be added to Melbourne's water are:

**To disinfect water:**
- Chlorine
- Sodium Hypochlorite
- Ammonia

**To adjust the pH of water:**
- Lime
- Carbon Dioxide

**To provide effective water treatment at Winneke and Yan Yean Treatment Plants:**
- Alum
- Aluminium Chlorohydrate

**To comply with the Health Act:**
- Fluoride

(b) On average the following quantities of the above chemicals are added to Melbourne's water.

- 550 tonnes per annum of **Chlorine Gas** is added to the water at a concentration typically between 0.6 and 1.2 mg/L (milligrams per litre or parts per million).
- 250 kilolitres per annum of **Sodium Hypochlorite** is used as an alternative to Chlorine Gas at some sites.
- 8 kilolitres per annum of **Ammonia** is used in conjunction with Sodium Hypochlorite at some sites.

- 2070 tonnes per annum of **Lime** is added to water after chlorination to stabilise the pH of the water and is dosed at a concentration typically between 3 and 5 mg/L.

- 12 tonnes per annum of **Carbon dioxide** is added to water after chlorination to stabilise the pH of the water and is dosed at a concentration typically between 3 and 8 mg/L.

- 1750 tonnes per annum of **Alum** (Aluminium Sulphate) is added to water as a coagulant and is dosed at a concentration typically between 12 and 18 mg/L.
  The alum is removed with particles from the water as part of the conventional water treatment process.

- 7 kilolitres per annum of Aluminium Chlorohydrate is used as an alternative to Alum.

- 1030 tonnes per annum of **Fluoride** is added as required under the Health Act. Fluoride is dosed at a typical concentration of 0.9 mg/L.

## Premier: full-time equivalent staff

**226. MR KOTSIRAS** — To ask the Honourable the Premier with reference to full time equivalent staff in the Department of Premier and Cabinet — what is the average number of hours lost due to sick leave taken each month since November 1999 — (a) with a medical certificate; and (b) without a medical certificate.

**ANSWER:**

Average hours of sick leave per full-time equivalent employee for each month from November 1999 to August 2000:

| | with medical certificate | without medical certificate |
|---|---|---|
| **August 2000** | 0.86 | 0.61 |
| **July 2000** | 0.77 | 0.43 |
| **June 2000** | 0.48 | 0.47 |
| **May 2000** | 0.81 | 0.75 |
| **April 2000** | 0.71 | 0.28 |
| **March 2000** | 0.59 | 0.44 |
| **February 2000** | 1.65 | 0.9 |
| **January 2000** | 0.48 | 0.31 |
| **December 1999** | 0.95 | 0.62 |
| **November 1999** | 0.59 | 0.64 |

## Multicultural Affairs: Victorian Multicultural Commission

**228. MR KOTSIRAS** — To ask the Honourable the Minister for Multicultural Affairs what were the total number of applications for the three positions on the Victorian Multicultural Commission.

**ANSWER:**

I am informed that:

A total of 42 applications were assessed for the three positions of Commissioner with the Victorian Multicultural Commission.