PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-FIFTH PARLIAMENT

FIRST SESSION

12 October 2004

(extract from Book 4)

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FIFTY-FIFTH PARLIAMENT — FIRST SESSION

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CONTENTS

TUESDAY, 12 OCTOBER 2004

Tuesday, 12 October 2004

The SPEAKER (Hon. Judy Maddigan) took the chair at 2.04 p.m. and read the prayer.

QUESTIONS WITHOUT NOTICE

Police: database access

Mr McINTOSH (Kew) — My question is to the Minister for Police and Emergency Services. I refer to the inappropriate accessing of the confidential law enforcement assistance program (LEAP) database of barrister David O'Doherty, who prosecuted three allegedly corrupt police officers, and I ask: can the minister confirm that the LEAP files of one of the police officers was falsified to conceal serious firearm offences, including discharging up to 50 rounds from a gun into a former girlfriend's house?

Mr HAERMEYER (Minister for Police and Emergency Services) — No, I cannot and I will not. This matter is under active investigation by Victoria Police, and I suggest that members on the opposite side — —

Mr Perton interjected.

The SPEAKER — Order! The member for Doncaster!

Mr HAERMEYER — I suggest opposition members, who seem to want to cast themselves in the role of some sort of amateur Inspector Clouseau, should read a good crime novel and let the police get on with their job. They should leave it to the professionals and stop running around trying to second-guess the police and knock them at every opportunity.

Smoking: bans

Mr ROBINSON (Mitcham) — My question is to the Premier. With smoking killing almost 5000 Victorians a year can the Premier outline to the house what initiatives the government is taking to reduce the harmful effects of tobacco on the health and welfare of Victorians?

Mr BRACKS (Premier) — I thank the member for Mitcham for his question. It refers to the fact that each year some 5000 Victorians lose their lives from tobacco-related illnesses. That is a shocking and startling figure. I know, of course, every member of this house is concerned about the road toll and about health, but when you hear in those stark terms that 5000 Victorians die each year from tobacco-related illness, you know it is one of the biggest tragedies we have to face and one of the important matters we have to deal with as a community. The cost to the community, of course, is considerable over and above the lives lost and the illnesses caused. The cost to the community is more than $5 billion in health care and related social costs as well, so this is not a small health matter but a very large health problem for our state and for the whole of Australia.

As the house would be aware, in the last five years our government has moved on a range of measures to ensure we have smoke-free workplaces, smoke-free venues and smoke-free shopping in Victoria. In July 2001 we introduced smoke-free dining in restaurants and eating houses around Victoria. That was an outstanding success. It was supported by the industry, and we saw something like a 5 per cent increase in the custom of restaurants as a result of those moves as well. In November 2001 the government also introduced smoke-free undercover shopping centres, or enclosed shopping centres, and again that has been a resounding success and has made it much better for people who do not want to passively inhale smoke from other people in those centres. In September 2002 we also introduced smoke-free gaming and bingo venues. That has also been a success.

While I acknowledge that there has been a downturn in some sections of that industry, that is directly related to gaming activity and the breaks caused in the gaming activity. When someone moves from a machine to smoke in a confined area or outside either they do not come back or they reduce their gaming activity, and that has had an impact. We now have a much better environment for those people who work in and who want to go to those venues.

Today I am pleased to announce that we will be extending further our bans on smoking and smoke-free areas in Victoria. From 1 July 2007 we will ban smoking in hotels and bars in Victoria, in clubs completely, and railway stations which have covered areas will all have a complete ban by July 2007.

It is worth noting that a ban of a similar nature has already been proposed in Queensland, which members would have heard about, which is planned to be implemented by July 2006. Bans of a similar nature are planned by South Australia by October 2007, by the Australian Capital Territory by December 2006, by Tasmania from January 2006, and New Zealand is proceeding with a similar ban in December 2004. Today, concurrently with New South Wales, Victoria is moving to implement those bans further — to pubs, to clubs, and also to railway stations which are enclosed.

There is some overseas experience which is very useful as well. In New York, where bars and pubs have had a smoking ban for some time, there has actually been an 11 per cent decline in adult smoking — a very good outcome. We know that smoking bans of a similar nature have been in place in California and Ireland, with similar sorts of success. These measures which I have announced today — which will be implemented progressively up until the time they will be fully implemented, on 1 July 2007 — will reduce smoking overall for adults and teenagers and will make sure we encourage a culture of preventing smoking in Victoria. They will reduce passive smoking, of course, for those guests and patrons who want to visit venues, and they will also assist the many, many staff who work in these venues. It is estimated that some 30 per cent of workers are exposed in their workplace to passive smoking — a very surprising figure. These reforms will mean that the overwhelming majority of that remaining 30 per cent will now have a smoke-free environment in which to work as well, which is very beneficial.

The Quit campaign undertook a survey at the end of last year that showed that if these measures were implemented — that is, extending the smoke-free venues — you could expect a 15 per cent increase in custom in bars and hotels. That was a survey that was undertaken, and it was not dissimilar to a survey in New South Wales. I think these reforms are necessary and sensible. They have now been extended to a further ban of smoking in enclosed areas in Victoria. I think they will be supported by the bulk of the population in our state who want to have smoke-free venues. Importantly, they will also save lives.

Water: Wimmera–Mallee pipeline

Mr RYAN (Leader of The Nationals) — My question is to the Premier. Given the resounding success of the federal coalition government in Saturday's election, will the Premier give an unqualified commitment for his government to provide $167 million to build the Wimmera–Mallee pipeline?

Mr BRACKS (Premier) — I thank the Leader of The Nationals for his question. In relation to the Wimmera–Mallee pipeline, we have already committed a significant amount of money to — —

An honourable member interjected.

Mr BRACKS — I will go into that. We have already committed money that was associated with the original business case, and when that business case was revised we increased the amount of money available to it. We have said that we will match the conditions that the coalition government has put on for extra money on the condition that it is new money from the commonwealth. That is an entirely sensible and reasonable position, given that the competition policy payments are in the forward estimates of every state and territory budget in this country. Effectively that means that in Victoria's case — —

Honourable members interjecting.

The SPEAKER — Order! The member for Mornington!

Mr BRACKS — In Victoria's case it means a cut to our budget of $200 million per annum in the competition policy payments. It also means that the commonwealth will take that money, fund its proportion and expect the state to fund the other half, so we would pay twice — that is what the coalition government is suggesting. We would pay twice for these arrangements.

Mr Ryan — On a point of order, Speaker, the Premier is debating the question. The answer is simply yes or no. Is it going to put up the $167 million?

The SPEAKER — Order! The Speaker does not have the right to direct the Premier to answer yes or no, as the Leader of The Nationals well knows.

Terrorism: Bali memorial

Mr HUDSON (Bentleigh) — My question — —

An honourable member interjected.

Mr HUDSON — You obviously have not had a look at the booth results in my electorate. You ought to have at the booth results in your electorate!

The SPEAKER — Order! I warn the member for Bentleigh. If he engages in any further outbursts like that, I will suspend him from the house.

Mr HUDSON — Will the Premier inform the house about the plans the government has for commemorating the 22 Victorians who tragically died in the Bali bombing that occurred two years ago today?

Mr BRACKS (Premier) — I thank the member for Bentleigh for his question. Two years ago this house, as members are aware, condemned the cowardly and brutal attack in Bali which cost the lives of innocent Victorians and Australians. Of course we would all remember the significant response from the Victorian public, particularly in this place with the floral tributes placed on the steps of Parliament House, the many

dedications that were undertaken at that time and the resolve that was shown to ensure that these events never happen again and that we do not cower in the wake of these types of events, which are designed specifically to affect our nation.

As this house would know, I was previously asked a question by the member for South Barwon about the opportunity for establishing a permanent memorial to those Victorians who died in Bali in that tragic event two years ago. I am pleased to indicate to the house that work is under way to ensure that Victoria does have a permanent memorial to those Victorians who died so tragically.

It is appropriate on this day, the second anniversary of the tragic events in Bali, to announce that a permanent memorial will be dedicated to the 22 Victorians who died in Bali. The site and design of that memorial has been the subject of significant consultation and discussion with the families involved. The families have decided on a form of commemoration which I can indicate to the house will proceed.

We have also worked closely with the City of Melbourne, and after discussion and in conjunction with the families it has allocated a site for the permanent memorial for the victims of the Bali bombings. I can indicate as a result of those discussions that Lincoln Square in Carlton has been selected as the preferred site for that memorial. The City of Melbourne has commenced redevelopment of Lincoln Square, including an upgrade of the water feature and landscaping works to the surrounding gardens. The memorial will incorporate the names of the 22 Victorians who lost their lives two years ago and will also use 91 small water fountain jets to recognise the 91 Australians who died. Importantly, each year on 12 October the fountain will become a reflection pond in memory of those who died.

The state government will contribute some $120 000 to the cost of the memorial, which is expected to be completed in the next three to six months. The memorial will be a place where bereaved families as well as the entire Victorian, Australian and international community can go to remember the 22 Victorians who lost their lives and the profound impact the events in Bali have had on the lives of so many people in our country.

A memorial service organised by bereaved families and survivors of the Bali bomb attack will be held at 7.00 p.m. tonight at Lincoln Square, Carlton, the site of the new memorial. I am grateful for the support and cooperation of members of this house for ensuring this memorial will go ahead. I am also grateful for the cooperation of not just the families but also the City of Melbourne, which has made a joint contribution to this memorial.

Police: database access

Mr McINTOSH (Kew) — My question is to the Minister for Police and Emergency Services. I refer to the inappropriate access of the confidential law enforcement assistance program (LEAP) database of barrister Mr David O'Doherty, and I ask: is there any connection between the illegal accessing of Mr O'Doherty's LEAP file and the fact that he had been followed home by police, stopped without explanation by police while driving and, at a later time, had his car broken into and only his personal papers taken?

Mr HAERMEYER (Minister for Police and Emergency Services) — As I said before, this is a matter that goes to an active police investigation about a very sensitive matter.

Honourable members interjecting.

The SPEAKER — Order! The member for Doncaster will cease interjecting in that manner.

Mr HAERMEYER — It is totally improper for the member for Kew to use this place to air all sorts of theories and allegations — —

Honourable members interjecting.

The SPEAKER — Order! The member for Bass!

Mr HAERMEYER — It is improper for the member to air all sorts of theories and allegations about a matter that is currently being investigated by the police. This matter should be left to the professionals to investigate; it is not for people like the member for Kew to come in here and play politics with it.

Royal Melbourne Hospital: helipad and trauma centre

Mr LUPTON (Prahran) — My question is for the Minister for Health. I ask: in the light of the commissioning of the new Royal Melbourne Hospital helipad and trauma centre can the minister outline to the house how this facility will assist in meeting the existing and future health needs of Victorians?

Honourable members interjecting.

The SPEAKER — Order! I have already called the member for Bass for interjecting. I ask him to cease interjecting in that manner.

Ms PIKE (Minister for Health) — Every year thousands of Victorians are severely injured in transport, workplace or domestic accidents. In fact those accidents are the biggest killer of people under the age of 40 in Australia, accounting for half of all child deaths and 75 per cent of all deaths involving teenagers and young adults. For every trauma-related incident it is estimated there are about 31 hospital admissions, 144 emergency department visits and 1333 private doctor visits. In trauma care time is critical — every single minute can be vital to critically injured patients. A severe head injury will cost the community $2.6 million over a patient's lifetime, and an accident which leaves a person quadriplegic will cost $4.7 million.

Victoria is already a national leader, and in fact an international leader, in trauma prevention and care. When you look at the statistics, death from trauma is around 12 per cent, and nationally and internationally the benchmark is about 20 per cent. We already have an excellent suite of services and standards, and this new helipad will continue our efforts as we strive to improve our record.

We have excellent trauma services at the Royal Melbourne Hospital, the Alfred hospital and the Royal Children's Hospital. There is a growing concentration of expertise. The new helipad at the Royal Melbourne Hospital will strengthen that reputation. Before now, as members will be aware, trauma patients who had to go to the Royal Melbourne Hospital by helicopter were landed at the Gatehouse helipad behind the Royal Children's Hospital and had to be transferred by road. Now we have helicopters being able to land 40 metres above street level, and patients are of course immediately placed in the hands of the specialists. This helipad has been built as part of a $32 million redevelopment at the Royal Melbourne Hospital, which will include two new trauma bays in the emergency department, new wards and day units. We are also investing a further $9.2 million into another 60 ward beds and a refurbished pharmacy.

This is a terrific initiative. It complements a whole range of other initiatives right across the state, including the Austin Hospital, the opening of the new Casey Hospital and redevelopments at Monash, Northern, Werribee and Sunshine hospitals.

Hospitals: services report

Mrs SHARDEY (Caulfield) — My question is to the Minister for Health. I refer the minister to the latest *Hospital Services Report*, which shows a huge increase in waiting lists, skyrocketing ambulance bypasses and a blow-out in the number of people waiting on trolleys, and I ask: why did the minister cover up the worst *Hospital Services Report* in five years, waiting until after the federal election?

Ms PIKE (Minister for Health) — I thank the member for Caulfield for her question. Last year the commonwealth Department of Health and Ageing prepared a report — —

Honourable members interjecting.

The SPEAKER — Order! The members for Benalla and Mornington!

Dr Napthine interjected.

The SPEAKER — Order! The member for South-West Coast will cease interjecting in that manner!

Ms PIKE — This report on the state of our hospitals right across the country says that Victorian public hospitals are amongst the best in the country for waiting times on elective surgery and for waiting times for emergency treatment.

Mr Cooper interjected.

The SPEAKER — Order! The member for Mornington will cease interjecting in that manner!

Ms PIKE — There is a national recognition that Victoria's public hospitals are performing extraordinarily well. Over the five years since this government was first elected the number of patients who have been admitted into our public hospitals has increased by 200 000. We were admitting 1 million patients in 1999; now in 2004 we are admitting 1.2 million patients into our public hospitals. That has been an enormous rise, and in that context waiting lists have remained steady, and that is a remarkable achievement. You have a huge increase in demand, with more and more people being admitted and more and more people coming to our emergency departments.

This is a remarkable achievement, and it is due to the consistent investment that this government has made in our public hospitals. The opening of new capacity at Casey Hospital, the building of new wards at

Maroondah Hospital and new theatres at Northern Hospital, and of course the establishment of the hospital demand management strategy, which has developed new models of care, have helped us to manage that demand and keep those waiting lists at that level in spite of the massive increase in the number of patients we are admitting.

I have made it very clear that during the recent nurses dispute 1360 beds were closed and 1200 operations were cancelled. Everybody would understand that you cannot close that many beds — one in four beds, the equivalent to four major public hospitals — and you cannot cancel 1200 elective surgery operations and not have an impact on our health system. Our achievements have been remarkable, and they have been impressive in the context of huge demands; but nevertheless, the nurses dispute and the closure of those beds did have an impact — —

Mr Ryan — On a point of order, Speaker, the minister is debating the question. The question was dedicated to why the minister hid the records until after the federal election was over. I ask you to have her return to that question.

The SPEAKER — Order! The Minister for Health seems to be giving an extremely broad answer to what was a fairly narrow question. I ask her to return to the question and to conclude her answer.

Ms PIKE — I am proud of the fact that this government has released a quarterly *Hospital Services Report* for every quarter that we have been in government, which is in sharp contrast to the those opposite, who did not even release a report for nearly 12 months prior to the last election.

Mrs Shardey — On a point of order, Speaker, the minister was debating the issue. She has now finished debating the issue and has still not answered the question.

The SPEAKER — Order! The minister has concluded her answer.

Environment: financial responsibility

Mr HERBERT (Eltham) — My question is to the Minister for Environment. What recent action has the Bracks government taken to improve the environment while keeping the state's finances at AAA levels, and what proposals has he rejected?

Mr THWAITES (Minister for Environment) — I thank the member for Eltham for his question. The hallmark of the Bracks government has been financial responsibility. Our ability to deliver better services in health and education and to deliver a better environment depends upon a strong budget. We on this side of the house have shown that you can get an A-plus for the environment while still retaining an AAA for the economy.

One very good example of that is the bush tender program. This is an outstanding program where farmers who seek to improve the environmental qualities of their land are able to have their sites assessed for their conservation significance. Recommended management programs are developed, and farmers then take part in an auction system where they bid for those environmental works on their land.

I am very pleased to advise the house that one of the key drivers of this initiative, Gary Stoneham, who is the chief economist with the Department of Primary Industries and who was part of the former Department of Natural Resources and Environment, recently won the *Bulletin* Microsoft Smart 100 award for being Australia's smartest and most creative person in agriculture and the environment. Gary Stoneham and other members of the bush tender team in the Department of Primary Industries and the Department of Sustainability and Environment together deserve the congratulations of this house.

I refer to the *Bulletin*, which states that the bush tender auction is being successfully applied where other methods such as subsidies and tax concessions have failed in the protection and management of native vegetation. The bush tender program not only protects native vegetation but also is much better value for the taxpayers dollar. It is environmentally and financially responsible. I am very pleased therefore to announce today that the Bracks government will be providing an additional $500 000 to the bush tender program from the government's greenhouse strategy, and the Victorian Water Trust will provide an additional $400 000 to the North East Catchment Management Authority to run a bush tender program for farmers to protect river bank areas along the very valuable Ovens River.

Another good example of financial and environmental responsibility is the sales water deal that has been done with farmers in northern Victoria. Under this plan 145 billion litres of water will be made available to the Murray River for environmental flows. That is as a result of an historic agreement between farmers and environmentalists. This is the best value water project in Australia. It will cost some $640 a megalitre compared to the benchmark of $1000 a megalitre — another outstanding example of where this government

is environmentally and financially responsible. We are able to do this because we have rejected as a government financially irresponsible ideas.

There are some proposals on the environment which have been made where I can indicate to the house today some actions we will not be taking. We on this side of the house will not be undergrounding electricity and telephone lines at a cost of $45 billion.

Mr Plowman — On a point of order, Speaker, the minister is now clearly debating the question, and I ask you to bring him back. He has also been speaking for over 4 minutes, and I ask you to conclude his answer.

Mr THWAITES — On the point of order, Speaker, I was directly answering the question in relation to the actions that we are taking or not taking in relation to financial irresponsibility.

The SPEAKER — Order! As I understand it, the Deputy Premier was talking about decisions the Victorian government had made that would affect the area and was also discussing other policies he had looked at but was rejecting, and I therefore do not uphold the point of order.

Mr THWAITES — I can indicate to the house today that we will not be recommissioning Lake Mokoan after it has been decommissioned, as has been proposed by some people. Lake Mokoan loses some 50 billion litres of water every year and — —

Mr Plowman — On a point of order, Speaker, the minister has now been speaking for close to 5 minutes, and I ask you to conclude his answer.

The SPEAKER — Order! The minister has now been speaking for over 5 minutes. I ask him to conclude his answer.

Mr THWAITES — Certainly, Speaker. As I indicated, we will not be wasting tens of millions of dollars and destroying the environment by recommissioning Lake Mokoan, as proposed in an irresponsible way by the shadow Minister for Water. We will not be funding half the cost of upgrades of all irrigation dams at a cost of $100 million. We will not be raiding the budget to fund water initiatives which are best funded by water users. We have indicated that — —

Honourable members interjecting.

The SPEAKER — Order! I ask the minister to conclude his answer.

Mr THWAITES — Speaker, this side of the house, the Bracks government, is committed to financial responsibility and to environmental responsibility, and we have got the runs on the board to prove it.

Mitcham–Frankston freeway: freedom of information

Mr DOYLE (Leader of the Opposition) — My question is to the Premier. How was your weekend?

Mr Nardella interjected.

The SPEAKER — Order! The member for Melton! I will not warn him again.

Mr DOYLE — Yes, it is only two years; don't worry, mate!

Mr Haermeyer interjected.

The SPEAKER — Order! The Minister for Police and Emergency Services!

Mr DOYLE — My question is to the Premier. I refer the Premier to his admission on radio this morning that prior to the 2002 state election there were 'tonnes and tonnes of documents' on funding options for the Scoresby freeway, and I ask: why was not one single document in these tonnes and tonnes of documents even identified in his department's freedom of information response to the opposition?

Honourable members interjecting.

The SPEAKER — Order! Before the Premier starts, I remind the Deputy Leader of the Opposition and other members about parliamentary language.

Honourable members interjecting.

The SPEAKER — Order! And if members persist in yelling out while the Speaker is on her feet, I shall remove them from the house!

Mr BRACKS (Premier) — The freedom of information matter which the Leader of the Opposition is referring to is a matter which, if there is a concern, should be taken up with the Ombudsman. I understand that is occurring, and we are very happy about that. In relation to the Mitcham–Frankston freeway and the tolling of that freeway, could I say that there is a stark choice that people have. A stark choice — that is — —

Honourable members interjecting.

The SPEAKER — Order! That is enough. I warn the member for South-West Coast.

Mr BRACKS — The building of the Mitcham–Frankston freeway by 2008, off the budget and without debt, or what is being proposed over this side, which is — —

Honourable members interjecting.

The SPEAKER — Order! The members for Doncaster and Scoresby are behaving in an inappropriate and unparliamentary manner, and I ask them to stop or I shall take action against them.

Mr BRACKS — It will be interesting to see if the shadow Treasurer has a contribution to make about bringing onto the budget another $1 billion plus of debt, which is the proposal of the opposition.

The SPEAKER — Order! I ask the Premier to return to the question.

Mr BRACKS — When we have net debt at $2 billion, that side of the house wants to add a further $1 billion onto debt.

Business: investment initiatives

Mr JENKINS (Morwell) — My question is directed to the Minister for State and Regional Development. Can the minister update the house on any recent investments or announcements that demonstrate how Victoria is the place to do business in Australia?

Mr BRUMBY (Minister for State and Regional Development) — I thank the member for Morwell for his question. It is true to say that since the election of the Bracks government Victoria really has become a magnet for people, for events, for capital and for ideas to move to our state.

Today I am pleased to announce more good news for Victoria with the final go-ahead for the development of the $200 million Casino gas project at Iona, near Port Campbell, by Santos Ltd and its joint venture partners. This project involves the development of the Casino gas field in the Otway Basin, and during its construction phase it will generate something like 180 new jobs for our state. It has the potential to add hundreds of millions of dollars to the Victorian economy and will provide an important new source of gas supply. This really confirms the headline on the front page of the *Australian Financial Review* of 4 October, just last week, which referred to 'Victoria's modern day gold rush'.

Honourable members interjecting.

Mr BRUMBY — You hate good news about the state!

The *Australian Financial Review* reported that:

> … more than $2 billion is poured into new Victorian gold mines, mineral sands projects and processing facilities for offshore gas fields, while hundreds of millions more is being spent on the biggest mineral land petroleum exploration effort in the state's history.

It is not just capital, it is not just people and it is not just new investment which is coming to our state. Last week the Premier announced that Melbourne had won the right to host the 4000-delegate International Congress of Internal Medicine at the new Melbourne Convention Centre in 2010, one of the biggest conventions to be held anywhere in Australia.

Mr Honeywood interjected.

Mr BRUMBY — You will still be in opposition.

The SPEAKER — Order! The Deputy Leader of the Opposition will cease interjecting across the table in that manner, and the minister will cease listening to him.

Mr BRUMBY — Today I am pleased to announced that Melbourne has won the right to host another major conference, the Fifth World Conference of Science Journalism, to be held in 2006. This will bring 400 international and interstate delegates, including Nobel laureates, 3000 room nights and $3 million to the state. Melbourne won the conference over Beijing, Barcelona, Munich and Trieste. Not a bad effort!

For all the carping of the opposition, last year Melbourne was rated 26th in the world as a business events destination. Today, in 2004, we are rated 11th. In fact this year Melbourne has more than doubled the number of future business events it has scheduled to over 70 events. Whether it is people, events, capital or new ideas, Victoria is a magnet for all of these things coming into the state. Building approvals have been at more than $1 billion a month for 30 consecutive months; population growth in the last quarter — and has the minister not done a magnificent job bringing tourists, major events and, of course — —

Honourable members interjecting.

Mr BRUMBY — That is right — he brings them, we announce them. New business investment, new events and jobs growth — as the *Australian Financial Review* said, it is really like the gold rush all over again.

ELECTRICITY INDUSTRY (WIND ENERGY DEVELOPMENT) BILL

Introduction and first reading

Mr BRUMBY (Treasurer) introduced a bill to amend the Electricity Industry Act 2000, the Essential Services Commission Act 2001, the Energy Legislation (Regulatory Reform) Act 2004 and for other purposes

Read first time.

TRANSPORT ACCIDENT (AMENDMENT) BILL

Introduction and first reading

Mr HULLS (Minister for WorkCover) introduced a bill to amend the Transport Accident Act 1986 and the Accident Compensation Act 1985 and for other purposes.

Read first time.

COMMONWEALTH POWERS (DE FACTO RELATIONSHIPS) BILL

Introduction and first reading

Mr HULLS (Attorney-General) introduced a bill to refer certain financial matters arising out of the breakdown of de facto relationships to the Parliament of the commonwealth for the purposes of section 51(xxxvii) of the constitution of the commonwealth and for other purposes.

Read first time.

ELECTORAL LEGISLATION (AMENDMENT) BILL

Introduction and first reading

Mr HULLS (Attorney-General) — I move:

That I have leave to bring in a bill to amend the Electoral Act 2002, the Electoral Boundaries Commission Act 1982 and the Constitution (Parliamentary Reform) Act 2003 and for other purposes.

Mr HONEYWOOD (Warrandyte) — Could I have a brief explanation of the bill?

Mr HULLS (Attorney-General) — Just briefly, this bill will ensure that the electoral commissioner has appropriate triggers set in the legislation in relation to any redivision for both the lower house and the upper house, and it will also better define homelessness to ensure that homeless people are eligible to vote in this state.

Motion agreed to.

Read first time.

PETROLEUM PRODUCTS (TERMINAL GATE PRICING) (AMENDMENT) BILL

Introduction and first reading

Mr HULLS (Attorney-General) introduced a bill to amend the Petroleum Products (Terminal Gate Pricing) Act 2000 and for other purposes.

Read first time.

LIQUOR CONTROL REFORM (UNDERAGE DRINKING AND ENHANCED ENFORCEMENT) BILL

Introduction and first reading

Mr HULLS (Attorney-General) — I move:

That I have leave to bring in a bill to amend the Liquor Control Reform Act 1998 and the Business Licensing Authority Act 1998 and for other purposes.

Mr HONEYWOOD (Warrandyte) — I would also like a brief explanation on this bill.

Mr HULLS (Attorney-General) — This bill will make a range of amendments to the Liquor Control Reform Act to help address under-age drinking and also enhance the enforcement powers of police.

Motion agreed to.

Read first time.

STATE CONCESSIONS BILL

Introduction and first reading

Ms GARBUTT (Minister for Community Services) — I move:

That I have leave to bring in a bill to remake with amendments the law relating to certain concessions, to repeal the State Concessions Act 1986, to make various consequential amendments to other acts and for other purposes.

Mr HONEYWOOD (Warrandyte) — We would also like a brief explanation on this bill.

Ms GARBUTT (Minister for Community Services) — This bill updates the State Concessions Act, it recognises the changes in certain responsibilities of various ministers and in their names, and it makes no changes to the existing level of concessions.

Motion agreed to.

Read first time.

PETITIONS

Following petitions presented to house:

Preschools: funding

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

The humble petition of the undersigned citizens of Victoria respectfully requests that the Legislative Assembly of Victoria:

recognise the value of preschool education and respect the work of preschool teachers;

recognise that preschool teacher qualifications are equal to primary teachers by offering pay parity;

recognise that preschool is an educational experience and move responsibility to the Department of Education and Training;

retain and attract preschool teachers to tackle the preschool teacher shortage by offering pay parity, reasonable workload and appropriate group sizes;

resource preschools in order to:

provide access for all children irrespective of their family's economic circumstances;

alleviate unacceptable workloads for volunteer parents and teachers;

provide for salary parity with school teachers so that the cost to parents (fees) does not increase;

support for children with additional needs.

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

By Mr PLOWMAN (Benambra) (26 signatures) and Mr LANGDON (Ivanhoe) (64 signatures)

Rail: Sandringham line

To the Legislative Assembly of Victoria:

The petition of residents in the Brighton electorate of Victoria draws to the attention of the house the exceptionally poor train services on the Sandringham line. Poor services include regular cancellations, lateness and overcrowding.

The petitioners therefore request that the Legislative Assembly of Victoria urge the government to improve train services on the Sandringham line.

By Ms ASHER (Brighton) (14 signatures)

Calder–Tullamarine freeways, Essendon: safety

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

The humble petition of we the undersigned citizens of Victoria sheweth that:

1. The intersection of the Calder and Tullamarine freeways in Essendon is a dangerous intersection causing many accidents.

2. Public safety is compromised by the design of the intersection.

We the petitioners therefore pray that the government undertake as a matter of urgency a redesign of the intersection with works to commence as soon as practicable.

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

By Mr LANGUILLER (Derrimut) (13 signatures)

Eastern Freeway: city end congestion

To the Legislative Assembly of Victoria:

The petition of the residents of Manningham and the eastern suburbs draws to the attention of the house the increasing traffic congestion at the city end of the Eastern Freeway and the consequent terrible waste of time and productivity for tens of thousands of Victorians who use the freeway daily, and draws to the attention of the house the remarks by the chief executive of the Southern and Eastern Integrated Transport Authority who has urged road users to tell politicians that 'something needs to be done to the city end of the Eastern Freeway'.

The petitioners therefore request that the Legislative Assembly of Victoria act to require that the government proceed with planning and construction of a tunnel to link the Eastern and Tullamarine freeways and consider other road proposals including tunnelled lanes under Hoddle Street and Punt Road.

By Mr PERTON (Doncaster) (14 signatures)

Tabled.

Ordered that petition presented by honourable member for Brighton be considered next day on motion of Ms ASHER (Brighton).

Mr THOMPSON (Sandringham) — I move:

That the petition tabled in my name be taken into consideration on the next day of sitting.

Motion agreed to.

Mr PLOWMAN (Benambra) — I move:

That the petition tabled in my name be taken into consideration on the next day of sitting.

And also that the support from the local community be noted — —

The SPEAKER — Order! The member for Benambra will cease doing that. The member's motion is out of order.

Ordered that petition presented by honourable member for Doncaster be considered next day on motion of Mr PERTON (Doncaster).

Ordered that petition presented by honourable member for Derrimut be considered next day on motion of Mr LANGUILLER (Derrimut).

DOCUMENTS

Tabled by Clerk:

Auditor-General — Report of the Office for the year 2003–04

Crown Land (Reserves) Act 1978 — Section 17DA order granting under s 17D a lease by Mt Rouse Public Park Reserve

Duties Act 2000 — Report of exemptions and refunds made under s 250 for the year 2003–04

Financial Management Act 1994 — Report from the Minister for Agriculture that he had received the 2003–04 annual report of the Victorian Broiler Industry Negotiation Committee

Recreational Fishing Licence Trust Account — Report on revenue and disbursements for the year 2003–04

Tattersall's — Report for the year 2003–04 (including financial statements for Tattersall's Gaming Pty Ltd, Tattersall's Sweeps Pty Ltd, Tattersall's Club Keno Pty Ltd, Footy Consortium Pty Ltd) (two documents)

Transport Act 1983 — Report by the Essential Services Commission on the Review of Hire Car Licence Fees.

The following proclamations fixing operative dates were tabled by the Clerk in accordance with an order of the house dated 26 February 2003:

Alpine Resorts (Management) (Amendment) Act 2004 — Part 3 on 1 November 2004 (*Gazette G41*, 7 October 2004)

Animals Legislation (Animal Welfare) Act 2003 — Section 26 on 19 October 2004 (*Gazette G41*, 7 October 2004).

ROYAL ASSENT

Message read advising royal assent to:

Aboriginal Lands (Amendment) Bill
Crimes (Dangerous Driving) Bill
Evidence (Witness Identity Protection) Bill
Interpretation of Legislation (Amendment) Bill
Major Crime (Special Investigations Monitor) Bill
Major Crime Legislation (Office of Police Integrity) Bill
National Parks (Additions and Other Amendments) Bill
Sentencing (Superannuation Orders) Bill.

BUSINESS OF THE HOUSE

Program

Mr BATCHELOR (Minister for Transport) — I move:

That under standing order 94(2), the orders of the day, government business, relating to the following bills be considered and completed by 4.00 p.m. on Thursday, 14 October 2004:

Children and Young Persons (Age Jurisdiction) Bill

Essential Services Commission (Amendment) Bill

Limitation of Actions (Adverse Possession) Bill

Parliamentary Superannuation Legislation (Reform) Bill

Planning and Environment (General Amendment) Bill

Teaching Service (Conduct and Performance) Bill.

These six bills that we are putting forward as part of our government business program provide an achievable legislative target for this parliamentary week. We have advised all the parties and the Independents of our intention to set this workload for this parliamentary week. We expect that it should be able to be achieved, and our motion should receive overwhelming support.

Mr DIXON (Nepean) — The opposition does not oppose the government business program; in fact, it is rather light on. We have had a bit of mucking about with the Pharmacy Practice Bill — on and off and on. It is now off, so six bills will easily be completed, probably by the close of business tonight. I am not sure what we will do for the other two days. We have had a very busy weekend; we are all tired, and I am sure we look forward to the light week.

Mr MAUGHAN (Rodney) — The National Party will also not be opposing the government business program. It is an easily achievable program. I do not think there will be a large number of speakers — —

An honourable member interjected.

Mr MAUGHAN — I am sure there will be heaps of bills at the end of the sitting. The good thing about Parliament this week, and probably in future weeks, is that we will probably not be snowed under with masses of notices of motion now that the election is out of the way — there will be no need for those cluttering up the notice paper. The legislative program for this week is easily achievable, as the Leader of the House has indicated. For that reason the National Party will not be opposing the government business program.

Motion agreed to.

MEMBERS STATEMENTS

Chisholm: federal election

Ms MORAND (Mount Waverley) — On Saturday, like most members of this house, I was working at a polling place in my electorate. I was at Glen Waverley Secondary College, which is a great government school in my electorate and is also located in the federal electorate of Chisholm.

Dr Napthine interjected.

Ms MORAND — Worry about your own numbers, Denis. I was very perplexed about the behaviour of one of your workers at this polling place — —

The SPEAKER — Order! The member for Mount Waverley will address her remarks through the Chair.

Ms MORAND — I was perplexed by the behaviour of one of the Liberal Party workers, who was a little confused about the issues. A woman handing out how-to-vote information for Stephen Hartney, the extremely ordinary candidate for the Liberal Party, was standing in front of the Liberal's 'No tolls' bunting, wearing a CityLink jacket. This had me wondering, 'Are the Libs confused? Perhaps they cannot make up their minds about their policy position on tolls. Maybe they want a bet each way. Perhaps they cannot get their story right. Or is it that they introduced tolls and still support them?'.

I have some lovely photos here, which I am happy to share with members. But the final word in Chisholm belongs to Anna Burke, who achieved a 2 per cent increase in her primary vote on the weekend. It was greater than that of the Liberal candidate, who took the Liberal vote backwards. Saturday's outcome in Chisholm was very good, because a well-respected local Labor member was re-elected, despite the presence of misleading publicity from the Libs.

Federal government: election result

Mr SMITH (Bass) — I am wondering, Speaker, can you smell it? Can you smell the sweet smell of victory that is sweeping across the country, through Victoria and through every state and territory in Australia — victory for John Winston Howard, the greatest Prime Minister since Menzies and a man of integrity and honesty; victory for the coalition, which has given Australia great leadership. You could say it is gold, gold, gold for Australia — gold for John Howard's great communication with the Aussie battlers, gold for economic management, gold for building a stronger Australia, gold for a great forests policy, gold for great health and education policies and gold for the majority of Australians in the majority of states for voting for a great leader and a coalition government. Far be it from me to gloat, but what a great win it was! What a terrific win we had; and the people of Victoria sent a message to the Bracks government — that is, we will not forget or forgive you for tolls and lies. We say, 'We are coming to get you on 26 November 2006'.

John Sendy

Mr WYNNE (Richmond) — I rise to pay my respects to the life of John Alan Sendy, who was born on 1 June 1924 and passed away on 4 August 2004. John Sendy was a significant political leader in this state. He joined the Communist Party with his mother and father in 1942, at a time when the party had 10 000 members. In less than three years that had swelled to 23 000. John said that to be a communist at that time revealed an admirable devotion to ideas and causes under adverse conditions. He remained a communist for 30 years — most of them as a full-time party worker — and visited the Soviet Union, Italy and Czechoslovakia, and represented the party in France, Indonesia and Romania. He met many prominent people during his time in the Communist Party, such as Brezhnev, Mao Zedong, Chou En-Lai and Paul Robeson.

It was a tough time to be a communist — one's political allegiances often had very severe ramifications upon one's career and job prospects. Such was the case for John Sendy. His contribution to the Communist Party, and the contribution of the party to the broader political

landscape in Victoria, is chronicled in his excellent autobiography, *Comrades, Come Rally*. I pay my respects and that of my family to his daughter, Lynn, with whom we enjoy a close friendship, her husband, Guy, and children Ben and Hugh, and, of course, his wife, Dawn.

The SPEAKER — Order! Before I call the next speaker I want to correct the record. The member for Sandringham moved a motion which I have ruled out of order because it refers to a petition that has not been tabled yet.

McMillan: former federal member

Mr RYAN (Leader of The Nationals) — I rise to speak on behalf of Christian Zahra, the former Labor Party member for the federal seat of McMillan. I do so because yesterday on radio I heard the state Minister for Manufacturing and Export actually say that the Labor Party did not lose a seat in the state of Victoria. What an extraordinary statement because as we all know the former federal member for McMillan, Christian Zahra, lost his seat. I have known this guy for some years, and I must say that I have some regard for him in the way that he has done his job.

The fact is he has been absolutely torpedoed by his state colleagues. They shot him down in relation to the absolute fiasco over wind farms. The appalling planning guidelines that we have been given in Victoria were reflected in the booth numbers across the southern part of the electorate of McMillan. Is it any wonder that he has lost his seat? There is the appalling ongoing lie by the state government about the position that applies in relation to Scoresby road. I said last week, 'For whom the bell tolls', and now we have seen the first victim. Christian Zahra has lost his seat simply because he has been shot down by his own state colleagues.

I fail to understand how the state Minister for Manufacturing and Export can get on the radio and say that Labor did not lose a seat. What an appalling thing to do to one of his colleagues — or should I say one of his former colleagues. Shame, shame, shame!

Road safety: Casey hotline

Mr LIM (Clayton) — Members may recall that in May I called on the Minister for Transport to establish a system of community monitoring of aberrant road behaviour — a way for ordinary people to report outrageous driving, blatant speeding, dangerous overtaking and other breaches of the road laws. We have made huge strides in improving road safety in Victoria, and it is maddening to see the good work of police, motoring organisations and responsible drivers being undermined by aggressive, irresponsible hoons in high-powered and noisy cars. How often do we see people driving irresponsibly and wish there was a policeman about? Of course it is open to any citizen to report illegal behaviour to the police, but in practice most people would not know how to go about initiating a private prosecution.

There are difficulties in establishing a monitoring service at a state level, but I am pleased to report that the City of Casey has now set up just such a 'Dob in a motor hoon' hotline at a local level. The City of Casey proposal was reported last week in the *Monash Journal*, and has already received wide public support. I have called on the Monash City Council and other councils in the Clayton area to follow Casey's example and I urge other members to do the same in their electorates.

Australian Labor Party: set speeches

Mr MULDER (Polwarth) — I refer the house to Labor's key lines guide for Labor members of Parliament who cannot think for themselves, and the results of a *Hansard* search that provides an enlightening summary of those within the Labor Party who are toeing the Premier's line, abiding by his gag, only speaking when spoken to and parroting Labor's key lines on demand. It would appear that unfortunately some members have lost their key lines guide and others are only referring to their bibles on the odd occasion. On key lines such as 'We can't believe a word they say', the *Hansard* search provided the following ratings: one point goes to the Attorney-General, the Minister for Agriculture, the Minister for Transport, the members for Frankston, Prahran, Bentleigh, Ripon, Lara, Yuroke and Mount Waverley. We give you one point each time you use the key line guide.

Two points go to the Premier himself and the Deputy Premier: they could improve their efforts. The members for Bayswater and Melton toed the line on three occasions. Heavy hitters in parroting key lines were the members for Burwood and Mulgrave, with a massive four points each — four points to you mob. And the title of winner of Labor's key line user of the year goes to none other than the person identified in the media as doing the Premier's job without actually being the Premier, the Treasurer of Victoria, who scored five points for using Labor's key lines guide.

The SPEAKER — Order! Will the member stop banging on the furniture, as it affects the *Hansard* report.

Mr MULDER — A round of applause for the Treasurer!

Member for Warrandyte: conduct

Ms MARSHALL (Forest Hill) — Last week the member for Warrandyte managed to waste the valuable time of other members of the house during the adjournment debate, although it could successfully be argued that he has wasted the time of every member who has been forced to listen to him once he begins representing his otherwise beautiful electorate. The member showed yet again a complete disregard for the seriousness of the issue that was being addressed at the time — namely, acquired brain injury.

Mr Honeywood — On a point of order, Speaker, imputations against members are not allowed under standing orders. The member knows full well why there were interjections at that time — —

The SPEAKER — Order! I will allow the member to continue.

Ms MARSHALL — The Minister for Community Services and those working with her understand the importance of supporting people with disabilities by continuing to make plans based on the very simple and basic philosophy that people with disabilities are an inherent part of our diversity as a community and that we as a government have a responsibility to reflect that, support it and celebrate it.

Unlike members of the opposition, we on this side of the house understand that as a government we have a responsibility to provide services in a way that does the same. I would like to congratulate the minister and her staff for the work she has done and continues to do, and I ask that the member for Warrandyte show more respect to all Victorians with disabilities, and all Victorians for that matter, instead of constantly, shamelessly and deliberately putting Victoria last on his list of priorities and wasting the time of not only members but all Victorians with his mindless and childish games.

Mitcham–Frankston freeway: tolls

Mr COOPER (Mornington) — The Labor Party is seriously deluding itself by denying that the swing against it in federal seats in the Scoresby corridor had anything to do with the unprincipled decision by the Bracks government to impose tolls on the Scoresby freeway. State Labor members of Parliament who hold seats in or close to the Scoresby freeway should clearly understand that the anger of voters over this broken promise by the Bracks government has not been dissipated by the federal election result.

In November 2006 those members of Parliament will be defeated because the leader of their party lied to their voters when he promised that there would be no tolls on the Scoresby freeway. Documents that have been made public by the Liberal Party shows that the promise was a lie and that the Labor Party had determined before the last state election that tolls would be imposed on this project. Labor members of Parliament like the member for Frankston do not help themselves when they write letters to their Labor Party mates heaping abuse on their constituents who have been calling on the Bracks government to honour its promise and not impose tolls on the Scoresby freeway.

The member for Frankston and many of his parliamentary colleagues will pay a heavy price in November 2006 for their deceit and lies. They have failed to stand up for their constituents and keep the promises that got them elected. It is no wonder that most voters despise them for their treachery and dishonesty.

Hastings: Cloak of Hope

Ms BUCHANAN (Hastings) — During Anti-Poverty Week 2003 I had the honour of chairing the Mornington Peninsula health, hope and happiness forum. During the day I interacted with many of the 200-plus participants who, like me, were enlightened by many motivational speakers and visitors. At this forum two community artists, Dy Smith and Eddie Tuck, started to create a cloak — the Cloak of Hope. The cloak's message from the peninsula community to its leaders incorporates words and messages on hundreds of pieces of fabric interwoven into the cloak. It is a proactive example of how local communities can be empowered through the democratic process to have a voice on issues important to them such as human rights and social justice, the environment, housing and affordable places, and connective and supportive communities.

It is fitting therefore that leading up to next week, being Anti-Poverty Week 2004, this cloak's 12-month journey has now brought it to state Parliament. I want to acknowledge the hope and hard work of local social planner, Jenny Macaffer, community mentors Linda Winmantle and Leanne Farnsworth at Good Shepherd Youth and Family Services, and various Mornington Peninsula mayors, Anne Shaw, David Renouf and Judith Grayley. It will be with a great sense of humility that I will wear this cloak, representing the hopes of many residents and acknowledging how much this

government has done and how much harder I will be working to achieve for the residents of the peninsula and Western Port region.

Hazardous waste: Nowingi

Mr SAVAGE (Mildura) — Members in this place will know that tomorrow there will be a rally at this Parliament to unequivocally highlight again the opposition that the region I represent has to the proposed toxic waste containment facility at Hattah-Nowingi. We live in a democracy, and governments that do not heed public opposition to proposals such as this toxic waste containment facility do so at their peril. Tomorrow I will be tabling a petition with some 19 000 signatures. I want to make the point that many residents of New South Wales have signed that petition, so they will be crossed off and discounted. But as has been pointed out to me, we are not counting votes, we are counting opinions. I want this house to take note that opinions from residents who live in border regions like mine in Buronga and Gol Gol should have some impact on the outcome.

Nineteen and a half thousand signatures on a petition is a significant number. It may be a record for one electorate; certainly it is a record in my region. I ask members to take note of the rally tomorrow and the issues and concerns we have. This is an unsuitable concept for a region which is the food bowl of Victoria, right next to the greatest ground water discharge in the state.

Oakleigh Amateur Football Club

Ms BARKER (Oakleigh) — On Friday, 1 October, I had the great pleasure of attending the presentation night for the Oakleigh Amateur Football Club — or as we know them, the Krushers. We had a great night, as we were again able to celebrate with the seniors their grand final win of 11 September when they became D3 premiers. The Krushers had a good year: the seniors won the D3 flag; the reserves got to a preliminary final, and the under-19s also got to a preliminary final after their promotion to division 3 this year.

This great community-based football club is organised and run by volunteers, who do a magnificent job. Thanks to Pat McKenna, reserves coach, and his assistant, Shane Kitts. Thanks also to Mike Holden, who coaches the under-19s. All the support workers and trainers are too many to mention, but I thank them for their wonderful work. Thanks also to the executive committee of Norm Walsh, Shane Kitts, Cameron Marshall and Jay Kerly and also to Pat Heverin, who works tirelessly to gain sponsorship for the club as well as his contribution in many other ways.

There is no doubt the success of the club and its viability into the future is due to the vision and hard work of the president, Barry Alexander, and the seniors coach, Chris Moore. Three years ago they put in place the under-19 team, and they have worked very hard to attract young players to the club. I thank Barry and Chris for their vision and their commitment to the Oakleigh Amateur Football Club and to ensuring young players have a club they can join, participate in and want to continue being part of. I am extremely proud to be the no. 1 ticket holder for the Oakleigh Amateur Football Club. I look forward very much to the 2005 season, which I am sure will be very enjoyable and successful.

Parliament House: Ramadan dinner

Mr THOMPSON (Sandringham) — On 22 October the Victorian Parliament will be the venue for hosting an Iftar, or fast-breaking dinner, during Ramadan. The Australian Muslim community considers October to be the holiest month of the year. This will be the first dinner of its kind ever held at Parliament House. It will be co-hosted by my parliamentary colleague the member for Keilor and has the support of the Australian Intercultural Society, the Melbourne Muslim community and religious leaders, mainstream faith leaders, diplomats, academics and members of the wider Victorian community, including business leaders.

Mr Orhan Cicek, a leading Islamic spokesperson, has noted that this Iftar dinner will give us all the opportunity to positively interact with members of the Victorian community, including leaders from Muslim and non-Muslim backgrounds, and display a positive approach to community initiatives. He said:

> We strongly believe that this program will enhance the existing harmony and trust between cultures and interfaith communities living in Victoria.

Over the past 12 months several excellent functions have been organised by the Victorian Islamic community, including two significant fundraising events for the Royal Children's Hospital, most recently last Friday night. That function was addressed by the former Governor of Victoria, Sir James Gobbo. Also there has been the outstanding work undertaken by John and Hatice Basarin, co-authors of *Gallipoli — The Turkish Story*.

The ACTING SPEAKER (Mr Ingram) — Order! The honourable member's time has expired.

Spain: national day

Mr LANGUILLER (Derrimut) — I was honoured to represent the Premier, Steve Bracks, together with my parliamentary colleague the member for Gembrook, at Spain's national day being celebrated today and to convey to the Spanish community and the Consul General of Spain, Federico Palomares, best wishes on behalf of the government.

The members of the Spanish community are a vibrant group who have played a valuable role in the development of Victoria's multicultural society. The Victorian government is committed to promoting ongoing interaction among diverse groups to build trust, harmony and goodwill and to strengthen our societal ties. With this in mind the Victorian government will soon introduce a new multicultural Victoria bill to ensure our state's renowned multicultural heritage is preserved for future generations.

The past year has brought tragedy to Spain. The appalling acts of terrorism in Madrid in March, in which so many people died, shocked the world. Victorians expressed their outrage at these evil actions but also their sympathy for and solidarity with the people of Spain. It is my hope that this terrible event will have strengthened the resolution of the world community to defeat terrorism.

Occasions such as national days provide an opportunity to reflect on the past and also to resolve to approach the future with hope, pride and determination. On behalf of the Victorian government and the Premier, Steve Bracks, I wish the Spanish community and the Consul General all the best for a memorable national day celebration.

Attorney-General: performance

Mr WALSH (Swan Hill) — I wish to express my dissatisfaction with and dismay about Rob Hulls, who as a minister in this government has failed to discharge his responsibilities to my constituents. During the adjournment debate on 27 May I addressed him in his role as Minister for WorkCover on material safety data sheets and on the difficulty farmers have in accessing them for the chemicals they store on farms as the regulations require. I asked the minister to change the definition of 'supplier' in the hazardous substances regulations to make this information easier to obtain. That was almost five months ago. As yet I have no answer. In his capacity as Attorney-General I wrote to Mr Hulls in September — —

The ACTING SPEAKER (Mr Ingram) — Order! The minister must be addressed by his correct titles.

Mr WALSH — I wrote to the Attorney-General in September 2004, May 2004, November 2003 and December 2002 on behalf of constituents regarding the need to have Shane Hanson of Charlton declared a vexatious litigant. My predecessor, Barry Steggall, first wrote to the minister on 10 October 2002, vigorously but unsuccessfully pursuing the issue of Shane Hanson with him. Prior to that, in October 2001, the Buloke shire wrote to the minister on the issue. We have made numerous phone calls and have a file that is three centimetres thick on this issue, and we have waited three years for an outcome.

I have recently written to my constituents saying that they should write to the minister asking for ex-gratia payments in compensation for their losses. It is their right, as the minister has not fulfilled his — —

The ACTING SPEAKER (Mr Ingram) — Order! The honourable member's time has expired.

Chelsea Rotary Club: 50th anniversary

Ms LINDELL (Carrum) — I ask that the chamber join with me in congratulating the Chelsea Rotary Club on 50 years of service to our community at Chelsea. Last night there was a grand celebration, with nearly 200 residents celebrating what has been a tremendous amount of community work and activity. There were three past presidents honoured last night with special certificates of appreciation — George Malone, Llew Owen and John Rooke. They are all very longstanding members of the Rotary Club of Chelsea.

One particular woman, Maisie Colville, the editor of their weekly newsletter the *Bulletin,* has performed that service for the club for 50 years. I put on the record my appreciation for the 50 years of service that she has contributed to the club. The current president, Kevin Harrison, and the current members put in an extraordinary amount of time and effort. They deliver first-class work in their community. They made a — —

The ACTING SPEAKER (Mr Ingram) — Order! The honourable member's time has expired.

Mitcham–Frankston freeway: tolls

Mr WELLS (Scoresby) — Through this statement I condemn the Bracks government for its continuing arrogance and contempt over the Scoresby tollway. The federal coalition's overwhelmingly comprehensive win on Saturday demonstrated just how angry people are in the outer east with the Bracks government's decision to

toll the Scoresby freeway. Voters went to the polling booths with one thing in mind — make Labor pay for its Scoresby lie.

If Premier Bracks and co. ever need to be convinced that tolls on the Scoresby were a major issue that will continue to haunt them, they need look no further than the massive swing against Labor in the seat of Aston, which lies at the very heart of the Scoresby freeway corridor. Mr Chris Pearce was convincingly returned with a huge swing of 8 per cent in the primary vote. When compared to the average state swing to the Liberal Party of 4 per cent on primaries, clearly there was an enormous groundswell of voter anger against the Scoresby tolls at the ballot box. Premier Bracks and his cohorts still fail to recognise the enormity of the tolls — —

The ACTING SPEAKER (Mr Ingram) — Order! The member should refer to the Premier by his correct title.

Mr WELLS — I said 'Premier Bracks'!

The ACTING SPEAKER (Mr Ingram) — Order! The member can continue, but he must refer to members by their correct titles.

Mr WELLS — The government still fails to recognise the enormity of the tolls decision for the people of the outer east, who have simply had enough of being kicked in the guts once again, as they have been in the past by successive Labor state governments. The Premier does this at his own peril leading up to the November 2006 state election. Voters in the outer east will never forget the Scoresby lies. They are sick and tired of hearing the Premier's lame and pathetic excuses.

Yea High School: alternative education program

Mr HARDMAN (Seymour) — I rise to inform the house about the Access Yea Community Education program, known as the AYCE program, that is run through the Yea High School. It is a program for school refusers.

On Friday, 8 October, the Minister for Education and I visited the school and spoke to Annette Scales, who coordinates the program; the principal, John O'Meara; Mary Schultze, a parent; and two students who participate in the program. The program is for students who would not participate in mainstream education for a variety of reasons and students who were previously home schooled. The minister and I heard about the program, which provides students with a structured format for years 7 to 12, including the Victorian certificate of education, the Victorian certificate of applied learning, English, maths, science, studies of society and environment, personal and creative development, numeracy and literacy, information technology and a variety of enrichment programs. The program presently has centres in Yarck, Geelong, Bayswater, Eltham, and Langwarrin/Frankston, and is set to grow in 2005.

Students and parents told personal stories about the success of the AYCE program, for themselves in the case of the students and for their children in the case of the parents. In a support letter for the program, Mary Schultze, in talking about one of her own children, said:

> She now demonstrates great leadership and organisational skills which I believe have also been aided by the independent learning which is required by the students in this program.

I congratulate the innovation and dedication of Yea High School and its staff who support and run this alternative education program that is meeting the needs of a specific and growing group of students across the state.

Diana Heatherich

Mr SEITZ (Keilor) — I rise to congratulate Diana Heatherich, a preschool teacher in Keilor Downs, which is in my electorate. She has been a preschool teacher for 18 years and this year has been awarded by the *Herald Sun* a teacher of the year award. This is a great achievement. Congratulations to this person for the dedicated work she has done for children in my electorate in their formative years. I know that preschool and early development is very important for children.

Diana Heatherich has developed a very successful integration program for children going from preschool to prep in the primary school system and has also established a play group which uses the facilities available there when no preschool sessions are being held. Again that helps the young children to socialise, mix and get ready for preschool and then primary school. Diana Heatherich should be congratulated on her work. She has also presented a thesis to university students on primary school teachers being able to develop this program for integrating children from preschool into primary school.

Mental Health Week

Mr LEIGHTON (Preston) — This week is Mental Health Week. Psychiatric illness has the potential to

touch all of us either directly or by affecting family and friends. Schizophrenia affects 1 person in 100 and depression affects 1 in 4 women and 1 in 6 men. The move in providing treatment from large, whole-of-life institutions to community settings was made possible by the introduction of psychotropic medication. In Melbourne the discovery of lithium carbonate by Melbourne psychiatrist Dr John Cade ensured that people with bipolar disorder no longer had to spend a lifetime in institutions. However, we must ensure that the move from institution to community continues to receive the financial support of government.

In my view the priorities are: comprehensive services with accommodation ranging from acute hospital beds when needed to more informal community residential settings; a trained work force of professionals for both inpatient settings and community teams, which is becoming more critical as those of my generation are reaching retiring age; close coordination between mental health services and public housing; funding for psychiatric disability rehabilitation and support groups such as Neami; and continuing research conducted by institutions such as the Mental Health Research Institute.

Morwell: Power of Racing festival

Mr JENKINS (Morwell) — I would like to draw the house's attention to the Power of Racing festival which is taking place in my electorate this spring and summer. This has grown over the last five years with the support of the Bracks government and with the particular support of successive ministers for racing and sport.

Highlights this year include the Moe-Newborough Indigenous Sporting Expo, which was held on Sunday, 10 October, and which starred amongst others the Olympic medallist, Cathy Freeman; Moe Cup Day, along with the famous 3-hour Moe sale, to be held on Thursday, 14 October; the *Herald Sun* tour final stage in Traralgon on 24 October, which is sponsored by Active for Life and VicHealth and very much supported by this government; the Swimming Victoria Open Water Swim at Hazelwood pondage, Churchill, on Saturday, 23 October; the Australian Hillclimb Championship at Gippsland Park from 29 to 31 October; ladies day at Glenview Park in Traralgon on Saturday, 30 October; a dual code — greyhound and thoroughbred — racing day at Glenview Park on Friday, 12 November; and the Traralgon Cup at Glenview Park, finishing up on Sunday, 5 December.

This is great news for Victoria and for the Glenview Park racing club in Traralgon, which has been saved by the actions of the Latrobe Shire Council and the Glenview Park committee and by me, with the support of this government minister — as distinct from the attacks by the member for Polwarth in the last government, who wanted to see this institution closed.

LIMITATION OF ACTIONS (ADVERSE POSSESSION) BILL

Second reading

Debate resumed from 16 September; motion of Mr THWAITES (Minister for Environment).

Mr LIM (Clayton) — I rise to support the bill, and in so doing — —

Mr Smith — On a point of order, Acting Speaker, I am actually the lead speaker for the Liberal Party on this bill, and we have not at this stage spoken on it.

The ACTING SPEAKER (Mr Ingram) — Order! Yes, the member for Bass has the call. I apologise to the member for Clayton.

Mr SMITH (Bass) — I thought the member for Clayton might have been apologising to me for jumping in a little bit too quickly!

The Limitation of Actions (Adverse Possession) Bill is important. Having spent a number of years on the Hastings council and having had adverse possession raised on a number of occasions at council meetings, it is good to finally see something being done about it.

The Liberal Party does not oppose this legislation, but it has some concerns about the way it has been put together. Firstly, we ask why it has taken so long for it to come before the Parliament of Victoria. The Municipal Association of Victoria (MAV) has been making representations since March 2000 for this type of legislation, yet the Bracks government did nothing until late last year, and it has taken about 12 months to introduce the bill into the house. This follows a similar pattern across all the decisions this government makes when there is a need to get things into place, in that it is not ready to move as quickly as it should, even though an issue has been pressing for some time. One understands from the opposite side that the MAV is a friend of the government, so it is a bit strange that the MAV is being critical of the time delays and is also expressing its concerns about this particular bill.

It appears that this may be similar to the pattern this government is following with the Victorian Local Governance Association, which also has just about had

enough of this government. I quote Julie Hansen, the president of the VLGA, as reported in the most recent *VLGA Review*, because I think it relates very much to the position this government now finds itself in with local government because of the way it has treated local councils. Ms Hansen said:

> We are already experiencing the lost opportunities from the creation of the gigantic Department of Victorian Communities, where there is an inconsistent approach to partnership with local government and communities. While not as apparent as the Kennett government's 'top down' model, the 'hands off' approach of the Bracks government has excluded many local government and non-government organisations from providing valuable inputs into major initiatives involving community wellbeing. The state's rhetoric on the important role of local government is not generally substantiated with meaningful action.

In other words, the VLGA does not believe this government is doing what it should be doing to try to assist local government in the way it carries out its duties. What the problem is I am not quite sure — whether it is Minister Candy Broad or an incompetent ministerial staff that is causing a loss of confidence in the Bracks government — but it is actually happening.

The second-reading speech says that the purpose of this legislation is to protect the community interest by preventing the unintended loss of public land to individual claimants. There is something that we in this house should remember: councils represent all their ratepayers, so when we talk about councils we are talking about all the members of the community — including ratepayers — who benefit from the community in which they live. We have to take into account the fact that we are talking about community land — that is, land that is owned by the ratepayers, the people who actually live in that community, not by some faceless people who at times stand up in council to represent their views.

As we all know, adverse possession rules go back to 1623. It happens where a person occupies another person's land and denies access to that land by others, being either the owners or other parties. It happens where people set out to deliberately deprive the council or other property owners of their land by denying others access, by fencing it off, by putting up a gate where there may not have been a gate before or by locking a gate so that others cannot get through. If this occurs over a period of at least 15 years, then those people are able to put in a claim that they are entitled to the land of which they have in fact taken adverse possession. They must prove that they have a possessory title to the land and that, by denying the owner access, they have dispossessed the owner of that land.

Currently Crown land and land controlled by VicTrack is protected from such claims, yet local government land is not. This legislation will go some way, but not all the way, to protect council land, being land owned by the ratepayers of the municipality, from being taken up by adverse possession. Council land can be council reserves, drainage reserves or other bits of land that we all know to be council land.

Local government will, after this amendment is passed, be able to protect councils' assets by registering all the council-owned land that has not previously been registered. So it will be necessary for councils to do a complete audit of all the land they believe they own and to register that land with Land Victoria. By registering the land in their name, councils will be able to prevent people from trying to claim some of that land and take it over.

Most roads and reserves created since 1988 are registered in the names of councils. Some roads and reserves created before 1988 are not registered in the names of councils, so they will now have to take that into account and get that land registered. Under this legislation councils will have the opportunity to register the assets they wish to protect, but at a cost to them. They must take that into account when they are looking at whether it is worth while registering that land, which may mean they will have to put some planning provisions on it. They may just let it be taken over by adverse possession, or they may decide to be more vigilant in seeing that adjoining and abutting property owners are not creeping onto council land, enabling them at some stage in the future to claim it by adverse possession.

If councils decide to register this property, they may be up for tens of millions of dollars in registration and other fees they will have to pay, and there may be planning implications involved in registering their land. As I said before, the Municipal Association of Victoria, as a friend of this government, believes that a council should have full and comprehensive protection for all council land, whether the council's name is on the title or not. As members know, land is vested in council by developers. Whether it be the 5 per cent of land required when a subdivision is done or whether it be roads, laneways or actual reserves that become part of a development that goes ahead, that land gets vested in the council. Since 1988 most of that land has been registered in the council name, but that is not necessarily so. It may well now be up to the councils to go ahead and get that land — those reserves, streets, roads and laneways — put in their names.

It is going to be quite a big and difficult job. The MAV believes that the land should be classified as being comprehensively protected and should not have to necessarily be registered. But it is important that the land registry recognises the land as being council-owned land, so the MAV wants to put councils in a position where they are not going to lose the land because they are not able, through either a lack of money or a lack of resources, to get people employed by a council out there to work out exactly what land should be registered. The MAV believes there is still a large number of gaps in the legislation and that it will not protect the councils' position. It talks about those gaps in a report it has put out with regard to this particular bill, and I will quote from that report. The MAV says that land that is still at risk under the government's proposal is:

1. Reserves (including drainage, sewerage and recreation reserves) created by subdivisions prior to 1988 that are registered in the name of the original subdivider (usually deceased or wound up); and

2. Local roads and laneways created by subdivisions prior to 1988 that are registered in the name of the original subdivider. Such laneways (provided they are public highways i.e. used by the public) vest in the council by virtue of section 203(1) of the Local Government Act 1989. Such vesting is not, however, reflected in the Register of Titles.

It also goes on to say that:

3. Land in discontinued roads, which vest in council by virtue of section 528(2) of the Local Government Act 1958 and 207B(1) of the Local Government Act 1989;

4. Land in reserves, which vests in council by virtue of section 569BA(1) of the Local Government Act 1958;

5. Land compulsorily acquired by councils (e.g., land acquired for a public purpose pursuant to the Land Acquisition and Compensations Act).

The Municipal Association of Victoria believes those lands will still be at risk under this bill if it gets approved and passed. The MAV talks about the costs of registering reserves that are set aside, and it mentions one council in particular:

> Many municipalities will have dozens of reserves in this category. The City of Banyule has reported that it has 80 such reserves.

The City of Banyule, by some comparisons across the state, is a small municipality. One only has to think of some of the larger municipalities, particularly in rural areas, that would have a lot more reserves than Banyule. You only have to think of areas like Werribee and areas over in Casey that would also have, I would think, many hundreds of these reserves that have to be registered. It is going to cost them tens of millions of dollars to get these areas registered in the councils' names, and one wonders whether the councils are in the financial position to allow this to happen.

The MAV goes on to say that the state government concedes:

> Roads and laneways of which the council is not the registered proprietor will not be protected from adverse possession by these proposed amendments.

One has to ask why. We have this legislation now before the Parliament. There has been a long break between when it was first mooted and when it has finally reached the house, and one must wonder why these issues were not raised by the government when it brought in this legislation. One has to concern oneself a little.

When I am in Melbourne I live in the City of Port Phillip, and I know there has been great concern about the laneways around South Melbourne and the areas that people have just taken over. It is very difficult for the council to be able to see some of these areas that have been closed off. There is one very close to where I live that has been closed off, because somebody has built a brick garage over it and denied access to other people to use that laneway to get to the houses further up from where I am. It does not worry me because it does not affect my use of that laneway, but it most certainly does affect other people.

The City of Port Phillip got on to this very early in the piece and has made an effort to try to find out which laneways have been closed off. It has already identified 300 encroachments and similar irregularities in the lanes and the rights of way it has in that municipality. So there are 300 of them that people have actually stolen, you could say, from the rest of the community.

The MAV raised concern about:

> … the frequent lack of documentary evidence that a road has become a public highway …

That is because the government in its explanatory memorandum says:

> Roads (and laneways) that are public highways cannot be the subject of a successful adverse possession claim as, by its nature, the public has a right to use a public highway and access must not be blocked by fences or other possessory actions.

They can, and they do. If land is not registered and somebody closes off access to it, as I spoke about before, it is not difficult for them, after 15 years, to lodge an adverse possession claim against that land.

Discontinued roads are another concern for the MAV. The Premier is giving councils the power to discontinue roads, subject to public consultation processes, and to take possession of the land in the discontinued roads. This power has been granted three times: in the Local Government Act, the Planning and Environment Act and the Road Management Act. In all three acts the discontinuation requires a notice to be placed in the *Victoria Government Gazette*, but in none of them is the registrar required to record the fact that ownership of the land has changed. So a road can be discontinued, but it does not necessarily mean that it goes into the name of the council. Therefore if somebody comes along and fences it off for something like 15 years — and a lot of rural areas have roads that have been discontinued — the council, because it is not the registered owner of that land, can have an adverse possession claim brought against it because its ownership has not been registered; it has not been necessary. Consequently the title may still record the original owner as the registered proprietor and such land will not be protected under the proposed amendment. One must again ask why. It cannot be that hard to register it with the lands department.

Next the MAV document deals with land subject to undisclosed tenancies. It says that councils' property portfolios often include land held for some future purpose. Pending its use for municipal purposes, councils may permit such land to be used or occupied by another party. It may be an area that has been set aside as a future reserve — a football oval, or something similar — but it is in an area which is fenced off and people can use that land. Councils might not lease it out to them but might allow them to run their cattle on it for a period of time. After 15 years the people who have been able to use the land over that period could put a claim against the council for adverse possession. One has to ask why, after nearly four years, the government did not take this into consideration and do something to try and protect councils in some way.

Although Liberal opposition members do have concerns, we are not opposing this bill. The concerns of the Municipal Association of Victoria are also our concerns. We are disappointed that the government was not prepared to listen to what the MAV had to say. One would have thought that the MAV was in a position to have a greater understanding of local government matters than the minister or some of the ministerial staff. There are people who have already lodged claims for adverse possession, and their claims will continue to be processed by the Land Victoria. They will be processed as if no amendments to this act had been made, and people have up to 12 months to lodge adverse possession claims against the council. Other potential claimants who have occupied council land for 15 years or more will also have 12 months in which to lodge a claim with Land Victoria. Their claims will also be handled as if this amendment to the act had not been made.

Councils are, of course, getting very frightened that there will be a land rush when people find out about this legislation and realise that if they do not lodge an application within 12 months they will not be able to claim the land by adverse possession. There are some people who put a fence up to keep the weeds down a little bit on their neighbour's property, whether the land is owned by the council or privately. They think they are doing the right thing. However, there are other people who set out to try and cheat people out of their land by taking adverse possession. It is most unfortunate that this type of behaviour occurs, but it does. Not everybody is as honest as we would like them to be.

In conclusion, the Liberal opposition does not oppose this bill, but suggests to the government that there are some real concerns about it within the community. It is very disappointing that the government, having recognised the need for such legislation, is not prepared to do it properly and has only gone part of the way towards implementing a bill that would overcome the difficulties of adverse possession for local government. The quicker this legislation comes into being the better, because councils might then be able to put into place some actions to deal with difficulties they will have in the future.

Mrs POWELL (Shepparton) — I am pleased to speak on the Limitation of Actions (Adverse Possession) Bill on behalf of The Nationals as their spokesperson for local government and to say that The Nationals will not be opposing this bill. It is only a small bill, but it has very important ramifications for local government.

The main purpose of the bill, as set out in clause 1, is:

> (a) to amend the Limitation of Actions Act 1958 to exempt land of which a Council is the registered proprietor from claims of adverse possession …

Currently local government is not protected from adverse possession applications. The bill also provides:

> (b) … transitional arrangements for … claims of adverse possession against Councils.

Any person who has occupied council land for 15 years or more will have 12 months in which to lodge an application for title through adverse possession over the

land. It also means that people who have already lodged an application will not be affected by this legislation. This means that the application will be dealt with as though this legislation had not yet come into affect.

I received a briefing paper from the office of the Minister for Local Government. I was advised that councils and the Municipal Association of Victoria (MAV) have been lobbying the state government for this legislation and for the protection of council land from claims of adverse possession since 1997. As the member for Bass said earlier, it is about time we did something to protect local government and its land. We have been waiting for this to happen since 1997.

One of the reasons councils do not always monitor their land to make sure that somebody has not taken it over either by stealth or by adverse possession is that they do not have the resources to regularly check the land under their care. I was a councillor with the former Shire of Shepparton and I was also a commissioner with the Shire of Campaspe. In all of that time — four years as a councillor and one and a half years as a commissioner — I do not believe we had any claims of adverse possession. It is not something that all councils have had, but I guess this bill will be able to protect them from that sort of claim.

Councils will have to register their land to be able to protect it. This means in some instances councils will have to do a land audit and have a look at the land that is in their care. They will also have to make decisions about which land they want vested in council name and which land they do not want to take responsibility for. I was advised at the briefing that this bill reflects the policy position outlined in an exposure draft bill released in June 2004. That draft bill was put out for comment for about eight weeks. We were told that this bill is in line with the comments made by the public after the eight-week consultation period.

I have spoken to a number of organisations about this bill to see how it affects councils. I spoke to the City of Greater Shepparton. It did not have many problems with this legislation because, as I said, the council does not have many claims for adverse possession. It may be that the council does not know there are people on its land or it may be that the community at large does not understand that after being in possession of that land for 15 years they can put in a claim and apply for ownership of the land.

I also spoke to Mr Mick Toll, who runs Land Management Surveys (Shepparton) Pty Ltd. After looking at the legislation he did not have any specific problems with the bill. The Victorian Farmers Federation has a few concerns about the bill. Its senior policy adviser, Cathy Tischler, said that while there were no specific problems, local government land is not always best managed by local councils and that in fact local government land is likely to have delivered better and improved land management in many areas if taken over by private landowners. She further said that local government should be reminded of its duty of care and responsibility to be a good neighbour to adjoining private land and parks or other areas. When local government is putting on the register the areas it wants to place under its care, it must ensure that it particularly looks after those areas.

A number of people have spoken to me about those issues where neighbourhood boundaries could be a problem. I am talking about areas where a fence could be put in the wrong place and a person perhaps builds a shed or swimming pool in the area. When a new neighbour comes along and buys the property next door and has the area surveyed, they find out that the fence is in the wrong place. The only way to clarify that situation is for the existing neighbour to apply for adverse possession of that land so they do not have to remove the buildings they erected on that land in all fairness given that they thought it was theirs.

I spoke to Mrs Jeanette Felstead, who is a fellow of the Institute of Legal Executives. I believe she is an expert in the issue of adverse possession. She said many of the areas she deals with are section 60 applications — the adverse possession applications. She said she prepares many section 60 applications and has many on foot. She was pleased to see that the bill protects the applications which are pending at the moment and that they will go through the application process as normal. However, she has three applications for the old night man's lanes where people are using them as part of their properties.

Those areas have been closed because a number of homeless people had taken up residence. In addition to their lighting fires in the area, there were issues of vandalism and rubbish being left around the place. The neighbours asked for the laneways to be closed to protect those areas.

When the homeless people were moved on by council, blackberries took over the laneways. The people whose land adjoins the laneways say that at one time they had the homeless people and when they were moved on they now have the blackberries, Paterson's curse and all the sorts of things that happen on parcels of land which are not well managed. They are now putting in a claim for adverse possession and I believe it will be accepted.

At least this bill will allow them to continue with the appropriate application.

Crown land and land owned by VicTrack is already protected from claims of adverse possession. Adverse possession is a rule of law which allows a person occupying another's land to acquire that land, but only in certain circumstances. There has been some concern that somebody could be on a parcel of land for 15 years and then it is theirs. However, it is not a simple process to claim adverse possession, and it is certainly not a cheap process. To acquire the land the occupier must have been in exclusive possession of the land for 15 years or more without the permission or licence of the legal owner of the land. If there is a formal arrangement between the legal owner of the land and the person occupying the land, the occupier cannot apply for adverse possession. The fact that there has been a leasing or some other formal arrangement prohibits an occupier from applying for adverse possession even if they have been on that land for 15 years or more.

A person who applies for adverse possession is allowed to exclude the registered proprietor from the land. It is a system where we have to ensure that the person who is adversely possessing the land has true and correct claim to the land. They have to apply in writing to the registrar of titles under section 60 of the Transfer of Land Act 1958. The application must be in an approved form and must include a plan of survey with an abstract of field notes of the land. If the survey is more than two years old, the applicant has to have the land re-surveyed. The survey needs to be certified by a licensed surveyor. The application should also include any other plan, diagram or any document describing the land which satisfies the registrar as to the description of the land. One thing they have found is that it is important to provide photos of the land. Even aerial photos do not always give a true and correct picture of the description of that land and its relationship to the person who is seeking to adversely possess the land.

The application fee has been increased. It used to cost $250 to apply and the fee is now $600 if you do not need to have the land surveyed and $800 if the land has to be surveyed. It is not a cheap way of doing it. The registrar ensures the application is advertised in a newspaper which is circulating in the city of Melbourne or in a neighbourhood or local paper, or to any person the registrar believes might have an interest in that land.

As well as the person applying for the land, they must also advertise it. The applicant must also make sure that a notice is posted in a conspicuous place on the land, or wherever the registrar directs, for not less than 21 days prior to the granting of the permit. That gives the community or the owner of the land an opportunity to object to the adverse possession. They would then go through the normal appeal process. After that time the registrar may grant the application under section 62 of the Transfer of Land Act unless a caveat or objection is lodged.

This can only happen if the registrar has been satisfied that the ownership has been for 15 years — which must be proven — and that the land has been abandoned by reason of non-use by the previous owner. The registrar can then request payment to the consolidated fund. The formula for that fee is for 30 years possession the contributor gives 0.05 per cent of the improved value of the land claimed and for any possession between 15 years and 30 years it is 1 per cent of the value of the land. There is a minimum contribution of $50. It is not a cheap way of doing it. The person claiming the land has to ensure that the cost of doing so does not outweigh the value of the land.

There are number of methods of proving adverse possession. It is up to the applicant and their legal adviser to prove their case. Again it is a costly exercise, because the person must make sure that they have legal representation, and that comes at a cost to the applicant as well. They have to identify the land, and as I said earlier, it must be by a survey plan, an aerial photo or any other way they think they will be able to identify that land and its relationship to their own land. They have to give evidence and explain the circumstances in which the possession was commenced. They must establish that possession was exclusive and continued subsequently without interruption. They have to describe the use made of the land and who occupied it or used it. They also have to describe the access to the land and any improvements they have paid for on that land.

Applicants also have to prove who paid the rates, and to get the rate value of the land they have to get a notice from the council. It costs about $200 for the applicant to get from a council any direction on who paid the rates and how much the rates are worth on that land. The applicant's declaration must also state the value of the land that is being claimed as well as the basis value and how that is calculated. It must give the postal address of the land to be claimed or the property that the land forms part of. It must also state the name and address of the municipality of the district where the land is located.

So there is a fairly specific application form, and the applicant must provide a lot of information and data to the registrar to prove that they have the right to apply

for adverse possession of that land. There is also an onus on the person who is objecting to prove that they have had some access to that land at some stage during that 15 years. So it could be a lengthy process, and it could also be quite costly.

With roads and reserves there has to be evidence of 30 years of non-use, and that evidence must also be supplied. Local roads and laneways that are public highways — that is, the land over which the public has a right to travel — cannot be adversely possessed. The Road Management Act 2004 provides that a public highway can be extinguished only through road discontinuance or permanent closure.

Clause 3 of this bill also provides that councils may apply under section 24A of the Subdivision Act 1988 to have the title to certain reserves vested in their name. That land is not council land under the bill and is therefore vulnerable to claims of adverse possession, unless and until the necessary application is made.

Councils may decide not to take up ownership of or responsibility for areas such as the night man's lanes or other small roads or other portions of roads or land because of the implications of the Road Management Act 2004 or because of the responsibility that they see they will incur as a result of taking on the ownership of that land. So it does not mean that just because councils own that land they will automatically seek to repossess it. They may decide, when they consider the situation, that it is too costly or too onerous to have that land on their title and therefore adverse possession can continue.

One of the reasons this bill has been introduced is to do with the cost to councils because of their assets and the repercussions for councils of losing land that they may not have realised people had had possession of for over 15 years. I will read some comments from an article in the *Weekly Times* of 23 June this year which talks about possession law coming into the Parliament soon. The article says:

> In recent disputes:
>
> The Cardinia shire was forced to fight a claim for 2400 square metres of a council reserve. A second claim was made against the council for two house blocks at Cockatoo valued at $75 000.
>
> The Greater Geelong City Council incurred major legal costs fighting seven applications for adverse possession of a council reserve in Clifton Springs. Two were withdrawn, but the other five settled with the loss of 2000 square metres of land worth $200 000.
>
> The Shire of Yarra Ranges lost land which a resident had been occupying on both sides of a cul-de-sac.
>
> Frankston City Council lost a portion of a municipal reserve after it had been occupied by the owner of adjoining land without council knowledge.

So in the past a number of councils have lost not just huge tracts of land but also huge assets that realistically the ratepayers own. When we talk about council-owned land we are talking about land that is owned by the ratepayers. I think many councils are weighing up the cost of registering and being responsible for land against the cost of allowing applicants to adversely possess it.

One of the issues that has come out of this bill is the legal repercussions and the cost to councils of having to defend applications for adverse possession. The Nationals are pleased to see this bill coming forward and wish it a speedy passage.

Mr LIM (Clayton) — It is pleasing to hear honourable members opposite say that although they are raising concerns they nevertheless support the bill. I thought it was only appropriate at this juncture to congratulate the Minister for Environment for introducing the bill. I mention also the significant and magnificent contribution the Municipal Association of Victoria (MAV) has made to this bill.

In my contribution it is very important for me to say as someone who comes from Cambodia that this bill has touched me personally. I came from a country where the possession of land and house ownership and all that had been completely thrown out of kilter due to the revolution that brought in the Pol Pot Khmer Rouge regime. Honourable members probably remember or have heard of Year Zero, when the whole population was thrown out of their houses and off their land and forced into labour camps all over the country. This particularly affected the people in the towns and big cities more than anywhere else.

You can imagine that after the Khmer Rouge regime was thrown out by the invading force from Vietnam the people were allowed to go back to their places of origin, but during those four years 1.7 million people were killed or starved to death because of the hardships they went through during the killing fields period. So the question of ownership — who owns what and where, and all of that — is just coming to the fore. It is creating colossal dislocation, and the new regime cannot handle it. People are just clamouring and claiming ownership all over the place, and this is particularly affecting so-called common or Crown land, which is public land.

It would have been handy if something like this bill had been in place to protect the integrity of Crown land in

Cambodia — not that that country was at the time following the rule of law or that the law was transparent. The country is still coming to grips with how to deal with the law and all that.

I will deal with the bill in very general terms. I start by saying that adverse possession is a very old concept in law that dates back at least to the code of Hammurabi in Samaria in almost 2000 BC. In relation to a householder who has seemingly abandoned his land for a period of three years or more, this ancient law states:

> If the first owner returns and claims his house, garden and field, it shall not be given to him, but he who has taken possession of it and used it shall continue to use it.

So the theory of the doctrine of adverse possession is that the person who holds or uses property adversely and against the interests of the original owner should ultimately be entitled to own that property. The idea is basically that land use should be favoured over disuse, and therefore somebody who uses and cultivates land is preferred in law to somebody who does not, even though the latter person may be the rightful owner.

Adverse possession tends to favour community benefit over individual control, a basic tenet that advances the good of a particular society rather than the exclusive legal right of an owner. Like many good ideas, the adverse possession doctrine has passed from one society to the next, from the Sumerians to the Romans to the British, to finally become part of the law in Victoria. For the sake of the community good our property laws have therefore sanctioned certain types of otherwise unlawful taking of land belonging to someone else. We see a similar concept operating in squatters' rights which were so important to the settlement of rural Victoria.

As the name of the doctrine implies, for adverse possession claims to succeed the possession must be adverse, hostile, actual, notorious, exclusive, continuous and under claim of right. That is to say, community good aside, claims for adverse possession are likely to lead to dispute, and private owners are therefore usually very vigilant in policing their boundaries to make sure somebody has not built over their land or erected their fence in the wrong place.

When it comes to public land things become more difficult. It is by no means clear that community interests are best served by allowing adverse possession claims against land that is held in public trust. Because public lands are often extensive and fragmented, the job of ensuring that boundaries are not encroached upon becomes extremely difficult, let alone costly. For these reasons the state has quite rightly curtailed the use of adverse possession law in relation to public land. Both Crown land and railway land are protected from claims of adverse procession by the Limitation of Actions Act 1958. Until now similar protection was not extended to council-owned land and there have therefore been numerous claims for adverse possession against such publicly owned land over the years. Land which was held for public use — reserves and the like — has therefore steadily been eroded by claims for adverse possession from private land-holders who have sought to enrich themselves at the public's expense.

It is clear that adverse possession of council land is very unlikely to be in the public interest. This bill therefore rectifies the anomaly that Crown land be exempt from adverse possession claims while council land is not. The bill, as well as protecting the public interest, also reflects the state government's view of the importance and legitimacy of local government as a distinct and essential layer of government by extending to council land the same protection afforded to Crown land and railway land. It does this by modifying the Limitation of Actions Act 1958 to exempt land of which a council is the registered proprietor from claims of adverse possession and to provide transitional arrangements.

The bill inserts new section 7B into the Limitation of Actions Act which provides that the title of a council to council land is not affected by adverse possession. Finally, new section 7B(3) provides definitions of council, council land, registered proprietor and so on. There is no problem with roads as public thoroughfares are already protected from adverse possession claims. In the case of reserves and other land, if the council has a legitimate claim on the land, it can transfer title to the council whereupon protection against adverse possession claims would be forthcoming.

This is a most worthwhile bill that recognises the utility and rights of local government, protects public land from claims from private owners, and ensures that these ends are achieved in a fair and proper manner. I commend the bill to the house.

Mr THOMPSON (Sandringham) — Adverse possession is a technical issue of the law which has wide implications. In its very broadest sense there are some adverse possession issues where lands have been occupied and people have had to surrender title, generally as a result of political occupation. That might be illustrated by reference to the people of South Vietnam or the people of the former Soviet union who lost their land-holdings through the occupation of another government.

In a narrower sense the principal cases for which the bill is concerned today relate to the delineation of ownership where fence boundaries may not be on the property boundaries as indicated by the certificate of title. Victorian property ownership is regulated under the Torrens system of ownership. This land system of ownership is based on a Hamburg system of boat or ship ownership whereby right to title is governed by registration on a register of ownership interests. This particular method of ownership was a very effective method as opposed to the older general rule system of land ownership which related to a chain of title which needed to go back over a specified period of time.

The majority of land in Victoria is governed by Torrens title, with the majority of transactions post-1870 or 1872, or thereabouts, falling under the Torrens system. I may be mistaken, but there may be still some areas of land which are under general law title. The Torrens system regulates ownership to land.

Sometimes boundary fences are allocated not along the title boundary but rather on another area of land. If a person seeks to claim ownership of land that is not originally on their title but belongs to an adjoining neighbour, they may do so under the principles of adverse possession. This can be a complex procedure. It involves the exclusive occupation of a piece of land for a specified time frame, following which Supreme Court action can be taken. Members of the house would be aware that litigation is not a cheap process. Some people nevertheless have endeavoured to assert their land rights, and also additional rights for land that they may have occupied through the principle of adverse possession.

Traditionally the approach in New South Wales has been to grant greater priority or importance to the title document that delineated the boundary or described the boundary, whereas in Victoria some regard has been given to the ability of a person to make an adverse possession claim. The basic advice that lawyers would give to people buying land would be to measure the boundary. This could include the expense of a survey if it was in an area which was not clearly defined through existing and well-set boundaries in a built-up residential area, and in addition to the prospect of there being a survey, as appropriate, to get out with a tape measure and to actually measure the boundary fences. Sometimes people are highly possessive over an extra 6 inches they find on their title; other times they are indifferent.

The legislation before the house today is principally the product of some enterprising occupiers of council land in Melbourne endeavouring to assert ownership by building fences. I understand in the City of Port Phillip there may be over 32 kilometres of public laneways. These had a very practical purpose in yesteryear when they provided the opportunity for the night cart to travel down and go about work effectively, but in more recent times the cobblestone alleyways might have been used for the access and egress from the backyard of a property for parking purposes. Sometimes today they have been used as the main roadways to 20 or 30 subdivisions where people might hope to build on the back of their property. In the present case the sky is the limit. They may have endeavoured to gain access to the back of a property through a laneway.

One enterprising panel beater accused the City of Port Phillip of lacking sensitivity in the removal of a fence that had been erected in the early 1980s over a laneway which I am sure was of some value to his panel beating business whereby he might have been able to locate cars there or preclude the risk of miscreant people or people with illegal intent using it for purposes other than by way of a right of way or access or egress.

I alluded before to an all-party committee that reviewed the Fences Act. It looked at issues of adverse possession — —

Mr Perton interjected.

Mr THOMPSON — I will overlook interjections at this stage. The committee examined the New South Wales approach and the Victorian approach and came down in favour of some flexibility to enable adverse possession principles to be pursued through the courts.

The value of land in laneways would be significant. It represents a fertile base for local government to sell off land rather than have it claimed by way of adverse possession. An overview of Melbourne's laneways would be interesting. In some cases where a laneway has been divided it has been acquired by a landowner on the northern side of the laneway, but in other cases it has been acquired by the southern landowner and in still others the boundary has been set in the middle of the laneway, so an aerial overview would be interesting. However, the net effect of lanes being sold off is to add to the revenue base of a council, which might enable local government to undertake its work on a range of different frontiers.

A Victorian once sought to have more spare time to contribute to community life and the common good. He was working very long hours in country Victoria, and came up with an idea that would let him have more time with his family and focus on worthy social goals. He invented a game called *Squatter*. According to this

gentleman the game was republished on many occasions and was sold in the United States. I understand that if you put all the games that he sold on top of each other, they would reach a height greater than the Empire State Building in the United States. So not only is revenue derived indirectly through the concept of squatting, as illustrated by the excellent work and vision of Bob Lloyd — who, I might add, is a Sandringham resident and a great contributor to the local community — but through other avenues as well. For example, through the legislation before the house today, local government will be able to reap a windfall through boundary certainty, reduced litigation costs and the ability to sell off land on an orderly basis, given it will possess exclusive title to the land.

As to the issue of the difference between the Victorian approach and the New South Wales approach, I think there is some merit to the original New South Wales approach, which also may have had the effect of limiting uncertainty**.** The Victorian all-party Law Reform Committee, which reviewed this matter, had as its chair the member for Doncaster, who made a few comments to the house a moment ago. The subcommittee was chaired by a member for Templestowe Province, the Honourable Carlo Furletti — a great member of the other place. Together they, along with other members of the committee, came up with a series of recommendations designed to improve the operation of the Fences Act and to remove the prospect of or scope for neighbourhood disputation. I am not aware of the government having pursued these recommendations, but any government that does so will make a great contribution to removing neighbourhood boundary disputes, and thereby assist the furtherance of domestic harmony in local government areas.

Ms BEATTIE (Yuroke) — I rise to speak in support of the Limitation of Actions (Adverse Possession) Bill. It implements an important aspect of the Bracks government's recognition of local government as a distinct and essential tier of government. Of course we respect local government as a distinct tier of government, and a very important one. It is probably the level of government that most people relate to. We often hear local government described as being about 'rates, roads and rubbish', but it is more important than that. If I have time I will address six points in my contribution. I will go through the meaning of adverse possession, the process of consultation and why some of the proposals that were put forward at consultations were not taken up, what land this bill will protect, what land it does not protect, and lastly, some of the costs.

The costs can be quite significant. The member for Sandringham touched on the issue of general law title — sometimes referred to as old law title — and the new Torrens title. I bought a small farm which was on general law title. The costs associated with the title search were quite significantly higher than with the new Torrens title. The first question that should be answered is: what is adverse possession? The rule of adverse possession goes back a long way, a little bit before my time, as far back as the 1623 Jacobean Statute of Limitations. Adverse possession allows a person occupying another person's land to acquire the land in certain circumstances. To acquire the land the occupier must have been in possession of that land for a prescribed period of time. In Victoria the period is 15 years as provided by the Limitation of Actions Act 1958. The occupation must also have been without the permission of the legal owner of the land and must have meant that the legal owner was no longer in possession of the land.

Under the Limitations of Actions Act the person claiming a title must show discontinuance by the actual owner followed by possession or dispossession of the actual owner. Where these circumstances are satisfied the legal owner of the land can no longer sue to recover possession of the land. That is the definition of adverse possession.

I would like to refer to the stakeholder contribution that we talked about earlier, a hallmark of the Bracks government, which is getting all the parties together and listening to what they say. It has been the subject of public consultation through the release of a draft bill and an explanatory paper, and 29 submissions were received by local government in response. The Municipal Association of Victoria expressed concern that the bill does not give comprehensive protection to land that it is vested in or is managed by council. The municipal association suggested that council should be empowered to certify whether land is or is not council land. This suggestion was not taken up. I would like to go through why it was not taken up. In its submission to the government in response to the exposure draft limitation of actions, the association proposed that any application for an adverse possession of land should be accompanied by a certificate from the relevant local council that the land being claimed was not council land. Council land would be defined widely in regulation to include land that councils own or manage that has been reserved for municipal purposes or that has been vested in the council by operation of statute. That suggestion was not taken up.

What land does this protect? Councils are registered proprietors of a whole range of land. Indeed,

honourable members can refer to that. Councils often own land in fee simple. Since 1988 most local roads and reserves, such as those used for recreation and drainage created by subdivision under the Subdivision Act 1988, are registered in the name of the local council. That will be protected.

If we address what land is to be protected, we should also address what land is not to be protected. Several acts vest land in councils without providing for the council to be automatically made the proprietor. While this land is often owned and managed by local councils this is not reflected on the title and will not be protected. A couple of examples of that are reserves created by subdivisions made prior to 1988, discontinued roads that have not been sold to a new owner or transferred to the council, land acquired for road deviations which vest the council under section 207B of the Local Government Act 1989 and also land compulsorily acquired by councils under the Land Acquisition and Compensation Act 1986, land set aside for road reserves under subdivision created prior to 1988, and those that are required for public use to be open to public traffic. That is the range of types of lands that are not protected.

Mr Baillieu interjected.

Ms BEATTIE — I want to comment on costs, but I am sure costs do not worry the member for Hawthorn. He will not concern himself with such minor detail because he does not have to, but some of us are very concerned about costs. I did touch on the cost of the general law title as against the Torrens title and how expensive that general law title was. Costs in some cases have reduced and in other cases increased.

This bill is very important. Although on a first reading it is mechanical in nature, it is not just a mechanical bill; it is very important for councils and for many people to know which land is theirs and which land is not theirs. You often see farmers put a fence post in next to an old fence post and another fence post next to that. When you are talking about farmers with a significant circumference in their fence posts it can be quite expensive. In conclusion, this is a good bill. It helps respective layers of government. I commend the bill to the house.

Mr LEIGHTON (Preston) — I also wish to speak in support of the Limitation of Actions (Adverse Possession) Bill, which amends the Limitation of Actions Act 1958 by inserting a new section 7B into the act to provide that the title of council to council land not be affected by adverse possession. An exception is provided where an application for title by adverse possession of over 15 years is made within 12 months of the commencement of the new provision.

The concept of adverse possession is an ancient one and goes back to at least the 1600s. The rule of adverse possession allows a person occupying another's land to acquire the land in certain circumstances. To acquire the land the occupier must have been in possession of the land for a prescribed period of time. In Victoria that period is 15 years as provided by the Limitation of Actions Act. Occupation must also have been without the permission or licence of the legal owner of the land and must have meant that the legal owner was no longer in possession of the land. The irony to me with adverse possession is that the more illegally you act in occupying the land, the more conscious you are about that occupation, the greater your claim to adverse possession after 15 years. I wonder whether it is a concept that has run the course of its usefulness in this day and age. The policy base behind it in ancient times was to avoid having land lying idle.

However, when we turn to exempting councils from that there are very different public policy considerations. Other levels of government are exempt from adverse possession certainly in respect of Crown land and railway land. Local government is the third tier of government and the same should apply to it. In particular there is a strong policy argument that it is not in the public interest to have councils spending substantial resources in continually monitoring land they hold.

As a member for a middle suburban — these days inner suburban — electorate, I can say we have plenty of laneways in Preston. I also experienced this situation 20 years or more ago as a Heidelberg councillor. You know you are in for trouble when a constituent comes forward and complains that somebody has occupied land or that the council has denied them the opportunity to purchase a laneway. Most roads and laneways will not be covered under this bill unless a council has actually taken ownership of them.

I am pleased to be able to support this bill. It is a sensible measure, it clarifies the situation and it is in the public interest. On that basis I wish it speedy passage through the house.

Mr ROBINSON (Mitcham) — I am pleased to have the chance to make a brief contribution to the Limitation of Actions (Adverse Possession) Bill.

Mr Baillieu interjected.

Mr ROBINSON — I speak on this bill because it has relevance to Mitcham, as the member for Hawthorn

has quite correctly pointed out. He would no doubt be aware that the City of Whitehorse not so long back became caught up in an adverse possession case because a ratepayer in the municipality had extended a fence out over some council parkland which ended up being worth quite a sum of money. My recollection is that the council took up its legal option to try to stop the adverse possession claim but was unable to do so. Out of that, other members and I became aware of the shortcomings of the legislation, which did not offer councils the protection which had much earlier been provided to the Crown and to VicTrack.

Mr Baillieu interjected.

Mr ROBINSON — We had a very successful intervention in this case, and that is why we are here discussing this bill. It is good to see that the member for Hawthorn is getting with the program and supporting good legislation.

It is not unreasonable for councils to be afforded the protection that this bill gives. When we analyse their landholdings we see that they are extensive. A council like Whitehorse covers a fair area and has many municipal parks and reservations. It would be unrealistic to expect that in all cases the council would maintain data and would be able to monitor its landholdings to the extent that it would at all times be able to prevent people from trying to make successful adverse possession claims.

The bill in part amends the Transfer of Land Act 1958. My familiarity with this act goes back to my days at Box Hill TAFE many years ago, when I was undertaking a survey assistant's course — —

Mr Perton interjected.

Mr ROBINSON — Yes, it was a bushman's law degree when it came to property law. I was undertaking a certificate of technology as a survey assistant. For countless years students in the survey assistants certificate of technology course have traipsed their way down to Memorial Park in Box Hill. That park would have had more pegs put into it than any other comparable piece of land in Victoria. It has been the training ground for surveyors and survey assistants for many years. As part of that course we were made aware of the rights people have under the Transfer of Land Act to make adverse possession claims.

There is nothing wrong with the philosophy which underpins the right to make an adverse possession claim. Previous speakers have gone into some detail about the legal history that underpins the principle. It is fair to say it stems from a belief not just here in Australia but through Western nations more broadly that land should not lie idle and that those who can maintain and upgrade it should be given the opportunity of acquiring and developing a property right.

The situation is not consistent across Australia. I note the report of the Law Reform Committee in 1998 into the review of the Fences Act. I joined that committee just as it had completed its work on the Fences Act.

Mr Perton — It was a fine committee.

Mr ROBINSON — It was a fine committee — and it got finer when I joined it. I am glad the member for Doncaster recalls my contribution. It was a good committee.

Mr Perton — We worked well in a bipartisan way.

Mr ROBINSON — We did. And we moved on after that to the inquiry into self-induced intoxication, another outstanding report.

I want to quote from that 1998 review of the Fences Act:

> 6.39. Western Australia has adverse possession with a 12-year limitation period. Tasmania has a novel provision whereby, in cases of an adverse possession of Torrens system land, the registered proprietor's title is not extinguished and the registered proprietor is deemed to hold the land on trust for the person who has acquired possessory title. As previously noted, in New South Wales since 1979 claims in adverse possession can be made after 12 years to whole parcels of land but not to sub-parcels. The Queensland legislation provides for applications for title by adverse possession to the whole or part of a lot after 12 years. The South Australian Real Property Act 1886 prevents a person acquiring any right or title to land under the act by any length of adverse possession.

That 1998 report was a very good one. It provides us with a good basis for understanding that the law on adverse possession, much as we are amending it somewhat today, is quite varied across the country.

The biggest problem for councils is that they maintain very large land-holdings. The adjoining interests of businesses and residents are so extensive that it would be unrealistic to expect councils to be able to maintain at all times a proper and thorough scrutiny of who is trying to possess land that is in their names.

This amendment will afford councils the same protection which VicTrack and the Crown have been extended through longstanding exemptions to the adverse possession rule through the Transfer of Land Act. One other speaker did make the comment that in some parts of the state land ownership is problematic

where the fence lines do not necessarily reflect the actual title boundaries. This was something I became aware of up in the Dandenongs as a member of a State Electricity Commission survey crew. We would go out into the hills and do line survey work for powerlines which were being constructed, altered or upgraded. On some of the dirt roads up in the Dandenongs and beyond it was not uncommon to find that the road existed on private property and was a good distance away from the line of the road reservation. In those situations councils do encounter quite difficult workloads when problems emerge. These are problems between adjoining landowners, between the landowner and the council, or between the landowner and the council and the statutory authorities. It is important not to underestimate the complexities of some of those cases. Certainly situations where responsibility for bushfires that may emanate from electrical powerlines is a good case in point where the obligations upon parties, one would think, correctly flows and can be analysed where parties understand where their assets lie and where they are supposed to lie. Where they do not we end up with quite awkward situations. It is only reasonable to expect that we try and overcome those wherever we can. This is good legislation. It provides councils with reasonable protection. In the end that will make their job a lot easier and it will allow them to more adequately serve ratepayers and property owners in their municipalities.

Mr SEITZ (Keilor) — I rise to support the bill. We know that adverse possession dates back to the 1600s. There is a long history of adverse possession, particularly in Europe where land and properties were actually marked with a cornerstone and they used to be shifted mysteriously during night time and over periods of time. In winter time the snow would come over, and then next spring one paddock suddenly got bigger and yours got smaller.

There have been a lot of anecdotal stories and books written in Europe about the issues of adverse possession and illegal cases that have been going on because they did not have the system of titles that we have here. But even in Australia, particularly with government bodies, we have had a problem with some of the perpetual titles when working out who is the owner and who the property belongs to. In times gone by what was commonly referred to as Crown land could be used for public purposes. In many cases local government was involved in using Crown land, putting buildings on it and using it for recreational parks in the area. For instance, the former City of Keilor extended its town hall which was on Crown land. When it came to dealing with a bank with regard to a loan, it was discovered that the property was not on its land, it was on Crown land, so it did not belong to the City of Keilor. On further investigation we discovered that the swimming pool was built on a farmer's land which the council never obtained title to or registered as its land. As the swimming complex was a million dollar investment the farmer made the land on which it was built available as a planning subdivision that would be a future donation to public open space. The registration and the paperwork did not follow through. Again, there were a lot of red faces when those things came to light. The council and council staff at the time had to spend quite a bit of money on lawyers to catch up with the untidiness of the work.

We are fortunate that in Victoria we have had longstanding legislation providing 15 years of adverse possession, which has provided a cover for everybody. If you have a thoroughfare that crosses private land it should either have a gate or boom gate on it, or it should be chained up or locked up at least once a year to stop public access. That is the other thing that can trap many people. If people have a thoroughfare across their private properties they must close it once a year and keep a record.

Things can quickly change. Properties can suddenly be sold and there can be new owners. Access to waterways may change. People may be prevented from taking their stock down a laneway which they always assumed was a public laneway that would stay open all the time. It is important that we bring in this legislation particularly for local government — I pointed out the experience we had in the former City of Keilor — and also with the amalgamation of new municipalities to clarify who the owners are. I am sure that a lot of municipalities today still do not have a proper database record of what is its land, what is Crown land and what is owned by other people, nor would it have all land surveyed, pegged and marked and have its property and assets registered at the land registry.

I know some councils have been very eager and interested in certain parcels of land simply because it looked lucrative and attractive to sell them. That was their priority, but they had not registered what they thought were their assets. It is a job that does need to be done by local governments, particularly in view of this legislation. It is important to have this legislation so that councils cannot be affected by adverse possession policy that exists and has operated in this state for many years.

Having said that, I believe we need to have this protection particularly for local government because it is all ratepayers and taxpayers money that we do not want to waste on lengthy legal procedures and

barristers to be able to sort out this mess. I would certainly encourage local councils to look at themselves, look at their assets that they do have and update them. Nobody knows who owns and has possession of many parcels of land, particularly when it comes to laneways.

Laneways, the same as roadways in years gone by, were registered in the subdivider's name, so the land on which the road was built always belonged to the subdivider. That created many arguments in the past, particularly where people had to pay for the road construction — for example, when new people moved in and said they wanted a bitumen road. The people paid only for the bitumen on top, and the land became a council asset only if the council constructed a part of the bitumen — from memory it used to be to a depth of 18 inches, I am not sure what it is now — and the rest of the land was still on the title owned by the subdivider.

Councils note improved assets in their ledgers, and they are saying that in the new subdivisions where they have new roads they have good assets but in the old subdivisions they have bad assets because they have to replace the roads. That in itself is still an anomaly. In my opinion all those anomalies should be considered in this legislation and considered further by local government. When it comes to local government selling off laneways, which has happened in many cases when subdivisions have changed and there is no further use for laneways, it is still a lengthy process. The council has to get legal possession of that laneway before it can dispose of it because it is registered in the original subdivider's name.

This bill will protect public land because it will be managed and controlled by the council regardless of the title, and that is the important thing about this bill. I urge councils not to take too much comfort from this but to gradually work through all their assets and clarify them, particularly when it comes to sorting out what is Crown land, what is council land and what are known as easements — particularly railway easements, which are exempt from adverse possession, and State Electricity Commission easements, as well as access tracks that provide access to rivers for stock feeding. We still have to clarify a number of those in my electorate. An incident came up under the Kennett government where one lane went right down to the Maribyrnong River — Stenson Avenue. That has now been fenced off and made part of Brimbank Park, but historically it gave public access to the river. If anyone in the community had wanted to challenge it they could have taken it to a Magistrates Court, and they would have been able to stop that annexation which closed off the community's access to the river.

There are many such examples, and this bill is therefore important because it will resolve some of those issues, but it will not cover all aspects. I see that people who back onto the Sydenham railway line have extended their fences onto the railway easements. I am sure there will be legal arguments over that, even though the law says they cannot adversely possess that property. Those fences have been up for a long time, and all of a sudden outhouses are appearing on land which quite clearly is railway reserve land. However, legal action will probably be required eventually to repossess it if that land is needed, whether it be for a road along the railway easement or for track work along the Sydenham–Bendigo line.

I commend the bill to the house because it is an important, timely step that will save local government money in further litigation. It will prevent loss of land as a result of councils not having updated paperwork or records due to the pressures of amalgamation or because nobody saw the need to put council assets on a proper title, thereby allowing people to use a corner of land to graze their sheep on with the excuse that they are just keeping the grass down and then, after 15 years, claiming it as their private property. Nowadays that will not take place because we will be able to prevent those things from happening. I wish the bill a speedy passage.

Mr LOCKWOOD (Bayswater) — I too rise to support the Limitation of Actions (Adverse Possessions) Bill. Adverse possession is a bit of a novel concept. If a person squats on somebody's land and that somebody does not notice for 15 years, the squatter gets to keep it after a bit of due process — no wonder it is called adverse!

Mr Perton interjected.

Mr LOCKWOOD — Yes, indeed the whole country was. Of course there is a more serious side to it than that. Somebody who occupies land without the permission of the legal owner when the legal owner does not use the land has the right to apply for the title. The process requires an application to the registrar of titles. Some land is exempt, as we have already heard — Crown land and VicTrack land.

Adverse possession affects councils a great deal because they can lose assets. That means the community — ratepayers and residents — loses some of its assets. Councils often own many small parcels of land. I am looking at a map, for example, of one of the councils in my electorate, Knox, which has nicely put

on its web site the whole of its planning scheme. People are able to look at all the council-owned land across the municipality, and the little green squares come up all over the place. There are so many of them that keeping track must be quite an effort. The ability to know when people are using that land in the wrong way could also be quite significant. There are things like nature strips, parks, laneways and tree reserves. I know there was an issue of a tree reserve a couple of years ago at Knox council when I was president. In another example, a property owner could get the use of a laneway for a requisite number of years, and if the local council is unaware of it, it could lose the laneway. That has happened in a number of inner city areas.

In the outer east we tend not to have as many little laneways behind houses; we have not long lost some of the country feel of a lot of that area. In my local area there was an example in a cul-de-sac where some residents had built onto a council reserve — planted their garden and put up some structures associated with their driveway — and were quite upset when council noticed, came down and asked them to remove it. In fact they even went to the papers and demanded the right to occupy the land since nobody else was using it. However, the council did not give in on that one.

Council land is held for the community and for the benefit of all the ratepayers. We are now making this change for a number of reasons, one being that councils are recognised under the state constitution as a 'distinct and essential tier of government', with their own rights and the right to protect community assets. The bill protects land registered in the name of a council. Reserves and roads created by subdivisions made prior to 1988 remain vulnerable to claims of adverse possession unless councils go through the process of registering the titles. Roads and laneways that are used by the public are protected from adverse possession, but those that are not turned into proper roads and regularly used are vulnerable. Many laneways at the rear of properties may have been fenced off by adjoining owners for a variety of reasons, quite often to protect themselves from nuisance behaviour or dumping of rubbish and things like that. I know of a property owner who tried to corner off a bit of local parkland in my electorate because it was a serious problem for him. There was a little corner created between the fences and the reserve where people could get out of sight, and on a Saturday night the under-age drinkers came around and had a bit of a party, which caused him quite a deal of nuisance.

The Road Management Act 2004 now provides that public highways may only lose that public status by legislative action, so those reserves and roads are protected. Councils can apply for title for any land they own but for which they are not registered as the titleholder. This will give them protection but may involve some expense in investigation and registration. The council I was part of a couple of years ago went through a process of examining all its assets right across the municipality. It had a register of assets and noted their usage and whether they would continue to have the same usage, so it is up to date on all the little bits of land it owns and will probably be deciding which ones need to be registered and which ones do not.

Those councils that have been managing their assets well will have no problem identifying the land required to be registered, and those councils which have not been so vigilant will now have the opportunity to identify those little bits of land that they may want to register and protect.

It is in the public interest to prevent the loss of public land and the consequent loss of amenity. These are public assets and need to be protected. My experience a few years ago was that a number of pieces of public land under council control were sold by the commissioners who were put in place by the previous Kennett government. In some cases I am sure this was a benefit as it paid off debt, but in cases that I saw this fire sale of assets produced a mixed result. There was no debt, they simply decided what was surplus and what was not, what was non-performing, and sold off a number of assets.

One instance of land that was sorely missed by the council in Knox when the council was returned was a piece of land reserved for a performing arts centre. The council still wants the performing arts centre, but it has lost that particular asset to use either as a site or as an asset to sell to finance the centre. Even though that was made clear at the time, the commissioners still decided they would be a bit hairy chested and sold as much as they could and cut the budget back as much as they could. Similarly they restricted council's ability by reducing its budget across the board.

Councils may face some costs in registering these lands, but there is some alleviation being provided in terms of Land Victoria reducing the application fee under the Subdivision Act, removing or reducing the need for surveying by accepting text descriptions rather than survey plans and not requiring a planning permit either by changing the statewide planning scheme or by councils changing their own planning schemes. Since the use of the land would not change and there is no real need for a planning permit in situations like that,

councils can remove the need for a fee for a planning permit simply for a change in title.

Local roads are not protected because the Road Management Act vests some control in councils. Public highways cannot be adversely possessed because we all have the right to travel on them as long as they are actually being used. Sometimes road reserves are created by a subdivision, and there were many subdivisions in my area — a vast number of subdivisions in fact — as it developed in the late 1980s and 1990s. Mostly roads were made on the road reserves and as that did not leave those areas as reserves for future roads they were actively used and were in no danger of being adversely possessed.

There is a 12-month transitional period once the act is proclaimed, which is in the interests of fairness. That is to allow any claims to be settled in that period and to balance the rights of councils against existing roads so that we do not instantly terminate a right that is in place right now. The things that are not protected right now are reserves created by subdivisions made prior to 1988, discontinued roads not sold to a new owner, land acquired for road deviations, land compulsorily acquired by councils but where they are not the registered proprietors and land set aside for roads under subdivisions before 1988 but not used as roads. Councils can register these, and there is a process where they can register and protect those particular pieces of land. They can gain protection for those particular pieces of land which they may control but for which they are not registered as the proprietor.

On that note I say that this adverse possession bill is very beneficial for councils and beneficial for the retention of public land — land that may tempt adjoining owners to occupy. We are moving to protect that land to keep it in public ownership and under public control, and we are providing a process to do that. On that note I commend the bill to the house.

Mr MAXFIELD (Narracan) — I rise to speak on the Limitation of Actions (Adverse Possession) Bill. It is a bill which I am quite pleased and happy to speak on, particularly as it relates to my own area. My electorate is a larger country electorate with some quite significant outlying lands owned by council, and I feel this is a bill which will be of great benefit to areas like the one I represent.

Obviously the purpose of this bill is to amend the Limitation of Actions Act 1958 and to exempt the land of which the councils are registered proprietors from claims of adverse possession, and to provide transitional arrangements. This bill also provides for recognition of the role of our councils and further strengthens their ability to properly manage land and provide the services and support to the community that we expect of our local councils. The Bracks government clearly shows through this legislation strong commitment to and support for good and sensible local government actions. It is also about protecting the wider community interest to stop the wrong lands being claimed for adverse possession, and I know for the areas around where I live and for other outlying rural properties, as well as the built-up areas, it will be of great benefit.

A lot of people from metropolitan Melbourne may not be aware that there are lots of ditches, laneways and roads crisscrossing many parts of my electorate which are currently effectively being used — not officially — as seed banks and areas where native vegetation can thrive, because whereas the paddocks either side have been farmed on these drifts a lot of native trees have grown and shrubs, plants and grasses have been able to be grown. Allowing those to continue also provides drifts where native animals can go between different areas, because if somebody took over and gained adverse possession of a section of an old laneway the ability for animals to use that and the ability to continue to have that native vegetation and those grasses would be significantly reduced. It is certainly an issue that has arisen, for example, up in Walhalla. It is a wonderful part of my electorate, where there have been some areas of adverse possession.

This is because in large country areas it is difficult for councils to find the resources to closely monitor every individual parcel of land, disused laneway or road in their municipalities. From time to time someone may fence off a bit of council land, and if nobody lives nearby or those who do are not observant, they might not even be aware that it is council land. Therefore, no-one complains and they might even think it is part of that farmer's land. After so many years that land could then be claimed. The person could be living in Melbourne and the land could have a weekender on it; there are a range of possibilities where people could end up adversely possessing land. In fact you could end up with a situation where somebody could buy a property not realising that part of it includes land that is not part of the land they are buying.

Unless you measure every metre and every corner of the land correctly, you could discover down the track that you do not own some of the land and then want to gain access to it through adverse possession, therefore denying the community potential use of the land into the future. This is a really important issue for local government and for people in my community.

Mr Perton interjected.

Mr MAXFIELD — I will ignore the comments from the peanut gallery.

Mr Perton — The greatest peanut of all — —

The ACTING SPEAKER (Mr Savage) — Order! The honourable member for Narracan, without assistance. The honourable member will ignore interjections.

Mr MAXFIELD — I will certainly ignore interjections, because the voters certainly ignored the opposition at the last state election.

Mr Perton — Tell us what happened to your polling booths!

Mr MAXFIELD — At the last state election — —

The ACTING SPEAKER (Mr Savage) — Order! The honourable member for Narracan, on the bill. The honourable member for Doncaster will cease interjecting.

Mr MAXFIELD — I will certainly not be listing all the booths where the Labor vote went up, because there is quite — —

The ACTING SPEAKER (Mr Savage) — Order! If the honourable member for Narracan does not wish to speak on the bill, he can sit down and let the next member speak.

Mr MAXFIELD — Sorry, Acting Speaker, I have been sidetracked by members of the opposition.

We have to recognise and support local government. We have to ensure that the network of laneways and disused roads that criss-cross — although not in my electorate — rural and regional Victoria are enhanced and maintained. They are a crucial part of our public land network, and they are increasingly being used for bicycle tracks and walking paths, and as areas where people can walk their horses. If people in my electorate are unable to continue using those laneways without encountering areas that have been fenced off because of adverse possession, it will be a real disadvantage to their lifestyle into the future.

We need to give councils strong support on this, because there is a need to protect our rural land. Councils are going to be reluctant to allow inappropriate subdivisions into the future, and that restriction on subdivisions will increase the value of the land. We have seen major jumps in the value of rural land, and with that increasing value comes a strong financial incentive for some people to try and gain adverse possession as a way of acquiring some very valuable land — effectively at no cost. This means it is exceptionally important that members of the house support the legislation. I certainly commend this bill to the house.

Mr TREZISE (Geelong) — I am also very pleased to speak in support of the Limitation of Actions (Adverse Possession) Bill 2004 because it reflects the Bracks government's commitment to working with and on behalf of local councils across the width and breadth of Victoria, whether they be rural, regional or metropolitan, in order to achieve sound and good local governance. The Bracks government in its five years in government since September 1999 has established a very good working relationship with councils — and with the Municipal Association of Victoria — including the City of Greater Geelong in my electorate. The legislation before us has come about as a result of organisations such as the MAV and local councils lobbying the Bracks government for change.

In looking at the purpose of the legislation one can see why it is important to local government across Victoria. The adverse possession of council land is of concern to all councils, and I know it is an issue that has confronted the City of Greater Geelong over the last 12 months. From memory it has had to defend such a claim on the Bellarine Peninsula, specifically within the Clifton Springs community, where there were seven claimants for adverse possession. The cost to the City of Greater Geelong of settling with four or five of those claimants was nearly $200 000; nearly a quarter of a million dollars of ratepayers money was used to resolve that issue. So it is an important issue for not only the City of Greater Geelong but all councils.

Land owned by the council is not only an asset for the council but, of course, an asset for the whole of the community. This message was highlighted for me at a meeting of a community group I attended only last night that operates under the banner of Greening Geelong West. This is a very effective organisation, as are many community-based organisations. It is made up of active residents of the Geelong West area and has been operating for some nine years within the neighbourhood.

The objectives of Greening Geelong West include issues such as the promotion of greening open spaces and supporting indigenous vegetation on public land, so this legislation is important. It is important to groups such as Greening Geelong West to ensure that we retain open public space in areas like Geelong and Geelong West, especially given that in the older suburbs of my

electorate of Geelong, and no doubt other electorates right across Victoria, there is little space remaining to fulfil the objectives of organisations like Greening Geelong West. Therefore it is important that council is not in a position of losing land to adverse possession, as can currently occur. Suburbs like Geelong West need every green space they can get hold of. Communities rely on council to supply much of this land and, as I said before, council cannot afford to lose any such land to adverse possession, hence the importance of this legislation. It is important that we provide the same protection to council land as is afforded to Crown land and land owned by a number of government organisations such as VicTrack.

As we have heard today, adverse possession is a law that enables the occupier of another person's land to acquire that specific parcel of land under specific conditions. One of those conditions is the applicant must have occupied the land for 15 years without permission from the legal owner. By its very nature a local government council, especially one of such diverse geography as the City of Greater Geelong, may find it difficult to ascertain whether land under its ownership is subject to adverse possession. That was the case on the Bellarine Peninsula in the Clifton Springs area. People can easily fence off council land and occupy it for more than 15 years without the council detecting this adverse possession. The council is then at risk of losing this land to the detriment of not only the council but also the wider community, especially when that land may have been set aside for future development. No doubt this has occurred in the past right across Victoria. Parcels of local land that have been set aside by councils for future development, whatever that might be, have been adversely possessed by private people who have subsequently sought to claim the land.

In supporting this legislation I am pleased to see that the bill was subject to extensive community consultation. A draft bill and explanatory notes were released in June of this year and the bill before us tonight reflects the position outlined in that draft bill. I am aware that there was great interest in the bill from local councils across Victoria and that something like 29 formal submissions were received. The bill was put forward for comment over a two-month period and the issues raised were given due consideration by the government in drafting the bill before us today.

Finally, there is one issue I would like to address in supporting the legislation — that is, where council has ownership of land that is not in use and that land sits vacant. It is up to the council to ensure that that vacant land is maintained in a reasonable or good condition. It is not fair for neighbours to be living next door or near vacant council land which is neglected by the council. It is not fair for neighbours who are proud of their neighbourhood and put a lot of time, effort and money into their properties to be faced with an eyesore next door, across the road or just up the street, especially when that land is overgrown, covered in rubbish or creates an unsafe situation for the residents of that community because children can climb under or over the fence and get into that unkempt vacant land and get hurt.

In supporting this legislation today I call on all councils to ensure that where they have vacant land they ensure they are good neighbours and do the right thing by their local neighbourhood by maintaining that land. I support this legislation. It will be of benefit to all councils across Victoria and therefore local communities. I wish the bill a speedy passage.

Mr LUPTON (Prahran) — It is a great pleasure for me to rise and offer some comments in support of the Limitation of Actions (Adverse Possession) Bill. There are a number of reasons this is particularly good, sound and sensible legislation. I first want to make some comments about the effect the legislation will have on local government. It is important to remember that the Bracks Labor government understands and appreciates the important and distinct role local government plays in Victoria. The Bracks government has enshrined the position of local government as a distinct and separate tier of government in the Victorian constitution. That was an important recognition of the important role local government representation plays in our communities. This bill is consistent with this government's approach of ensuring we have sensible and appropriate reform of the law, that wherever possible the law is made simpler and easier to access and that the costs of applying the law and clarifying the legal position of councils and citizens are clarified and made easier. This bill does a number of things to achieve those objectives.

Adverse possession is a rule of law. It is a doctrine which has existed in the common law for many centuries. These days in Victoria it is enshrined in the Limitation of Actions Act. Essentially the rule of law known as adverse possession means that if somebody has had exclusive possession of a piece of land for at least 15 years without the permission or licence of the legal owner of the land, that land becomes subject to what is called a claim of adverse possession. The person who has been on the land for that period of at least 15 years can go through a formal legal process to claim legal ownership and title to that piece of land. When that type of claim is made it can create a degree of distress and difficulty, particularly when it is land

that is not used all that often and where boundaries may be difficult to define. Those sorts of disputes about adverse possession are often very drawn out and extremely costly.

Until now those claims have been capable of being made against local councils in Victoria just as much as they have been able to be made against individuals and companies which are proprietors of land. Historically Crown land cannot be subject to claims of adverse possession. There are very sound policy reasons for that. The principal one is it is against public policy for Crown land, which is essentially land owned by the community as a whole, to be subject to a claim of adverse possession as that would encourage squatting and those types of uses of land which it is not in the public interest to encourage.

Other types of land that are not subject to claims of adverse possession in Victoria include railway reserves that are in the ownership of VicTrack. Again it is clear on public policy grounds that it is inappropriate for those sorts of public lands, which are similar to Crown land in many ways, to be subject to that type of claim.

Given the position of local councils in Victoria, particularly now that they are enshrined in the Victorian constitution following those very sensible reforms of the Bracks Labor government a little while ago, it is sensible that any claims by way of adverse possession that can be made about land owned or registered in the name of a local council, which is very much akin to Crown land, also be restricted. To all intents and purposes council land is essentially the same as Crown land, and this bill reflects that policy — a decision of this government that will essentially treat it in the same way.

I know that the Municipal Association of Victoria, as the representative peak body of local government in this state, and individual councils themselves are very supportive of this law reform. They regard it as the type of law reform that will give them a greater degree of certainty and clarity about laneways and reserves that fall within their jurisdiction. Any disputes about these sorts of matters will be able to be dealt with in a more cost-effective way. It will also be far cheaper than has been possible in the past for councils to make application for a variety of types of land to be placed under council registration on the public title.

In recent times the need for this type of legislation has been seen in a number of instances across councils in Victoria, but one example that shows that claims of adverse possession are not as few and far between as some may mistakenly believe them to be occurred not very long ago in the City of Port Phillip in my electorate of Prahran, in the part of St Kilda that I have the honour to represent in this place. Before the amalgamation of councils in the 1990s, for public safety reasons the former City of St Kilda closed off some laneways in St Kilda.

Following the amalgamation of the councils and the creation of the City of Port Phillip from the cities of St Kilda, South Melbourne and Port Melbourne it was discovered early in 2004 that the time at which those laneways were closed off had become obscured. There were no good records available about exactly when those laneways had been removed as essentially public thoroughfares. A number of businesses had extended their business operations into the areas covered by those lanes, so a dispute arose about whether or not a claim of adverse possession might be capable of being sustained in relation to those issues. It just shows that in 2004 these issues can and do arise.

Any reforms such as the one before the house which give greater clarity to the law, which enable local councils across Victoria to more readily obtain registration of land within their jurisdictions and which simplify the law and give greater clarity and cheaper access to the courts in order to resolve any disputes that may arise between councils and other land-holders are to be applauded. This bill, following on this government's recognition of local government as a separate and distinct tier of government in this state, follows that pattern and gives local government the same authority over land within its jurisdiction as is offered to Crown land. It is a very appropriate and sensible piece of legislation, and I support its passage.

Mr STENSHOLT (Burwood) — I am happy to speak on the Limitation of Actions (Adverse Possession) Bill because my electorate contains many older suburbs in which there are a lot of lanes at the backs of houses which obviously, as has been mentioned before, the night-can man used to travel along. There used to be right of access along these lanes because of the narrowness of the blocks at the front where there were no garages and where they might have had garaging arrangements out the back. I am aware of some arrangements in St Kilda where you cannot get access at the front of the property but you can get access from the back. As I go around my electorate I see this in Surrey Hills, Burwood and Camberwell.

Laneways have often been subject to adverse possession where people have extended their backyards or turned dead ends into garages. This is the case in many other suburbs, as indeed it is in the suburb of

Hawthorn, which saw a swing to the Labor Party in the federal election, and also in the suburb of Kew, which also saw a similar swing, as did Burwood and Box Hill. There have been many examples of local councils looking at such land in their area, and I commend them for that. It is good governance to regularise these matters.

The councils in my area include Boroondara, Monash and Whitehorse. They look at schemes for consolidating and regularising the land-holdings. Some of the local residents have approached the councils in order to look at their property title. The property might have changed hands or the person may be seeking to buy a new house. They look at the title and see there is something out the back. When they walk down into the garden it is obvious to them that the property extends a bit further than what is shown on the plan, so they ask the council what the bit out the back is and if there is anything special about it. They do their title search and ask about it, and they find that it is the residue of an old lane.

There are many examples — and I am sure other members have some — where there are partial lanes. One house may have claimed part of it or even the whole of the old lane, the next house has claimed some, and then maybe there is a bit of a gap where there is still the residue of the old lane and the fences — and it is not too clear. When people come to buy these houses it makes it difficult to establish exactly what they are buying. As I mentioned, some councils, particularly those in my area, are looking to regularise these land-holdings to try to clear up anomalies and to respond to the requests they get from prospective buyers or even residents looking to sell. They are trying to fix up what is owned as shown on the particular title. Indeed there are people who in good faith seek to regularise their titles before perhaps passing their properties on to their kids.

A number of such cases have passed across my desk — I suppose you would call them cases of adverse possession — where people have sought my help in dealing with their council and clarifying what are often difficult issues. Sometimes councils have claimed possession and then sought to sell the land to the local residents whose properties abut the old lane. I know a couple of councils that have a process or a bit of a scheme to try to regularise the land-holdings, and they are going through it almost suburb by suburb trying to clarify the situation with such lanes. It is often not obvious who owns the land. When many of the old subdivisions were made the lanes were vested in the person who made the subdivision — that is, the entity or the original owner.

So you do a search in the titles office and find it is, for example, Mr McDonald who owns the lane out the back. It may even be a road that has a name, but is no longer a road or a lane because it is disused. It may still be a bit of a walkway, but somebody has moved their backyard a few metres out and has planted a few flowers, another person has taken the whole of their section of it and someone else has left the fences there. The council looks at it and, in trying to resolve what to do with it, finds that it is owned by Mr McDonald, who passed away many years beforehand, and that it has been partly used or fully adversely possessed or remains unclaimed and overgrown, with broken-down fences between properties. This makes it quite complicated to claim the land or revert to it.

Residents may have been using the land for a number of years — maybe for the last 30 years — and suddenly the council writes to them, saying, 'Dear Mr Smith, we would like to regularise the lane out the back. Could you please pay so much per square metre — and here's a bill for $3000?'. Let me tell you, they are on the blower to me saying, 'Can you help? I have a bill for $3000; what do I do? I have been using the land for the last 30 years'. So while this bill will clarify the matter of who actually owns the land, there still remains the issue that the councils need to deal with people. They cannot go in and be heavy handed; they need to consult with people, to talk to them. These are difficult issues. This is land that people feel they own, that they have used for many years. It can be quite easy where there is a clear lane and clear fences, and perhaps the council even cobbled it many years ago, but where this is not the case — where it is partially used or has fallen into disuse — there is a need for close consultation with residents.

It would be good if councils surveyed the area and advised residents of the situation. I urge them to do that within the 12-month transition period that is provided for under the bill, because it can be a bit of a surprise to a resident to find they owe the council many thousands of dollars. In my area and in areas like Camberwell, Glen Iris, Surrey Hills and Burwood, the cost could be quite a large amount per square metre. I am sure this is also true in Ivanhoe, Doncaster and other areas — —

Mr Nardella — Melton.

Mr STENSHOLT — Melton. These are areas where people will find it is quite a large bill. I know that some councils are being quite reasonable when it comes to negotiating these issues. They say to people, 'There is a longstanding arrangement here. We are happy to offer you this small parcel of land at a discount'. I am very pleased that councils are offering

this discount to owners of abutting land — say one-third of the going rate in that area. They make the offer to them first because their land abuts the laneway in question and they may have been using it for a number of years. That is commonsense — talking to people and dealing with them in a sensible way. What is not good is if they come up to them without any notice, without any clear discussion, without sitting the members of the council around and having a meeting with the residents adjoining the lane and explaining what the situation is, why the council is doing what it is doing, what rights people have and coming up with a reasonable, negotiated solution.

There is the issue of what happens to the land when some adjoining land-holders do not wish to buy their part of the lane. That may lead to some anomalies that need to be dealt with. There have been some cases where some people have been prepared to buy their part of the lane but their neighbour has not been able to buy theirs because they do not have enough money, while another person might buy a little bit behind it. There was one situation in my electorate where three or four people bought bits of the lane, but because it was rather long there were about seven or eight bits in the middle that nobody bought. It became landlocked, and was owned by the council. So there may be some anomalies as a result of this bill, but the intent is to clarify these issues and give power to councils in order to provide them with the ability to act in this regard, in a similar way to the way in which the Crown can act. The bill also recognises the fact that local government is one of the tiers of government and has legitimate powers, as we put it into the constitution last year. I commend this bill to the house as sensible legislation.

Mr LANGDON (Ivanhoe) — It is my great pleasure to add my contribution to the debate on the Limitation of Actions (Adverse Possession) Bill. As a City of Heidelberg councillor from 1988 to 1994, adverse possession was — —

Mr Perton — You were an adverse possession of the council!

Mr LANGDON — I shall ignore interjections, even though they could be useful. During that time the issue of adverse possession came up on a regular basis. The member for Burwood raised the issue of laneways, and I recall from my time on council that laneways and who owned them was a vexed issue, particularly for those residents abutting them who discovered — 100 years later in the City of Heidelberg's case — that the owner of the laneway was the original subdivider. Unfortunately that person — it being 100 years later — was no longer with us and did not have any connection with the families who owned the abutting properties. This bill implements an important aspect of the government's recognition of local government, and I am more than pleased to add to the discussion on that aspect.

This issue is a major one for local government, so much so that Doug Owens, the chief executive officer of the City of Banyule, approached me at a charity function. I am aware from a letter I received from Doug Owens that he also contacted Jenny Mikakos, a member for Jika Jika in the other place, at the same function. He was so concerned that he approached the members of Parliament who were at the function. Obviously he worked tirelessly on this issue.

Having done that he sent a copy of the letter to me and another copy to Ms Jenny Mikakos, a member for Jika Jika Province in the other place and Parliamentary Secretary for Justice, to outline the issue. With the letter to Ms Jenny Mikakos he included a letter he wrote to the Attorney-General. I want to add this letter to the debate to show that the Banyule City Council is listened to and in particular so that Doug Owens knows the concerns he raised in his letter have taken seed. The letter to the Attorney-General states:

> Adverse possession of municipal land:
>
> You will be aware of the need to amend the Limitation of Actions Act 1958 to extend the immunity of the Crown to all levels of government and statutory authorities.
>
> I write to request this matter be fast-tracked.
>
> This council has been subjected to yet another claim over property with an estimated value of $160 000.

He then talks about a letter that he includes.

> The attached copy of our letter to the registrar of titles is self-explanatory. In essence whilst we object to the claim we are powerless to prevent it proceeding.
>
> There is the potential for hundreds of other claims in this municipality alone. This loss of community assets must be stopped.
>
> Your urgent action is requested.

The letter is signed by Doug Owens, chief executive officer, and is dated 8 October 2003. As I said, a copy of the letter was also sent to the Minister for Local Government, Ms Candy Broad in the other place, and Ms Jenny Mikakos. Doug Owens has been very thorough in sending these letters. Clearly this is an issue that affects the City of Banyule, and Doug Owens, being a very good chief executive officer, wanted to raise this issue with the government, which he has done.

The bill will effectively exempt council land from claims of adverse possession through amendments to the Limitations of Actions Act 1958. This act sets a limitation period for the commencement of legal actions, including actions to recover land. Clearly the amendments are important and will cover some of the concerns that Doug Owens has.

Adverse possession has been well covered by many members of the house. I note it was covered by the members for Prahran and Burwood, whose expertise in this area is greater than mine. The rule of adverse possession dates back some time. Adverse possession allows a person occupying another's land to acquire it in certain circumstances. To acquire the land the occupier must have been in possession of the land for a prescribed time. In Victoria this period is 15 years, as provided by the Limitation of Actions Act 1958. The occupation must also have been without the permission or licence of the legal owner of the land and must have meant that the legal owner was no longer in possession of the land. Clearly this bill will cover these aspects. In commenting in the letter, Doug Owens urged that the matter be fast-tracked, saying that urgent action is requested.

The bill allows a 12-month transitional period. I will explain this to the house and in particular, to the City of Banyule. Clearly, with their 15 years possession, it would be unheard of in a legal context to introduce a bill that cut off or reduced people's occupancy straightaway. A number of councils have been concerned about the 12-month transitional period, and I can understand why. However, by law a person who has had adverse possession of land for more than 15 years is entitled to resist any application to evict him and may apply to the registrar of titles for the title of the land. To remove them immediately upon commencement of this legislation could be seen as a loss of rights. That is an important aspect. While acknowledging the difficulties councils have had with adverse possession, as outlined by the City of Banyule, we do not want to take away people's rights. The 12-month transitional period is seen as a balance between a council's rights and people wanting to claim adverse possession.

I compliment the City of Banyule for raising this issue with me. I also compliment the Minister for Local Government and the Attorney-General for taking action, because local government is important to the Bracks government. We have done more to restore the rights of local councils since the previous government in December 1994, 10 years ago, sacked all councils. I was one of those councillors sacked by the former government.

Mr Perton — Look where you ended up!

Mr LANGDON — Yes, for every difficulty there is a silver lining. Getting elected to this place in 1996 addressed some of these problems, two years after I was sacked. I was more than pleased to bring about the sacking of the Kennett government as a payback for my sacking in 1994.

I am aware that multiple speakers want to speak on this bill. I am more than pleased to commend the bill to the house, and I take note of the City of Banyule's letter to me and the many members whom the chief executive officer spoke to.

Mr CRUTCHFIELD (South Barwon) — I rise to speak on this very important Limitation of Actions (Adverse Possession) Bill. It is a subject that I have some knowledge of. I was a councillor with the City of Greater Geelong following the illustrious amalgamation of six Geelong municipalities into one super council in 1995. I remember in those days talking to older councillors, in particular a councillor of the former Shire of Corio, Jerry Smith, who was mayor for three years. He told me about what occurred in the former shire in the old days. For example, some vegetable growers who were using property on a council reserve as a vegetable patch subsequently claimed adverse possession and won that action in the courts. Clearly they had had possession of the land for more than 15 years, and the adverse possession rule allows people occupying another's land to acquire that land in certain circumstances. Clearly there was a process that they needed to go through to acquire the land from the legal owner — in this case, the council. That is one such example that this brought to mind.

A more relevant example occurred when I was a councillor in 2000. I was also the mayor, and there was a Clifton Springs group of residents who wanted to acquire council-owned land that was to be used as parkland. There was a master plan for that park that involved land that went from Clifton Springs Primary School to the foreshore. Unfortunately it caused a great deal of angst in the community. It was a situation where you had a small number of residents arguing their case for adverse possession over land which the broader community would have gained an important advantage from in terms of recreational space and a linkage from the primary school to the foreshore.

Unfortunately five residents, I think, won that adverse possession case. I would argue that that is one of the issues that brought this to the notice of the Minister for Local Government. I know the Municipal Association of Victoria and the Victorian Local Governance

Association have been lobbying government for this not just since 1997 but prior to that. As I have heard other speakers say, it was prior to the amalgamations that occurred in 1995. There were some issues then, for some reason. I am not sure whether there were less frequent audits in the older councils, but those adverse possession examples did occur in older councils as well.

I was approached by the chief executive officer of the City of Greater Geelong and the chief executive officer of Surf Coast Shire, Peter Bollen, about this issue. I know a member in another place, Elaine Carbines, was approached over the Ocean Grove example when she was looking after the member for Bellarine, — I think it was Gary Spry on that occasion — and she was particularly involved in lobbying for public comment. In June 2004 this bill went to an exposure draft, and that is essentially what we are here to discuss today.

It is important also to look at the transitional period. I realise the previous speaker spoke about this. There may in fact be legitimate reasons that people can demonstrate for being able to undertake adverse possession for some council property. Again it is not a concept or a principle that we as a government should be supporting, but there is the transitional period for people who may have genuine cases.

In summary, this bill gives councils greater ability to ensure the long-term ownership of council property. It puts the onus on councils to demonstrate that their titles are up to date and that they have done a proper audit of what land is owned by them. I know from personal experience with an amalgamated council that it found pieces of land it did not know it had. There is an onus on councils to undertake those audits so they know what pieces of land they own. I know from experience that all municipalities would support this bill, and I commend it to the house.

Mr DELAHUNTY (Lowan) — I rise also as a former councillor. In my nine years involvement with local government — and I am proud to say as a commissioner for two years — we did a lot of good work. The government went ahead and appointed commissioners too, so it used the same principle. The coalition was very strong in relation to the way it did that, and there would not be too many areas of Victoria where councils would want to go back to what we had before.

As the member for South Barwon said, the amalgamation of six councils in Geelong made it a super council. That made it awfully hard for other amalgamated councils in country areas. The trouble was the councils in Ballarat and Geelong became super councils and made it hard for us to compete in relation to tourism and attracting industry. Let us get back to the issue of this bill.

Mr Mildenhall interjected.

Mr DELAHUNTY — The member for Footscray is shouting out about his Aunty May, who is a councillor in the Hindmarsh shire. She does good work up there. She is a newly elected councillor.

The ACTING SPEAKER (Mr Smith) — Order! On the bill, please.

Mr DELAHUNTY — This a Labor government bill. It is about the limitation of actions or adverse possession. My colleague the Honourable Jeanette Powell, who is the member for Shepparton, has done a great deal of work on this. We agreed with her recommendation that The Nationals do not oppose this legislation. The Municipal Association of Victoria has been lobbying for this for many years — since 1997 — along with local councils.

Mr Merlino interjected.

Mr DELAHUNTY — It has taken five years to get your act into gear. One of the things that is making it very difficult for councils is the shortage of planners. I work with seven councils in my electorate — Southern Grampians, Horsham Rural City, Hindmarsh, West Wimmera, a fair area of Glenelg shire, Ararat Rural City and a small part of the Moyne council. None of those councils has raised any concerns with this. Some people have said this only deals with local government land. As we know it is different from dealings with private land, and I have some concern about that. Just as private land owners must be responsible for their land and have it on their asset register, councils — the member for South Barwon spoke about this fact — need to do an audit to know exactly what they own. But as we know in country areas of Victoria, and mine being the largest electorate — —

Mr Robinson interjected.

Mr DELAHUNTY — Showing off again, the member for Mitcham is saying. My electorate is about half the size of Ireland, being 34 500 square kilometres — I could fit 76 of the other 87 electorates within my area. That highlights not only the area of my electorate but also the many hectares that councils are responsible for in rural areas. Many of them are responsible for land right across the state, much of which is unfenced. There is a shortage of planners and qualified staff in country areas, but if there is to be any

change, councils have to be aware of the assets they are responsible for, whether it be buildings or land. They need to do an audit to know exactly what they are responsible for. Crown land and land owned by VicTrack is protected from claims for adverse possession, but council land is not currently protected.

It is interesting that in my electorate the Horsham Rural City Council has been trying to build a road across a disused railway line that has been closed for 25 years. The track has been removed: the rail, the sleepers and the bridges are gone. In fact only 100 metres away from where the council is trying to put this road the railway reservation is covered by a school. The line will obviously not be used again. The council should take adverse possession of the land and build the road across this unused railway line so that the areas of Horsham West and Horsham North can be connected, which will provide better access for the students attending schools.

More importantly, the schoolchildren who have to go kilometres out of their way to go around the railway line can get there via the quickest possible route. We have schoolchildren who spend hours on buses travelling to school in the morning and hours coming home at night. It would be a great advantage for the Horsham council to build over the railway line — —

Mr Nardella interjected.

Mr DELAHUNTY — It is great to see the member for Melton wake up. It is getting near teatime and he will get up soon.

The council should try and take adverse possession to build that road over that railway line. But, as I said, this legislation only deals with local council land. I have some concerns where we have a differential between what is private ownership and council land. Many councils and those in my area have been lobbying for this since 1997. As we know, we want to protect community interests like sporting ovals, golf courses and, importantly, sporting grounds where some land-holders have a got a history where they might creep in a couple of feet when building fence lines and then claim the land after 15 years. They have got the land very cheaply — —

Mr Robinson — Cheaply and cheekily!

Mr DELAHUNTY — They got the land very cheaply and cheekily, as the member for Mitcham said. The reality is that it is not right. This legislation does give some protection for councils. I talked about country councils and unfenced council land. Many years ago the Law Reform Committee — the member for Footscray might be able to remind me when it was — did a review of the Fences Act. There was major concern at the time. It said in those days that any government that shares a fence line with private owners should share the costs. We have had fires in western Victoria where the government did pay for some of the fencing, or pay fifty-fifty. But unfortunately it does not do it enough.

There are native vegetation laws which are impacting on many people in my area. When landowners are replacing fences local councils have different attitudes in their interpretation of native vegetation laws. In some cases private landowners have been asked to move their fences inside their boundary lines just so that they do not impact on the native vegetation. There are safety issues involved in putting up some of these fences. There is machinery used. I highlight the fact that the native vegetation laws are not being consistently implemented across the state and therefore they cause many of my constituents pain. I will return to the bill.

Mr Andrews interjected.

Mr DELAHUNTY — I have only a couple of minutes to go. We know that rule of adverse possession dates back as far as 1623. Adverse possession allows a person occupying another's land to acquire the land in certain circumstances. That has been very well covered by previous speakers. We know the philosophy behind adverse possession is that land should not lie unused. This is important. We have seen in many goldmining areas and the like in country Victoria that some titles have existed for many years and landowners have not been identified. I will just finish off by saying that the legislation has some good points. The transitional arrangements protect all parties. With those few words, I will not oppose this legislation.

Ms LINDELL (Carrum) — It is with pleasure that I speak tonight on the Limitation of Actions (Adverse Possession) Bill. The purpose of the bill is to amend the Limitation of Actions Act 1958 to exempt land of which council is the registered proprietor from claims of adverse possession and to provide transitional arrangements. The City of Frankston has written to me on a couple of occasions asking that the government enact legislation that will protect council-owned land or give the council-owned land the same protection from adverse possession as Crown land and land owned by VicTrack.

There is a strange anomaly down along the bayside suburbs, especially in the City of Kingston where we have houses right on the foreshore. Over time fences have been known to push forward onto the foreshore.

There have been severe instances of quite significant encroachments. People plant the sand dunes with nicely cut grass and put their tables, chairs and barbecues and extend their blocks. The Kingston council has always had the ability to reclaim those encroachments because the foreshore is Crown land. That ability is not there for neighbourhood parks or disused land because council land has never been given protection from adverse possession. One of the particular things that the Frankston council raised with me in its correspondence that I would like to address tonight in my brief contribution is the matter of costs and associated costs for applications under section 24A of the Subdivision Act 1988, especially planning permit costs. I am advised that Land Victoria recently released a regulatory impact statement proposing a reduction of fees for applications under section 24A from $297 to $180. Land Victoria also advised that it will accept text rather than surveyed plans, thus avoiding further surveying costs. The Minister for Planning has been approached for an amendment to the Victoria Planning Provisions to remove the current mandatory requirement of a planning permit for the vesting of reserves in the name of the council. This will certainly remove the costs associated with obtaining planning permits for these. I am sure that Frankston council will be very pleased to see this legislation, as will all councils across Victoria.

The bill makes provisions for transitional arrangements, as my colleague the member for Burwood said in his contribution. We are after all talking about people who have used land for a long time and who may have various reasons for their use of that land. It makes sense and in a fair way allows 12 months for potential claimants to take action. With those brief comments I support the bill and wish it a speedy passage.

Mr NARDELLA (Melton) — The Limitation of Actions (Adverse Possession) Bill is about security in local government and security for local people. It is about adverse possession of council land. Adverse possession will not be allowed any more. Certainly councils such as Moorabool and Melton in my electorate have on various instances had land taken away on adverse possession — land that should be for public use by local residents and ratepayers. Whether it is in Blackwood, Greendale or Myrniong, Melton, Diggers Rest or Rockbank — have I given you a bit of an idea of where my electorate is? — Plumpton or anywhere else in those two municipalities that is very valuable land and is looked after on behalf of local residents by those councils.

Clause 3 of the bill details the situation where adverse possession is stopped. It also details how people can claim adverse possession if they have held on to the land for at least 15 years or more and that they have another 12 months in which to claim it. Laneways are prime examples of where adverse possession has occurred in the past — for example, behind our family home in Sunshine there was once a laneway but that has now been taken over. There are situations where councils lose the land, sometimes without receiving due compensation for it, and that is not fair to local ratepayers.

I wish the bill a speedy passage. It is good legislation. It has come in after a lot of consultation. There were 29 submissions to the local government department, and the Municipal Association of Victoria has made its views known and we have taken those into consideration. The Bracks government always take such views into consideration in an open and democratic way, which is what the Bracks Labor government is about. I commend the bill to the house.

Mr WYNNE (Richmond) — I rise to support the Limitation of Actions (Adverse Possession) Bill. In so doing I hark back, as a number other colleagues have done, to my own local government days — they were fine days in the City of Melbourne — when this was quite a difficult job for councils to deal with.

Members will note from the contributions of previous speakers that there has been extensive consultation of the exposure draft of this bill. It has been strongly advocated by the Municipal Association of Victoria because it knows of the difficulties councils are confronting in trying to deal with the issue of adverse possession. It is particularly relevant in the inner city. In my own area of the City of Yarra the very tight subdivisions of the city are such that some of those narrow laneways which were originally night cart lanes are classic examples of where adverse possession has gone on over the years — where adjoining property owners have taken over parcels of land which are part of the City of Yarra's land-holdings.

This legislation supports local government, which has been a hallmark of the Bracks Labor government. Through the minister at the table, the Minister for Agriculture, who is a former Minister for Local Government, we have enshrined local government as a key partner with the state government in the administration of public services. It is that mature relationship that exists between state and local government which is very much a hallmark of the work of the previous minister, and the current minister has extended that. Through legislation like this, which goes to the very heart of the administration of land in the public domain that is owned by local government, we

are bringing surety to the process, not only for local councils but also through the transitional arrangements that have been established here. It is an opportunity to — —

Mr Mildenhall interjected.

Mr WYNNE — Indeed, as my colleague the member for Footscray indicates through that contribution by interjection, to protect the rights of citizens as well through that 12-month transitional provision. Clearly the contributions made from around the chamber indicate that the adverse possession question is a live one for local councils, not only in my own area in the inner city but also throughout metropolitan Melbourne and country Victoria.

I note in completing my contribution that a number of councils have, through a stocktake of their land, taken the opportunity to divest themselves of laneways to abutting owners, and I note that recently the City of Port Phillip finished an audit on that and sold off a number of parcels of land which were redundant to the public good. This is an important piece of legislation. It is important to get this right, to bring surety to local government and to citizens who may be in the position of having adverse possession rights. I commend this legislation to the house and look forward to the final contribution from my colleague the member for Footscray.

Mr MILDENHALL (Footscray) — It is a pleasure to speak on this bill, which amends the Limitation of Actions Act 1958 to exempt land registered in the name of a council or a former council from claims of adverse possession. As my colleagues have indicated, this is a bill that empowers and protects local government and public assets. It protects the integrity of decisions that councils in good faith have taken over the generations. It may not provide a pay rise for municipal councillors, but it will certainly make their life easier.

Like many in this chamber I hark back to my nine years on a local council. I am able to reminisce about the early 1980s when there was a very strong demand to close the laneways, the old night cart laneways as the honourable member for Richmond so colourfully described them, in order not only to enable residents to add to their land-holdings but also to improve their security. As the drug problem started to emerge many saw the laneways as havens for trafficking or consumption of illegal substances.

That process was often complicated by the dramatic difference between what was shown on the council records as the extent of council holdings and where the fences actually went upon physical inspection. So we often had the situation where what would seem to be simple transactions involving closing laneways and disposing of property to adjoining landholders were held up for a number of years. By the time they were processed there was a strong demand to open laneways that had been previously closed or certainly to maintain those that remained, as households became more affluent and there was a desire to keep vehicle access. This occupied many thousands of hours as council administrative officers tried to work through the mire of adverse possession claims that complicated the desire to either close or maintain the laneways.

This is good legislation, because it adds certainty and it will streamline the work of council administrations. It is part of, as the member for Richmond said, a strong legislative program to protect and enhance the role of local government in this state. I wish it a speedy passage.

Mr CAMERON (Minister for Agriculture) — On behalf of the government I thank the honourable members for Bass, Benambra, Sandringham, Clayton, Shepparton, Yuroke, Preston, Mitcham, Keilor, Bayswater, Narracan, Geelong, Prahran, Burwood, Ivanhoe, South Barwon, Lowan, Carrum, Melton, Richmond and Footscray for their contributions. As is so often the way in this house when there are debates on bills that affect local councils, many members want to speak, particularly those who have an interest in them based on their past involvement in local government. Certainly this evening we have heard many members get up and talk on this bill based on their former capacities, including a former lord mayor, a mayor, a councillor and even a Kennett commissioner.

This bill is about applying commonsense. If you and I, Acting Speaker, had property between us and one of us adversely possessed the land and the other did not do anything about it for 15 years, then the person who was affected, the person whose land was taken away, would not be able to take proceedings. Of course that is fair enough with individuals, because they should be able to look after their property, but councils are in a much more difficult position because of the amount of land they have. They are constantly having to go around the traps to check their alignments, which is not fair on them. That is why this bill essentially puts council land in the same position as Crown land. It is a commonsense provision. There are transitional provisions that mean that anybody who claims to have adversely possessed land for more than 15 years has one year to take action. That is about getting a balance

as we move forward and change the law. I wish the bill a speedy passage.

Motion agreed to.

Read second time.

Remaining stages

Passed remaining stages.

Sitting suspended 6.30 p.m. until 8.05 p.m.

TEACHING SERVICE (CONDUCT AND PERFORMANCE) BILL

Second reading

Debate resumed from 16 September; motion of Ms KOSKY (Minister for Education and Training).

Mr PERTON (Doncaster) — The Teaching Service (Conduct and Performance) Bill is an uncontroversial bill. It is uncontroversial because it does very little, and having written to scores of people across the state with an interest in this area of policy, I can say that the bill has been greeted with yawning indifference.

The second-reading speech states that the bill implements a range of important measures to simplify and streamline procedures relating to serious misconduct, serious inefficiency and mental or physical incapacity involving teachers and principals, but in fact it is really more a significant tilt at looking like you are doing something when in reality you are doing nothing.

This bill is based on an internal review of processes. Sadly that review has not been made available either to me as the opposition spokesman nor to the general public. I found that unusual in that at the briefing by officers of the department we were told there had been an internal review on which the legislation was based but that that internal review was not made available. Many areas of the policies surrounding this bill are shrouded in mystery. For example, the hearings of a merit protection board and its decisions are not published, so I, as opposition spokesperson, and other members of this house who wish to research exactly what it means to be negligent or inefficient in the discharge of your duties as a principal or teacher, can get very little guidance from the published material.

In essence the most important provision of the bill is that it replaces Her Majesty Queen Elizabeth II as the formal employer of teachers with the Secretary of the Department of Education and Training. Existing section 3 of the Teaching Service Act provides:

> … there shall be employed by Her Majesty in the teaching service teachers and principals and such other persons as are necessary for the purposes of this Act.

Clause 4 inserts new section 3A, which provides that:

> (1) The Secretary, on behalf of the Crown, has all the rights, powers, authorities and duties of an employer in respect of officers and employees in the teaching service.

I would hardly have thought it was a dramatic step forward for Victorian teachers, principals or students to have Grant Hehir, the secretary of the department, inserted in place of Queen Elizabeth II as the nominal employer and manager of teachers in the state system.

Mr Plowman — Will you raise the flag and salute him?

Mr PERTON — The member for Benambra asks a very good question in mirth — that is, do you salute the secretary as the flag rises? Sadly the flag does not rise on as many schools as it used to. Those happy days when you and I, Acting Speaker, saluted the flag and sang the national anthem is present in many well-run schools but sadly not as many as in the past.

As I indicated, there was not much response to my request for views on this bill. One reason was that it was school holidays.

Mr Nardella — Very good, Victor!

Mr PERTON — The member for Melton laughs. There were not as many responses during school holidays as one would have expected, but in discussions at the end of the second-reading speech the minister and I agreed that there would be an extra week before the debate resumed.

Returning to the question of replacing the Queen with the secretary of the department as the employer, one principal at a western suburbs state primary school asked, 'Where is the mention of the school in all of this?'. Who is the employer and manager of a teacher, or indeed a principal? The underlying basis for this bill is a heavily bureaucratic system in which the secretary of the department is responsible for everything. The honourable member for Mordialloc looks confused. I can understand that, because we asked this question in the briefing — it was a well-conducted briefing, with some 10 public servants in attendance — and they were unable to enlighten us on it either.

The member for Mordialloc is right to look askance at this because almost all the disciplinary proceedings on

which this piece of legislation is based require the secretary of the department himself to actually sign delegated authorities, either to regional managers or to principals, to undertake the disciplinary proceedings in this matter or to appoint principals as investigators in the case of someone who comes within new section 66 of the Teaching Service Act, which sets out the grounds for action for dismissal for misconduct or inefficiency. It seems to me that either there are not going to be very many cases involving this legislation or the secretary of the department is going to be a very busy signing authorities for people to undertake proceedings and/or to investigate them.

Just this week the Organisation for Economic Cooperation and Development (OECD) *Education at a Glance* publication reports that:

> Decision-making in schools is becoming more decentralised as the education systems of OECD countries move away from centralised command systems based on government edicts and adapt to the flexibility required for the modern knowledge economy.

I put it to you, Acting Speaker, that it is a mockery of good public policy processes to replace an already highly centralised and lengthy process with an only slightly less formal, paper-driven and slightly less lengthy process and call that outcome an action.

The member for Melton looks confused, and rightly so. In a hearing by the secretary of the department the requirement to hear oral evidence is replaced by a capacity to determine these matters on the papers unless the teacher who is subject to the disciplinary proceedings requests an oral hearing by the secretary. Even after the secretary makes his or her determination, the matter can still go to appeal before a disciplinary tribunal or the Australian Industrial Relations Commission. Is this a long and lengthy process? As I said, we cannot find this out by looking at the decisions of a merit protection board. Indeed, the briefing officer who is in the chamber to advise the government looked me straight in the eye and told me that the merit protection board decisions were not available to me, nor were they available to teachers or their representatives in conducting a defence in proceedings like this. All one can do in looking at the way the system works today and making predictions as to the way the system will work in the future is have a look at the decisions of the industrial relations commission and talk to school principals and teachers.

If one reads the decisions of the industrial relations commission, they make very depressing reading indeed. I will not go through all of the decisions I have read in preparation for this debate, nor will I name the applicants, but it is humiliating to go through a hearing process before the industrial relations commission. I will quote from one of the cases where a teacher was served with a notice by the Secretary of the Department of Education and Training citing the fact that this teacher had had 'unsatisfactory performance over a period of six years'. The fundamental ground for trying to sack that teacher was unsatisfactory performance over a period of six years! If one goes through the litany of allegations against that particular teacher, or the litany of allegations about other teachers against whom proceedings have been brought and who have then appealed to the industrial relations commission, the difficulty a principal and the secretary of the department have in dealing with a teacher who is negligent, inefficient or incompetent in the discharge of his or her duties is quite staggering.

On the other side one has to acknowledge that a principal working to determine the employment of such a person may then go too far the other way. One example in one particular state school involved a teacher being charged with negligent conduct for failing to keep a student under control. The student had picked up a chair and was menacing another student. The teacher attempted to interfere to protect the student who was under attack, was kicked in the groin and became incapacitated. It was said that his failure to control that student was one of the grounds for his dismissal. There is great confusion about the way the legislation works.

Mr Nardella — That is why we are streamlining it, Victor.

Mr PERTON — Sadly, the government is not streamlining it. One of the problems is that the government has handed power over to a union which the federal Leader of the Labor Party described as the great impediment to improving the education system of this country.

I will come back to teacher quality in general, but looking at how the bill works with respect to the removal of what we can call bad teachers, essentially this is dealt with by new part V, headed 'Misconduct and inefficiency'. In division 1 of that new part section 66 provides the grounds for action. It says that after investigation the secretary may take action under this part against an officer or employee who conducts himself or herself in a disgraceful, improper or unbecoming manner, commits an act of misconduct, is found guilty of a criminal offence, is negligent, inefficient or incompetent in the discharge of his or her duties, contravenes a provision of this act, contravenes a requirement by or under any act that corporal punishment not be administered, or, without reasonable

excuse, contravenes or fails to comply with a lawful direction given to the officer by a person with authority to give that direction.

As I said earlier and given the time constraints, if one looks at the sorts of proceedings reported in the industrial relations commission and one talks to principals and teachers about the operation of these termination provisions, it appears that it is very difficult indeed to determine the employment of a teacher who is just not up to it. The system works quite well in the case of someone who engages in actual serious misconduct or criminal conduct. It has always worked reasonably efficiently for those purposes. However, in most schools there are two significant problems in terms of ensuring teacher quality. The first is obviously attracting quality teachers to the school and then retaining them, given all the alternatives that exist for a quality teacher with the qualifications they have. The second problem is getting rid of the deadwood.

Mr Jenkins — How about starting here?

Mr PERTON — Indeed. The honourable member for Morwell, a fine example of deadwood, will probably survive any swings against the government at the next election and, unless his party shows some good sense, will no doubt be here.

Is it possible to remove the so-called deadwood that exists in almost every secondary and primary school, be it state, Catholic or independent? I will quote from a well-respected school principal. Having read the bill and the second-reading speech the principal said this:

> The bill does very little, although the tighter time frame is helpful to schools. An alternative to all this is tighter controls on teacher quality. The definitional terms in the act are fine but lack real teeth in reality.
>
> A true mechanism for holding teachers accountable for student learning and the relationship between teachers and the family would be useful. The checklists, processes et cetera used in the UK for measuring teacher effectiveness are far more formal than those available here. The process here could also be made a lot faster by having a school-based panel determine 'fitness' to teach followed by an external review of the teacher concerned that uses processes that actually look at teachers' work, 'quality of planning assessment and reporting' and involves observing the teacher teach, 'quality of instruction, engagement, questioning, scaffolding of learning'. The current processes only work for serious misconduct, not for inefficiency or lack of quality in teaching.

All of the discussions I have had with principals, school council presidents and the like indicate that that is the fundamental problem with the structure of this legislation and the way the employment provisions work. When faced with allegations of inefficiency or incompetence on the part of one of its members, the Australian Education Union, which often speaks of its commitment to quality teaching, almost invariably defends that member and makes it almost impossible for that person to be removed.

I quoted earlier from the industrial relations commission. With respect to the fact that you have to write a letter to someone saying you are sacking them because of six years of incompetence, what responsibility do we as members of Parliament have and what responsibility does the secretary of the department have that it takes six years to get rid of an incompetent teacher? For five of those years students are being forced to have classes with such a person. Again if one reads through the industrial relations commission provisions, one sees that many students are seriously let down by teachers who are just not up to it.

Let us look at this question of teaching quality. We have the position under this government that it is very difficult indeed to get rid of the deadwood or, as one of my local principals has said, the teacher who is retired in action — you know, in the last four or five years of teaching they may have lost that passion, but, because of the way in which superannuation is structured, they remain within the school system.

What lever do principals have? It is obviously to recruit high-quality teachers. What is interesting in Victoria and Australia generally is that we actually have a high rate of salary for starting teachers. The latest Organisation for Economic Cooperation and Development statistics indicate that Australian beginning teachers are very generously paid. The problem is that as you rise through the levels of seniority there are no structures in place to pay teachers according to performance or to pay sufficient to attract teachers whose skills are in high demand elsewhere to stay within the system.

This is particularly the case for many schools in more difficult geographic areas, and that includes schools identified by the government as having students that are more likely to misbehave — and Moreland City College of course stands as a stark example of that. But so too do many schools in more isolated geographic parts of the state have trouble recruiting high-quality teachers and retaining their services. To its credit, the government has provided additional incentives for teachers after some three to five years of service, but those incentives are not attached to performance criteria other than the most general, and again there is no great incentive for the young, talented, hardworking teacher.

My friend the member for Mordialloc and I serve on the all-party parliamentary Education and Training

Committee, which is in fact looking at this question: the loss of teachers within the state system after some three to five years. They are attracted overseas. There is the adventure of teaching in the United States of America or the United Kingdom, often times with very generous salaries and oftentimes with quite generous sign-up allowances. Those Australian teachers who teach overseas are well regarded and sought after. The honourable member for Mordialloc and I and other members of that education committee, including the honourable member for Bulleen — who is a fine deputy chair of that committee — have heard and understand that Americans seek out high-quality Australian mathematics, English and science teachers. The Hong Kong government seeks out those people, as does the British government.

There was an article in the press just a few days ago that showed there is very active recruitment of Australian teachers by, for instance, the Scottish education system and others. I shall just indicate some of those statistics without going into too much detail. Working holidays are becoming a popular means by which young teachers in particular can live and work overseas. The figures suggest that nationally each year around 4000 to 6000 Australian teachers go to do an overseas stint, with this number increasing in the four years to 2000–01. Estimates suggest that close to 2000 of these teachers were recruited by recruitment agencies while in Australia.

As a result of this upward trend in residents going overseas, the previous balance between resident teachers leaving and those returning has shifted to a net loss. In fact this has been highlighted by the government's own teacher-demand-and-supply expert committee, which has recommended that the state government look at recruiting highly qualified overseas and interstate teachers so that they might benefit from the intercultural experience here that so many of our teachers enjoy while teaching away from Victoria.

The expert committee looking at teacher supply and demand found that there are hundreds of unfilled vacancies for qualified teachers of mathematics, science, English, technology and physical education and that the critical shortages in these areas today are worse than in 2000. So over the past four years of Labor government — five years since 1999 — the shortage of highly qualified teachers across the state in those subject areas has deteriorated, and so too the ability to recruit teachers in those subject areas has deteriorated in country Victoria.

The Minister for Education Services, after a very short period of time in the job, claimed she had 'solved the teacher crisis' and that there was 'no shortage of qualified teachers for the start of 2003'. She was wrong, and the member for Derrimut would be well aware that schools in his area are having difficulty recruiting mathematics, English and physical education teachers. The evidence across the state is that roughly 1 in 3 maths teachers does not have a post-secondary school qualification in mathematics, and that 1 in 4 English teachers has no method training in English, nor indeed any undergraduate training in English. Quite clearly that is a real problem in the school system.

The shortage of physical education teachers is demonstrated by the government's incredible proposals through the Victorian Curriculum and Assessment Authority to take physical education out of the core disciplines of the education system. This proposal defies all expert advice. One only had to listen to radio 3LO yesterday and to SEN radio today, for instance, to hear David Parkin — a well-respected teacher, physical education specialist, advocate for healthy lifestyles and famous Australian Football League coach — pleading with the government to reverse its position in respect of taking physical education out of the core disciplines.

The member for Yuroke, who is parliamentary secretary to the minister, and the honourable member for Oakleigh both know that this decision is wrong. There will be a protest meeting tomorrow night of physical education teachers, parents and medical specialists, and I urge them to go to the state hockey centre tomorrow night — —

Ms Beattie — We'll be here.

Mr PERTON — It is at 5.30 p.m. I am sure we can arrange a pair — —

Ms Beattie — Parliament's sitting.

Mr PERTON — It is plain from the interjections from the members that they will stay away from that meeting.

The ACTING SPEAKER (Ms Lindell) — Order! Interjections are disorderly and should be ignored.

Mr PERTON — But why is physical education being taken out of the core disciplines? The reason is that the average age of teachers is now 48, and the feedback the government has received is that lots of people would prefer to be teaching nutrition or healthy living in the classroom and not on the football, hockey or soccer field or on a tennis court on a cold winter's day. We also know the problem, as indicated by the Australian Council for Health, Physical Education and Recreation or by David Parkin, of the major shortage in

physical education teachers in the education system. So there are problems in the Victorian system, just as there are problems internationally, in recruiting high-quality maths, English, physical education and technology teachers, but it is one of those global problems that needs to be solved locally.

While I commend the minister on making some small efforts to provide additional incentives to recruit teachers to hard-to-staff schools, the critical issue is — and it is the centrepiece of this bill, and it is the centrepiece of the teacher recruitment problem — the absence of performance pay.

When young people enter teaching they get a relatively high starting salary of $45 000 a year, but it very quickly plateaus out. The honourable members for Yuroke and Oakleigh know that to be the case. The only way in which the Victorian state education system can afford to pay the sorts of salaries that are needed to hold those high-quality teachers is to provide performance pay.

A task force from the Boston Consulting Group, headed by Larry Kamener, who is well known to members of this house, has set out the formula for measuring teacher performance. That methodology can serve two purposes. It could provide a real ground for action under proposed section 66(1)(d) in order to demonstrate that someone is inefficient or incompetent in the discharge of their duties by measuring their impact on student performance. So at that end in respect of implementing this legislation, the Boston Consulting Group methodology works — but it also works at the other end. How do you keep talented teachers who have been in the system for three to five years? You need to offer them more attractive salaries that are competitive with the private-sector alternatives that are available to them, not just in the independent schools but in other areas of industry.

The member for Yuroke and I have talked about the TRIP (teacher release to industry) program. Although most came back into the system as higher performing teachers, many were attracted away by the more performance-based salaries available to them in other careers and occupations.

Ms Beattie interjected.

Mr PERTON — I note the member for Yuroke's typically stupid interjection. What is interesting is that the public relations on this bill is about saying it will provide the government with the power to sack. In any event, I have only 25 seconds left to me. This legislation will do very little. Over the next few years it will do nothing to improve teacher quality and will do very little to remove the sorts of teachers that need to be moved to other professions and other occupations.

Mr MAUGHAN (Rodney) — This legislation, which is simple but very important, deals with the conduct, performance and competency of teachers. The purposes of the bill are very clearly set out. They are to reform procedures for taking action against officers and employees for misconduct, inefficiency or physical or mental incapacity, to establish a disciplinary appeals board and to make other miscellaneous amendments. They are fairly simple and straightforward.

All members of this house would acknowledge the importance of education and of our good education system. The education system in this state provides access to all, irrespective of their socioeconomic background, and aims to develop each individual to their full potential. Having said that — and I sincerely believe that on a world scale we have an excellent education system — it does not mean we should not be looking constructively at how we can do things better.

The shadow minister for education made some very good points, particularly with regard to performance pay for teachers. We have excellent starting salaries, but we are not rewarding teachers well enough for their performance. I acknowledge that we have moved in that direction, but there is much more that can be done to reward excellent teachers and to keep them in the system, which is what we need to do. While we might argue about emphasis and philosophy, the facts are that we have an excellent education system, basically dedicated teachers, excellent facilities on a world scale and overall pretty good outcomes. However, we can do much better. We can always argue about programs and emphasis, but it is really a matter of degree as to what judgments we make.

Students in this country and in this state are limited only by their own abilities and their own determination. I do not want to go through them tonight, but there are many examples of students who have been able to achieve at a very high level because they have had the drive and the determination to do it. We have a system that will accommodate their needs.

Last week, when speaking on the amendments to the Constitution (Recognition of Aboriginal People) Bill, I talked about the importance of education in overcoming disadvantages in the Koori community. That is certainly the case: the higher the level of education, the less disadvantage there is in the Koori community. That applies to students generally. As we lift our educational standards, that disadvantage becomes less and less.

An indication that we have a common approach to education is the fact that we spend somewhere around a quarter of the state's expenditure on education. That is very important. However, I argue that we should perhaps change the emphasis a little. It is essential that we have the best and the brightest teachers in the preschool system and that we provide the very best facilities in early intervention programs and in early childhood development. That is because the first six years of a child's life are absolutely crucial in determining the sort of individual they will be in another 10, 15 or 20 years. It is an investment in the future.

We are not good at providing funding unless there is a short-term pay-off. In an excellent editorial in the week prior to the election the *Australian Financial Review* commented on this very issue, saying that business and politics are responding to the community's demand for instant gratification and for results in the short term rather than the longer term. The editorial pointed out that business is no longer making long-term investment decisions because the shareholders want dividends today and are not prepared to wait until tomorrow. In politics the same thing is happening: we want to see results in the short term and are reluctant to invest in the longer term. In the educational area it is to our detriment that we neglect the first six years of a child's life, because we pay a much higher price later on in juvenile justice, crime and so on. I would argue that we need to adequately fund early childhood development and have that as our priority.

Education is, as I think we all agree, critically important to the individual. It is important in overcoming disadvantage, and it is important to enable people to achieve their goals. It is certainly important that the state develops a well-educated work force that is innovative, entrepreneurial and uses its human resources to their full potential. It is essential that the nation has the best educated work force possible. Of course, teachers are a critical part of any education system, and this legislation essentially deals with teachers. You can have good education in the absence of good facilities, and there are plenty of examples of that. One which readily comes to mind and which I have seen recently is China, where I visited schools that by our standards have very poor facilities and much larger class sizes, yet they are achieving very good results.

So you can have poor facilities and, provided you have good teachers, a good outcome.

Good teachers are absolutely crucial to a good education system. I saw an excellent example of this recently when I had the privilege of serving as principal for a day at Cohuna Secondary College. Among a number of things, one that stuck in my mind was the experience of being in a class with three students who were doing year 12 English literature with an excellent teacher who was stimulating these students with the Greek classics. That is an outstanding example of what a good teacher can do to bring out the best in students. I remember studying the Greek classics in my own school days; I was disinterested because I did not have a stimulating teacher. The point I am making is that good teachers are vital, and we should do everything we can to encourage them.

This bill is about reforming the procedures for taking action against teachers for misconduct, incompetence or having either a physical or mental incapacity. I repeat: the vast majority of teachers are dedicated, hardworking, well-trained, competent and conscientious. We need to get it into perspective; we are talking about relatively small numbers — —

Ms Beattie — A small minority.

Mr MAUGHAN — It is a minority; it is a relatively small number of teachers who are in the teaching profession but should look at doing something else. They are small in number but during my 15 years in the Parliament I have dealt with three such teachers, and I can well recall how difficult it has been to get them out of the classroom and doing something else. I feel for those teachers, but I feel even more for the students whose educational outcomes have been compromised because those teachers were allowed to remain in the system for longer than they should. This legislation is a step in the right direction — towards speeding up the process of moving out of the classroom teachers who for various reasons should not be in front of a class.

The system and the union have historically protected teachers at the expense of students. I think that is the wrong way around. Certainly teachers have their rights and should be treated with compassion, but our first priority has to be the welfare of students. This legislation, which The Nationals support, moves towards achieving that objective. I welcome the reforms to be implemented through this bill because they streamline procedures relating to serious misconduct, serious inefficiency and mental or physical incapacity involving either teachers or principals. It removes the very formal, court-like disciplinary procedures that have been in place in this state for many years, and replaces them with the ability of the secretary to apply the same principles to both officers — that is, the principals and the teachers — as it does to employees, the temporary teachers.

In any such case it is important that staff have the right of appeal. This legislation establishes an independent appeals board to do that. It separates the issue of mental and physical incapacity from the far more serious problems of misconduct, incompetence, unsatisfactory performance and the like. It clarifies the right of the secretary to remove a teacher from teaching duties when serious allegations are raised. I think none of us has any problem with that, particularly when it applies to allegations of abuse of students — and sexual abuse in particular. Clearly those teachers should be removed until the allegations are investigated and have been found one way or another.

New section 45, which is substituted by clause 5, deals with mental and physical incapacity and enables the Secretary of the Department of Education and Training to make a determination without holding an oral hearing — to make a judgment based upon the written evidence before him or her. However, it allows the officer whose employment comes to an end on the grounds of ill health early access to long service leave benefits, and that is as it should be. An officer or an employee can appeal to a merit protection board under new section 45A(1), which says:

> If the Secretary makes a determination under section 45(1) that an officer or employee is incapable of performing his or her duties on account of physical or mental incapacity, the officer or employee may appeal to a Merit Protection Board against the determination.

Misconduct, inefficiency and incompetence will be dealt with under a new part V of the principal act. This is dealt with by clause 6 of the bill. It essentially provides that if the secretary finds that a ground or grounds exist, after the proper examination process has been followed the secretary can take a whole range of actions that are specified in the legislation. The secretary can reprimand, fine or reduce the classification of the teacher, or in the extreme case can terminate the employment of that individual.

One of the things I welcome in this legislation is that transferring the teacher from one school to another has been removed as a penalty. That is long overdue because for many years if there was a problem in a school, after the parents had gone through the process of complaining, the complaint had been investigated and the region had come into it, the teacher was usually moved to another school. That did not resolve the problem; all it did was transfer that problem to another school. I commend the government on making it not possible to simply transfer a teacher. That is a very good move. I applaud it because my own personal experience of this — transferring the problem and compromising the education of other students — leaves me cold. I certainly welcome that provision in the bill.

Teachers will be managed by their schools and by the principal. If it is a principal who is under question, they will be managed by the regional office or the regional manager. There is plenty of support and assistance available for teachers who are having difficulties to try and help them overcome those problems and become competent and do their job properly. If all else fails the provisions in the bill will do something about it.

There is the right of appeal. The proposed disciplinary appeals board, which I referred to earlier, will be made up of a legally qualified person who will be chairman, and who will be appointed by the Governor in Council; a person with experience in education, appointed by the secretary; and a third member of the board, nominated by teachers themselves, but appointed by the minister. That three-person board will be able to hear appeals. I do not know how many teachers were disciplined in 2003 or in previous years, but I know that the number of appeals has been very small. In 2003, from memory, I think there were only four appeals of which two were withdrawn and the other two, as I understand, have not yet been resolved. The number of appeals is relatively small and I imagine the number of disciplinary procedures is relatively small. I would be interested to know during the course of this debate what it is, but I guess it is of the order of 20 to 30 a year. I simply do not know.

I conclude by reinforcing the comments made by the shadow minister for education that Australian and Victorian teachers are in great demand overseas, which says something for our system. We need to get rid of some of the deadwood that is in the system, and that is happening naturally. I am encouraged by the quality of the new younger teachers coming into the system. We have an evolving system of young, competent teachers who are providing a great deal of enthusiasm in many of our schools. As I go around schools in my electorate I find schools that are doing amazing things. Generally speaking our school system is working very well, although I note that the average age of teachers, like farmers, seems to be going up.

Mr Honeywood — Forty-eight!

Mr MAUGHAN — The Deputy Leader of the Opposition indicates it is 48. Hopefully that will come down fairly quickly as some of the older teachers retire and the new graduates come into the system. I hope within the next few years it will start to fall and come down below 40 years, as the new teachers come into the system.

I comment briefly on the government's decision to remove physical education from the core curriculum. That is a step in the wrong direction. All the other things that governments are doing to combat obesity and the health problems we have because of our inactivity are negated by removing this very important part of a child's physical education. I implore the government to think more carefully about that and to ensure that we are able to attract and retain people who can provide physical education and get young people into the habit of being physically active. It has enormous consequences in later life. It comes back to the point I referred to earlier, that we seem to deal with these problems in the short term rather than looking at long-term solutions. The government complains, and I agree with it, that hospital beds are being clogged up by a variety of people who are there because of lifestyle choices. We can avoid a lot of that by preventive things like physical education in schools and setting children up for the rest of their lives. This is sensible legislation. I think there are adequate checks and balances in the legislation. The National Party will not oppose the bill.

Ms BARKER (Oakleigh) — I am pleased to speak on the Teaching Service (Conduct and Performance) Bill, which amends the Teaching Service Act 1981 to reform procedures for taking action against officers and employees for misconduct, inefficiency or physical or mental incapacity; to establish the disciplinary appeals boards; and to make other miscellaneous amendments.

I want to firstly deal with the aspect regarding the streamlining and simplifying of the misconduct, inefficiency and mental and physical incapacity provisions. Currently there is overlap in the use of section 45 and part V. This overlap is potentially confusing. In relation to this issue it is important that there is clarity and transparency in legislation that applies to teachers and school principals. Our schools are extremely important bodies within local communities.

The bill proposes to tidy up section 45 which deals with incapacity. The new section is designed to deal only with genuine physical or mental incapacity. Current section 45 is entitled 'Incapacitated officers' and allows the secretary to inquire into the fitness, capacity and efficiency of a teacher or principal. Inquiries under the current section 45 are normally associated with mental and physical capacity, matters of fitness relating to character and conduct, and inefficiency and capacity. Allegations relating to fitness on account of character and conduct and inefficiency and capacity associated with unsatisfactory performance will now be dealt with under the new part V.

Under new section 45 dismissal will be the only option if the secretary finds the teacher is medically incapacitated. The current section imposes a number of outcomes, but with the narrowing of the scope within the section to deal only with medical incapacity and if the secretary finds that the teacher is incapable of performing his or her duties because of that medical incapacity, then termination is the appropriate outcome. It is not envisaged that the section would be used very often as most teachers who are seriously ill would voluntarily retire.

An example of how new section 45 may be used is where a teacher has been on unpaid sick leave for several years due to permanent incapacity but will not voluntarily resign. This leaves a school in a difficult situation and unable to fill a position on a substantive basis. New section 45 is consistent with similar provisions in acts applying to commonwealth and state public service employees. Those provisions provide that an agency head has the power to cause a public servant to be retired on account of physical or mental incapacity. As indicated by the member for Rodney, current section 45 appeals will continue to lie with a merit protection board, but the teacher may choose to make an application for unfair dismissal or unlawful termination to the Australian Industrial Relations Commission. It should be always noted that state and federal antidiscrimination laws must be followed. Any decision of the secretary under this section must comply with those laws as well as the Accident Compensation Act 1985 and the commonwealth Workplace Relations Act 1996.

Part V of the bill will now deal with allegations relating to fitness on account of character and conduct and inefficiency and capacity associated with unsatisfactory performance. The new part V sets out the various grounds upon which the secretary can take action against teachers and principals, and the member for Rodney outlined those in his contribution. The bill also lists the outcomes that may be imposed by the secretary as a reprimand, fine, reduction in classification and termination of employment. As indicated by the member for Rodney, the outcome of transfer has been removed, and it is most appropriate that the outcome of transfer is removed. It simply, as we know, can shift the problem from one school to another. It is not appropriate to transfer a teacher who has engaged in serious misconduct or serious underperformance.

Appeals from decisions under part V will lie with the newly established disciplinary appeals boards. Again as an alternative a teacher or principal may choose to make an application for unfair dismissal to the Australian Industrial Relations Commission.

The substitution of section 45 and the changes to part V are logical and sensible. They simplify and streamline the key provisions relating to serious misconduct, inefficiency and mental or physical incapacity. I note the member for Doncaster referred to the local school level, and it is important to point out the bill does not replace the department's local level school-based complaints and unsatisfactory performance processes. Each year complaints concerning the conduct of teachers and principals are managed at the local level through a variety of measures, including the department's local level complaints process and the unsatisfactory performance procedures. My understanding is that they are on the department's web site. The member for Doncaster may like to have a look at them.

Mr Perton — I already have.

Ms BARKER — Good. Principals and regional directors have the management responsibility for handling such matters. Local outcome measures include support for the teacher, monitoring of conduct, apologies and conciliation. The member for Rodney referred to a number of complaints and unsatisfactory performance processes. My understanding is that there are just a handful of complaints and unsatisfactory performance processes which resulted in a formal inquiry by the secretary and it is certainly not anticipated that this number will increase.

The new disciplinary appeals boards are established to hear appeals from decisions of the secretary to take action against teachers and principals for misconduct and like matters under part V. Currently a merit protection board hears these types of appeals and over the years department stakeholders have expressed a need for the establishment of a specialist appeals board to deal exclusively with disciplinary appeals. The current merit protection board was originally set up and designed to hear selection and promotion grievances from members of the teaching service. It started hearing disciplinary appeals from 1993, but it has no power to order the payment of money in lieu of reinstatement, which the new disciplinary appeals boards will have. The merit protection boards will continue to carry out their functions under the act, including hearing appeals under section 45.

The disciplinary appeals boards will be independent comprising appropriately qualified and experienced members. It is appropriate that an experienced and legally qualified person sit on each board, given the questions of law which can often arise in a disciplinary appeal hearing. It is also appropriate that a person experienced in education, education administration or public sector administration also sits on each board, given the educational context of the disciplinary appeals. It is also appropriate that each board should include a representative from the teaching service. Therefore the bill provides that the disciplinary appeals boards' members will be selected from one of each of these three pools of people. When an application for an appeal is lodged with a disciplinary appeals board, the senior chairperson of the merit protection board will select one person from each pool to sit on a particular case with the person from the pool of legally qualified members being the chairperson.

There are a number of other amendments, but I do not have time to deal with them. I suppose it could be viewed that we are dealing with a negative in education, but it is necessary to ensure we have sensible legislation to simplify and streamline procedures to ensure that important issues such as serious misconduct, serious inefficiency and mental or physical incapacity involving teachers and principals are dealt with quickly, efficiently and justly.

In conclusion I am very proud of the teachers, staff and schools in my electorate. The teaching staff have a strong commitment to ensuring a better future for families through quality teaching. I note the comments made by the member for Doncaster on performance pay, but I believe the teachers in my electorate are already of very high quality. Education is our government's number one priority and we stand very proudly by it. Since 1999 we have invested an extra $4.4 billion into education and training and have employed an additional 5000 teachers and staff in government schools.

Mr Perton interjected.

Ms BARKER — We are very proud of our record. Unlike the member for Doncaster and the previous government, we did not sack 9000 teachers. We have employed 5000 teachers and we will continue to invest in our children's future by investing in education and training in Victoria.

Ms Duncan interjected.

Mr HONEYWOOD (Warrandyte) — I rise to make a brief contribution to the Teaching Service (Conduct and Performance) Bill. In doing so I note the interjections coming from the member for Macedon opposite. It is quite interesting when you note the fact that this particular piece of legislation is not necessary at all. It is not necessary because the honourable member who just rose, the member for Oakleigh, and the member for Macedon actually made contributions

to a previous piece of legislation that purported to fix all of the ills that are supposedly going to be fixed by this most recent legislation. I refer to their appalling contributions to the Victorian Institute of Teaching Bill on 1 November 2001. That bill has since been revealed to be just another taxing mechanism to fleece out of every teacher in Victoria an annual tax to pay for the privilege of being a registered teacher. That was never the case under the previous Liberal government. We never had a tax on teaching, but this government does.

In the debate on that bill the then Minister for Education, now the Minister for Planning — the only education minister in living memory who had a vote of no confidence in her by principals across the state of Victoria — purported in her second-reading speech that the Victorian Institute of Teaching:

> … is established to promote and improve, for the public benefit, the quality of teaching in all Victorian schools through the regulation of the teaching profession.

She went on with a whole heap of babble, including the following quotes, that it will have the power to investigate:

> … serious misconduct, incompetence or continued fitness to teach of registered teachers and impose sanctions where appropriate.

She also went on to argue:

> … as the new single registration authority for all primary and secondary government and non-government school teachers, it will act to reassure the Victorian community that teachers in our government and non-government schools are qualified, competent, fit to teach and of good character.

She finished by saying:

> On the other hand it adds to the current powers of the employers an added sanction of referral to the institute for the possible deregistration of teachers for serious misconduct, serious incompetence or where employers believe, with due cause, that a teacher is no longer fit to teach.
>
> …
>
> Where formal complaints are made to the institute alleging serious misconduct, serious incompetence or that a teacher is no longer fit to teach, the institute will initially investigate such complaints through referral to the employer wherever appropriate and practicable.

So why do we need the legislation before us? If the Victorian Institute of Teaching was supposedly, according the then minister's second-reading speech, to be the body that would have the powers to deregister incompetent teachers to ensure that teachers were of a good character and to ensure that they were not inflicting upon our children anything out of the ordinary, why do we do we need this subsequent legislation at all? As usual with this government it is because it messed it up — it promised the world and failed to deliver. It does not get even the drafting of legislation right. It is very educational, for want of a better term, to look at the contributions to the Victorian Institute of Teaching Bill back in November 2001 from the then Labor Independent member for Gippsland West at the time, now Labor defunct member, Ms Susan Davies. In her contribution to the bill, as significant as it was for her back then, she purported that:

> The legislation will regulate the conduct of those teachers, will provide procedures for handling complaints about teachers who are registered or permitted to teach under the act, and will establish the Victorian Institute of Teaching. Part of the bill provides for the membership of the council, which will be the institute's governing body.

As part of the cheer squad that she was in for the Labor minority government, Susan Davies claimed that this legislation would fix all the misconduct issues that are purportedly now belatedly being fixed by this legislation before the house.

Then we had the member for Clayton, who on speaking on the Victorian Institute of Teaching bill maintained:

> I strongly believe that this bill — although there is some reluctance on part of the opposition which has circulated some amendments to it — needs to be looked at in the context of what it is meant to do. It is only appropriate to remind the house that for the first time the bill will regulate the teaching profession by providing for the registration of teachers in schools in Victoria. It will regulate the conduct of those teachers, provide a procedure for handling complaints about teachers and establish the Victorian Institute of Teaching.

There we have Susan Davies, the then so-called Independent and now failed federal candidate for the Labor Party, the member for Clayton and the no-confidence-voted then Minister for Education, now the Minister for Planning, who as we know has gone from one incompetent performance to another, all purporting that the very issues contained in this legislation would be fixed by the Victorian Institute of Teaching Bill. What has happened in three years? Why has the Victorian Institute of Teaching not actually worked? Why have the promises made by the member for Clayton and the Minister for Planning, the then Minister for Education, not actually come to fruition?

Quite simply it is because they appointed all their Labor mates to the Victorian Institute of Teaching and those Labor mates are quite happy to take their $100 000 salaries and tax every teacher in the state. If any teacher is not willing to pay the $40 annual registration fee, which is a tax on teachers, then they are deregistered. It does not matter how good the teacher is, because they

are not a member of this de facto union — they are already pressured to join the teachers union to pay for Labor Party advertisements on television at election time for Mary Bluett — and it is not good enough that they are not willing to pay the hundreds of dollars in annual teacher union levies, they have to pay this additional Bracks government tax on teaching. My wife has been paying it for five years. All they get for that is a rubber stamp and the right to teach for another year. Nothing else is provided to them.

They were promised by the then Minister for Education that under the Victorian Institute of Teaching Bill they would be provided with professional development courses. Has one course been provided to any teacher in the state of Victoria by this Victorian Institute of Teaching, this so called professional development body? Not one course has been provided to any teacher. It is just a body to provide jobs for Labor Party mates and to pay for their very nice little salaries by ripping off a $40-plus annual fee for the privilege of teaching our children in government schools. It is outrageous and should never have been brought into being. That is why at the time, as the then shadow education minister, I moved amendments to try and ensure that teachers got something back for the money they were charged, that teachers got some professional development courses, that teachers got something in return for this requirement to pay an annual fee or be deregistered. It was not good enough that this government could take a new tax off teachers that we in government never imposed on them.

Having said that, let us look at who should be the true employer of teachers in the state of Victoria. Surely the true employer of teachers should be the very person who is charged with the day-to-day responsibility for them. It should be the principal of the school who is appointed by a committee made up of parents, teachers and government representatives. It should be the principal of the school, a chief executive, who has the prerogative that any employer should be entitled to based on their day-to-day knowledge of the quality of the teachers that present themselves for work each day in their particular school community. It should be the principal, as per the self-governing schools legislation that we brought in, that should ensure that teachers are providing the quality world-class education we take for granted here in Victoria.

That was the case when we were in government and provided government schools such as Broadmeadows Primary School, Corio Primary School and Traralgon Secondary College with the wherewithal and the ability for their principals to actually be the employers, to be able to take on and interview outstanding teachers and to pay those teachers additional money that recognised their world-class quality standard of teaching and that gave children access to teachers of quality. All we get from the other side is quantity not quality. The government is prepared to throw millions of dollars at teachers across the board based on timeserving — not based on quality of teaching but based on how many years they have served. The whole experienced teachers with responsibility system brought in by the then Minister for Education, the current Minister for Planning, was based on timeserving. It was a cop out to the union and it was not based on quality.

Ms BEATTIE (Yuroke) — I rise in support of the Teaching Service (Conduct and Performance) Bill 2004. As the member for Rodney said in his very sensible contribution, the purpose of this bill is to amend the Teaching Service Act 1981 to reform procedures for taking action against officers and employees for misconduct, inefficiency or physical and mental incapacities; to establish a disciplinary appeals board; and to make other miscellaneous amendments. It is a small bill but a very important one.

I will concentrate on the removal of court-like oral hearings in this bill. Of all the important measures that are contained in the bill this is one of the most important, because it enables the secretary to conduct inquiries into allegations of misconduct, inefficiency and mental and physical incapacity on the papers and without having to hold formal court-like appearances. We all know how off putting those formal court-like oral hearings can be. Inquiries under the Teaching Service Act 1981 are generally associated with the court-like oral hearings. The current practice of the act involves the secretary charging a teacher with a disciplinary offence, conducting the court-like oral hearing and then imposing a penalty. The current practice under section 45 involves the secretary providing a notice of inquiry to the teacher concerning their inefficiency, their capacity or their conduct, and conducting either a paper-based or court-like hearing.

Oral formal hearings are cumbersome, outdated and they certainly are not in keeping with modern employment practices, including the practices applicable to state and federal public servants, so they are completely out of step. No requirement for an oral hearing under the state or federal legislation applies to public servants. Additionally most comparable interstate education acts do not require a formal court-like oral disciplinary hearing.

Before I discuss the issues associated with oral hearings it should be noted that the bill does not affect or impact on the existing local-school-level complaints processes

and unsatisfactory performance processes, both of which remain largely the same, so that things can still be dealt with at that local level. The main issues associated with oral hearings are that witnesses are called by the department to give evidence in support of the allegation. The teacher who is the subject of those allegations may also call witnesses to give evidence.

The witnesses called by both parties can include teachers, principals and students. All witnesses are subject to cross-examination — and how off putting that is for students! This includes student witnesses, and I think it would be a terrible thing for students to be caught up in that process. Where the teacher elects not to have representation at the hearing the teacher may personally cross-examine the student. This can be extremely stressful for the student, who has demonstrated courage in making the allegation against the teacher in the first place. Oral hearings involve significant disruption in schools in having to arrange for both teachers and students to give evidence at hearings and to attend on the sitting days of the hearing. There are disruptions to the school curriculum, disruptions to planned excursions and perhaps even disruption to examinations, all of which could be avoided by this more efficient paper-based hearing process.

Hearings are often lengthy, some lasting for about five days. Some hearings can even continue for 10 days or more. This is the case even if ultimately the penalty or outcome does not result in a dismissal. In some cases dismissal is not even being considered yet the current provisions still require a full oral disciplinary hearing. The hearings are expensive and involve significant legal or other professional and representation costs for the parties. The hearings also involve the costs of a salary — —

Mr Perton interjected.

Ms BEATTIE — The member for Doncaster has had his turn. I will go on. The hearings involve the cost of the salary of the executive officer who presides over the hearing as the delegate of the secretary. They involve the cost of the salaries of the teachers and their costs to attend the hearings to give evidence. The proceedings are recorded, and again this also involves additional costs. Finally, under the current system for teachers and principals, oral formal hearings held at the employment level are duplicated if there is an appeal to an external body. This means that on appeal the oral appeal hearing process is repeated for all those involved.

I support any measure to remove the requirement for an oral hearing at the employment level. The removal of the oral hearing requirement will lessen the time involved for senior executives who conduct the hearings, and it will reduce the need for students and teachers to give evidence at formal hearings and to be subject to cross-examination. It will reduce stress, and it will lessen the disruption to schools. Overall the measure proposed will enable schools to focus on educational programs and student outcomes. For reasons of natural justice the decision-maker will not be the same person as the investigator. It is intended that where a teacher is the subject of the allegations the principal will be the investigator and the regional director will be the decision-maker. The principal will have no decision-making powers in relation to cases involving teachers. Where the principal is the subject of the allegations the investigator will be the regional director and the decision-maker will be the deputy secretary, Office of School Education.

I should also point out that oral hearings will be permitted in some cases. If the secretary determines that an inquiry warrants an oral hearing or part of an oral hearing the secretary may conduct one.

In conclusion, I am strongly of the view that these changes will create a fair system and a transparent process by which the secretary can manage discipline and related matters concerning teachers and principals. Finally, I should point out, as members on this side of the house have before me, our commitment to education, because it is that commitment which clearly demonstrates why the opposition is on that side of the house. First of all, the Bracks government has put $4.4 billion and 5000 extra teachers and staff into education since 1999. That is in stark contrast to what happened under the previous government, when 9000 teachers and staff were just cut out of the system with not a whimper from members who were involved in the government at that time — not a whimper! When the previous Premier was sacking teachers what did the member for Doncaster do in the party room? Absolutely nothing! He never stood up to the previous Premier, he could not! He sat there mute in the party room while Kennett slashed teachers from the system, while he sacked them, yet now expects us to respect his views on education.

The previous speaker, the member for Warrandyte, also talked about firsts. I would like to talk about a first that the member for Warrandyte created. Indeed I think he is the only minister for education who ever made a video of himself to promote himself, so he was a first there. I commend this bill to the house.

Mr KOTSIRAS (Bulleen) — It is with pleasure that I stand to speak on the Teaching Service (Conduct and

Performance) Bill. I do so because I believe education should be our first priority. It is very important that our students have the best teachers, not only for themselves but also for our country. I would like to thank the department and the minister for allowing the briefing on the bill, although I understand there were more advisors and public servants there than opposition people.

During the briefing we were advised that the Australian Education Union (AEU) supported this bill. I spoke to a number of teachers whom I know, and not one of them knew that this bill was being introduced into this Parliament. I would have thought that if the union had been doing its job properly it would have gone out to the schools, spoken to the teachers, advised them about what was happening and then come back to the government and made the changes, but not 1 teacher out of the 10 I spoke to from different schools in different regions knew anything about this bill. So it surprises me that the AEU supported this bill without checking it out with its members.

I have to say that most teachers are very hardworking, because teaching is challenging, rewarding and offers an exciting career. I know that in my electorate of Bulleen we have many excellent teachers and good schools. For example, Templestowe College has top teachers who are highly qualified and dedicated and who have a positive attitude to the school and to teamwork. We all expect and demand high standards in our schools, because as I said, teaching our children is about their future and also about the future of our country. All students should have the opportunity to have the best possible teachers they can. Unfortunately this is not always the case, and it is important that those teachers who are not doing their work, who are incompetent and who are neglecting the students are forced out of the schools. I support any measures that are taken to ensure that in our schools we have only the best teachers.

The bill before the house attempts to do a number of things. It changes the procedures relating to serious misconduct, inefficiency and mental or physical incapacity involving teachers and principals. This is good, provided it is not used for political purposes, and there are a few concerns in the bill that I would like to go through. The first one concerns clause 4, which inserts new section 3A in the principal act. New section 3A(2) says:

> … the Secretary —
>
> (a) may assign to an officer or employee any duties that the Secretary thinks fit;
>
> (b) may transfer an officer to another office in the teaching service.".

During the briefing we were told this does not mean that teachers would be moved to another school, and I am glad to see that that is no longer the case. However, does this imply that the secretary could force a teacher to teach a subject that they are not qualified to teach? If that is the case, it concerns me, because, for example, many teachers currently teaching mathematics and science are not fully qualified in maths and science.

Clause 5 of the bill proposes the substitution of new section 45 in the principal act. New section 45(3) says:

> The Secretary must establish procedures for the investigation and determination of an inquiry under this section.

Unfortunately we were told that the procedures have not been established, so the question is: when will they be established so that teachers will know about them?

Clause 6 of the bill substitutes part V of the principal act. Again, I have no sympathy for teachers who neglect their duties and their duty of care; however, I do not want to see teachers being treated in a certain way because they disagree with the politics of the government of the day. New section 66(1)(d) says that the secretary may take action if a teacher:

> is negligent, inefficient or incompetent in the discharge of his or her duties …

Again, I would like to see the definitions of those words. Paragraph (g) says the secretary may take action if a teacher:

> without reasonable excuse, contravenes or fails to comply with the lawful direction given to the officer or employee by a person with authority to give the direction …

Does this imply that the year-level coordinator, the faculty coordinator or even the union representative will be able to go up to a teacher and instruct them to do something? I hope that the minister will outline what is meant by that clause. And in the same clause paragraph (h) says action may be taken if a teacher:

> without permission and without reasonable excuse, is absent from his or her duties.

I can understand that this is about, for example, a teacher not coming back from long service leave, but I hope that if a teacher and a principal do not see eye-to-eye, the principal will not use this as an excuse to take action if the teacher is late for class.

The other matter that I have some concern about is the membership of the board. Clause 6 also substitutes new

section 75D in the principal act. Section 75D(2) refers to:

> (a) persons who have been admitted to legal practice in Victoria for not less than 5 years and have been nominated by the Secretary;
>
> (b) persons who are officers in the teaching service and have been nominated by the Minister …
>
> (c) persons who have knowledge of or experience in education, education administration or public sector administration and have been nominated by the Secretary.

So you have two members who are appointed by the secretary and one who is appointed by the minister. This, I would, imagine is a means by which this government hopes more teachers will join the union, because the board will be politicised and teachers will fear that if they do not join the union they will be severely criticised.

I also have many concerns about clause 5 of the bill, which substitutes new section 45A in the principal act. Under the heading 'Appeal to Merit Protection Board', it says:

> (1) If the Secretary makes a determination under section 45(1) that an officer or employee is incapable of performing his or her duties on account of physical or mental incapacity, the officer or employee may appeal to a Merit Protection Board …

That is fine, provided the board does its job. I have been advised that in a three-month period the board spent nearly $1000 taking union representatives to lunch. I cannot understand why someone has to go out to lunch and enjoy scallops, osso bucco, shanks, porterhouse steak, calamari and different varieties of fish to discuss matters which I would have thought were part of their duties. They had meetings with the Australian Education Union, twice, with the Victorian Primary Principals Association, with the Victorian Association of Secondary School Principals, with the Victorian Government Solicitor and with a police review commissioner. Again, I would have thought that was part of their duties. Why not have the meeting during a working day, and why not have some sandwiches? The Minister for Gaming understands about having lunch during a meeting. Why can members of the board not have a sandwich? Why go out and spend nearly $1000 in three months to enjoy meals such as shanks or chilli calamari? I find it unbelievable that members of the board are able to use taxpayers money on themselves while simply doing their job.

This bill goes some way towards weeding out those teachers who are not performing in our schools. That is good because, as I said at the start, education should be our no. 1 priority and we should only have good teachers, qualified teachers, and teachers who can teach. When I was a student at school and as a teacher myself I had some of the best teachers and colleagues, and I looked up to them. There were Tony McManus, Malcolm Cocking, Geoff Orin and Kevin Poon, to name a few. They were excellent teachers, and I looked to them for inspiration. We hope all teachers in our state schools are good, high-quality teachers who are dedicated, work hard, and work for the betterment of our students and our schools. If that is not the case we must put procedures in place to make sure those teachers are taken out of our schools; not transferred to another school, but taken away from our students because we cannot afford to let a child lose one, two or three years of education simply because we do not have the courage and the strength to achieve something.

While this bill goes some way towards addressing this problem, there is a lot more to be done. This government does not have education as its no. 1 priority. It has not done so for the five years it has been in government. It has failed in languages other than English, it has failed in English as a second language — —

The ACTING SPEAKER (Mr Seitz) — Order! The honourable member's time has expired.

Mr JENKINS (Morwell) — It gives me a great deal of pleasure to rise in support of the Teaching Service (Conduct and Performance) Bill. We have one of the best teaching services in the world — and it is getting better. We have one of the best state education systems in the world, and it just keeps getting better. We have some of the best, the most professional, well-qualified and committed staff in the world, and they keep getting better. They keep getting better because they have behind them a commitment by the Bracks government to invest in schools — to invest in education. They keep getting better because they have a commitment from the Bracks government, as they did from the Bracks government in its previous term, to invest in infrastructure.

This is distinct from the opposition which, when it was in government, closed over 300 schools. This government is investing in infrastructure. This government is employing more teachers. It has employed over 5000 extra teachers, after the former government stripped 9000 good, hardworking teachers out of the education system. Members of the opposition have the hide to sit over there and complain about this government continuing to invest in infrastructure, continuing to invest in our education system. It just keeps getting better because this government has made

that commitment to invest in infrastructure, to invest in teaching numbers, to invest in skills acquisition; not just for the students, but for the teaching and other education staff who work in our fine system. It is investing in better career paths and, importantly, making a real investment in the educational environment for students, teachers and staff — in fact for the whole school community.

That is what this bill seeks to do, that is what it does, and that is what it will do once it has been passed through the house, with or without the tacit support of those people who now sit on the opposition benches. This bill seeks to continue to improve the environment in our education system. It seeks to ensure a proper process exists to deal with staff in our school system whose performance may at times give rise to questions regarding their capability to perform due to physical or mental incapacity, misconduct or inefficiency.

Mr Perton interjected.

Mr JENKINS — First of all, and importantly, it clarifies the powers of the secretary. While it clarifies the secretary's powers, it is important to note that the shadow minister for education, instead of listening to this clarification and taking it on board, seeks to be confused by it, or is honestly confused by it — members can take their pick. Perhaps, as the member on my right indicates, he is just not interested in our education system. The bill clarifies the secretary's powers and rights that now equate with those of an employer. As an employer of those staff the secretary can assign his or her duties to others within the department and make sure that the system we have is streamlined, that it works for the education system, works for natural justice, and works for those teaching staff and students to make sure that our education system just keeps getting better.

The new provisions also allow for the secretary to terminate employment where staff are unable to perform their duties due to physical or mental incapacity. Importantly, we still have a system of appeals in place — not the sorts of appeals that you would expect to see in an employment bill that was related in any way to the environment that those on the opposition benches would impose if they were in power.

There would not be the employment provisions, the appeal provisions or the natural justice available to employees in an education system under the Victorian opposition. Those opposite stripped our education system and they sacked teachers; they reduced by 9000 the number of teachers in a school system which needed more teachers. This is about providing more teachers, not fewer. This is about giving staff natural justice and the opportunity to appeal rather than be dealt with summarily, as the opposition is apt to do with our education system.

The bill will simplify the provisions whereby the secretary may take action against misconduct, inefficiency, incompetency — we should have that here; we could do away with some of the members opposite — failing to comply with a lawful instruction, or being unfit. It enables the secretary to make determinations — —

Mr Smith — Who wrote this for you?

Mr JENKINS — You do not need to write this stuff — all you have to do is look at the history of the way the opposition treated our education system when it was in government. This does not need to be written; it is not new stuff, it is history. Those who do not learn from history and those who do not learn from good government are condemned to stay over there forever, and that is where they should be. The opposition should stay over there, and our education system, our students, our teachers and our staff will be much better off if they do. In one way it is a good thing that members opposite just do not learn.

The bill enables the secretary to make determinations on the papers, but it does not prevent oral hearings. Some members have suggested oral hearings are the only way we can get natural justice. That is not the case — we can make a case for natural justice through submissions on paper. The secretary will be able to decide whether to use the on-the-papers provisions or revert to oral hearings. As some members on my side have indicated, there will be some cases where the secretary decides that oral hearings are the most appropriate and are the only way to deliver natural justice for staff, students and ultimately our education system.

The bill establishes a new disciplinary appeals board. This disciplinary appeals board will allow those decisions which have been made about somebody's employment to be reviewed. It is a far cry from the industrial relations mayhem sought by the opposition and its mates in the federal government.

The transfer decisions have been deleted. I heard the member for Bulleen suggest that somehow the removal of the transfer provisions — I cannot work this out — might mean the secretary can direct staff to teach subjects in which they are not qualified. That is not the case at all; it means quite the opposite. We will not

transfer people who are a problem to another place to become a problem again — we are going to deal with them where they are. That is what the bill says. Members opposite need to learn to put on their glasses and read the bill, which is about getting a fair go for teachers, a fair go for those who are facing disciplinary proceedings and a fair go for those in our education system who will rely on this to deliver a great, improving and better and better education system. The secretary will act in accordance with the procedures and principles and the selection processes in place in the education system at the moment.

The member for Doncaster said this bill does very little at all. He needs to stop looking at himself. While he may do very little, this bill does a great thing. It continues the move towards a better and better education system. We have great schools and great staff. I would like to congratulate the Minister for Education and Training and the Minister for Education Services for bringing this bill forward, their staff for the hard work they have done on it, and all those many organisations which were involved in the consultation about this. It is those people and this government who will deliver a better and better education system in this state. There is absolutely no way the opposition will get the opportunity to wreck it again.

Mr DIXON (Nepean) — Tonight has been interesting. When we look at the program for this week we have six bills that need to be spread out over the three days, and I note that we are long on rhetoric and short on facts. The government members have been stretching their speeches out. We just had 9 minutes of rhetoric and 1 minute of facts about the bill: we got a line out of the bill and then a whole lot of rhetoric — the old seven dark years and all that — before another line out of the bill and more about the federal government and what have you.

This is a minor bill. From what a lot of the government members have said you would think the opposition was opposing the bill. We are not opposing this bill. We have no problems with the bill. It is a pretty ineffectual bill making minor changes which the opposition does not disagree with; some of those changes needed to be made within the system in the department. When the shadow minister for education sought comment from various education groups — teachers, schools, principals — there was very little interest in the bill. Therefore I do not think we should be spending the amount of time we are tonight debating this bill. There is basically agreement on the bill and it makes minor changes. I wish to make only a couple of points about the bill, coming from an education background.

I am very pleased to see that the secretary of the department is replacing the Queen — being a republican, I am very keen on that. I have no problems with that. In fact I was quite surprised that there were still vestiges of the empire scattered throughout our education department rules and regulations. It is good that that part is being cleaned up. I am sure the secretary is very happy about that.

This is a teaching service bill, and it reminds me of what teaching is about. Having a long education history myself, I believe teaching is a service. It is a service to a particular community in which a school is located, it is a service to the parents and it is a service to the students. We should not lose sight of that. If this bill goes some way towards improving that service, then I applaud it. The education of our children is one of the greatest professions anyone can be called to, and the guardianship of that profession is a very important task of any government. The teachers we have in our schools have to be quality teachers. Whether it is their mental capacity, their physical capacity or their professional capacity — all of those capacities have to be first class so our students and the quality of the education provided are protected.

This is an opportunity for us to reflect on the fact that this is what our education system is about. In the rhetoric and the politicisation of education, our schools, unions and the department should remember that schools are about children. They are about educating children, and any legislation and any regulation we have in this place to do with education is about delivering better education for our children. In some very small way, and I am not getting excited about it, this bill goes that way, and I have no problems with it.

It is very important that any process designed to weed out the teachers who should not be in our schools should not be drawn out. That can have a dreadful effect, not only on the person concerned but on the school community and the school leaders. It is a harrowing ordeal for a school principal and school council members to go through. There is a lot of uncertainty within a school community — the replacement teacher does not know where his or her future is, the parents of the children in that class do not know what the future of that class is — and it can be a very unsettling experience. We have seen some of these cases go on for years. That is not on. It is terribly damaging to the children and the whole school community. Anything that shortens that hearing process and makes it more efficient is welcome.

This bill affects the education of our children. We are reminded in the Teaching Service (Conduct and

Performance) Bill that providing education is a service to the community and to our children.

Mr DONNELLAN (Narre Warren North) — It is an honour tonight to be talking on the Teaching Service (Conduct and Performance) Bill. The purpose of the bill is to reform procedures for taking action against officers or employees for misconduct, inefficiency or physical or mental incapacity. As well it establishes a new disciplinary appeals board and makes other miscellaneous amendments.

The bill is really about this state government's commitment to continually improving the quality and the safety of children in our schools. It is very much related in a sense to my first speech, in which I said above all else I hoped that my role in this Parliament would encourage a continuing improvement in the quality of our teachers and our public education system.

We on this side of the house believe that in our public education system we are providing a choice — the choice to go down the road to a high-quality public school. That is not the choice of the Prime Minister, Mr Howard: the choice he provides is to spend enormous sums to get into an elite private school — but not the choice to go down the road and attend a high-quality public school. It is fine to provide choice, but if people cannot afford it, it is no good for anyone. At the end of the day this is what we are doing. Mr Howard's choice is effectively the abandonment of the public system, whether it be the universities or anything else. I went to a private school. I was fortunate that my parents could afford a private school. At the end of the day that was their choice. Most parents cannot afford that choice. With this bill we are continuing to improve the quality of teachers and the system.

People in my community down at Narre Warren North seek high-quality public schools. This is what they tell me — that they want good teachers, good education and great outcomes for their children. They do not want this choice taken away. They do not want to be forced on to a low-fee private school. They want to know that their local high school is a good-quality school and that their local primary school is a good-quality school.

In seeking excellence we do not seek to diminish the academics of this world. We do not tell them they are stupid. We do not call them elites. We think they have something to contribute to this society. We want the brightest and the best in Victoria. We do not seek to diminish them, and we do not tell them that the dumb know everything and that the elites who have spent many years studying subjects have no right to comment on public policy.

I refer to proposed section 3A. I am happy to see the Queen has been removed as the employer. At the end of the day the secretary of the department will be the official employer. This is vital. The secretary will be the employer and will have the rights, powers, authorities and duties which go with that. The state government has an obligation to ensure that our schools are safe. We do not have people who are ordinary; we do not have paedophiles. This is an obligation we take on as a state, and we have to give the employer the right to move these people on — to dismiss them or to move them elsewhere.

I remember that when I went to primary school I had a teacher who was probably mentally incapable of teaching. She used to bash, kick and so forth. The Catholic system at the time probably did not have the ability to move teachers on, but the provisions in this bill will give the secretary that ability.

Proposed section 45 deals with the termination of employment due to the physical and mental incapacities of the officer or teacher. This power can be exercised by the secretary or the matters to be considered can be delegated to a principal, an investigator, a regional manager or a board. The teacher, of course, is given a right of reply. At the end of the day they also have an appeal to a merit protection board. The secretary is required to provide the board's findings to the teacher, and they are able to give a written response. Further, the proposed section allows the secretary to make a determination without moving to an oral hearing. An oral hearing can be requested by the teacher, but they take an enormous amount of time and money and are an enormous stress on everybody. The officer is still provided with access to long service leave benefits on the grounds of ill health. This section actually streamlines the act and deals specifically just with the physical or mental capacities of the officer or the teacher involved.

Proposed part V streamlines other issues as well. It allows the secretary to deal with the following types of behaviour: disgraceful, improper or unbecoming conduct; misconduct; criminal conviction; negligence; inefficiency or incompetence; contravening a provision of the Teaching Service Act or a ministerial order; administering corporal punishment — which in my experience was administered many times while I was at school, and to me many times; failing to comply with a lawful direction; being absent without permission and without reasonable excuse; or being unfit on account of character or conduct. It provides the secretary with

opportunities to terminate, reprimand, fine or reduce the classification of the teacher involved.

One part of this section with which I am particularly happy is that the secretary does not have the ability to transfer the problem teacher, so to speak, or the problem officer from one school to another. That is one thing which has created enormous grief in various religious institutions and which we all know about, where the problem is literally transferred from one area to another in the hope that it does not happen again and will go away. That is not available to the secretary, and that is very appropriate in the circumstances.

Proposed part V also provides proper procedures for investigations. It will allow a principal or regional manager to look into these things, but again there is the appeal process. Appeals can be made to a disciplinary appeals board.

Inefficiency and incompetence, specifically in this proposed section, are dealt with locally first with the monitoring, support and assistance of the teachers. It is all about getting the standards up and seeking excellence. It is about trying first, and if that does not work, if it fails, then moving on. Oral hearings are still available, but the bill will reduce the need for oral hearings because at the end of the day they put enormous stress and strain on the school with teachers and fellow students having to appear, which is a difficult situation for all those involved.

There are other new provisions under proposed part V. The secretary can suspend an officer without pay after giving the officer the opportunity to respond in writing. There is a new disciplinary board, members of which will be Governor in Council appointments. A legally qualified person will be appointed by the secretary; a person with educational experience and background will be appointed by the secretary; and there will also be a ministerial appointment after calling for expressions of interest from principals and teachers alike.

I congratulate the minister on this bill. We need to continually seek excellence in all our teachers. We have an excellent work force, but we need to continually improve the public system.

Ms DUNCAN (Macedon) — It gives me great pleasure to speak this evening on the Teaching Service (Conduct and Performance) Bill. I heard members of the opposition referring to this bill as inconsequential and as a minor bill that does not warrant the sorts of discussions we have heard tonight. I find those statements extraordinary and concerning, mostly because the bill goes to the heart of what good teaching is about — that is, it ensures that teachers in our schools are the best possible, that their conduct is exemplary and that they are competent and in a position to perform their duties to a professional level, and it then sets up the processes and procedures to make sure that occurs. In the absence of that occurring, the need for fair and transparent processes to deal with those teachers is, in my mind, critical to the teaching service. The bill should not be seen as minor and of very little consequence.

That is the first point I make regarding the statements made by some members of the opposition. Having worked in schools for most of my working life and having been involved in many disciplinary actions, I appreciate what this bill is doing.

Business interrupted pursuant to standing orders.

ADJOURNMENT

The ACTING SPEAKER (Mr Nardella) — Order! The question is:

That the house do now adjourn.

Ambulance services: Mornington Peninsula

Mr COOPER (Mornington) — I have a matter for the Minister for Health. I seek action from the minister to fix the crisis in ambulance services on the Mornington Peninsula. The minister would be aware that a report to her in April this year revealed that Mornington and Rosebud were among the six worst areas for ambulance waiting times. It is six months since the minister received that report, and it is clear that the situation is now worse than it was then. Local ambulance officers are saying that the ambulance service on the Mornington Peninsula is on the brink of collapse. Those ambulance officers are doing the best they can, but the reality is that the government has failed to provide the staffing and resources needed for a decent ambulance service on the Mornington Peninsula. These funding cutbacks are now impacting badly on the community. In my electorate they are certainly putting lives at risk.

One example in mid-September was that of a woman in Mount Martha with chest pains who had to wait over 50 minutes for an ambulance. Ambulance officers in Frankston report that they have been forced to attend calls in ordinary cars because of an ambulance shortage. What is horrifying is that when these matters are brought to the attention of the minister, she hides away and gets a so-called ‘spokesman’ to say this

dreadful mess is the fault of the paramedics. People on the Mornington Peninsula are not going to swallow that nonsense from the Bracks government. They will not be fooled; they know exactly who is to blame, and they are demanding action from this government.

The hidden *Hospital Services Report* — which was kept from public view until after the federal election — shows that public hospital and ambulance services are now in crisis, and the Mornington Peninsula is in the forefront of that crisis. The Minister for Health cannot talk her way out of this mess — a mess that she has created. The time for action is now. On behalf of all those who live on the Mornington Peninsula and in Frankston I call on the Minister for Health to either fix this disgraceful situation or, if she cannot do that, to have the decency to resign and let someone more competent deal with the problem.

Finally, I want to quote from a statement reported in the *Mornington Peninsula Leader* of 5 October by Rosebud paramedic Tim Nolan, who has been in the job for more than 16 years. He said that he feared the cracks in the system would only get worse. The article states:

> It was a horrible situation to know that we had an ambulance available but it sat idle for 14 hours because we had no crew.

The article goes on to further quote Mr Nolan:

> The lack of resources is threatening lives and it's just not good enough.

Mr Nolan is absolutely right. The minister must act on this or, as I said, stand aside. If she or the government can find someone more competent they should let them have a crack at the job. This minister must either fix it or get out.

Ambulance services: Keilor station

Mr SEITZ (Keilor) — The matter I raise is for the Minister for Health, or in her absence the minister at the table, the Minister for Agriculture. It is in relation to the new ambulance station being built in the Keilor electorate. One of the local papers that circulates in my electorate, the *Brimbank Leader*, published an article titled 'Ambo station fears' on 21 September. The article says:

> The new ambulance station in Delahey is under threat over fears staff will be exposed to harmful electromagnetic rays.

I ask the minister to assure the community that this is another one of the trumped-up Liberal games before the election and that no-one is in danger from electromagnetic rays. My office in Sydenham is the same distance from the 3LO radio mast the article talks about — —

An honourable member interjected.

Mr SEITZ — That is what they are talking about. If one considers all the mobile phone masts and antennas across Melbourne, they would justify greater fears of electromagnetic fields. This radio station has been talked about by the Liberal machine for years. Every now and then someone brings the transmitter station up in the media and starts scaremongering about it. I agree the transmitter station should be shifted. During the federal election campaign the Liberal Party supporters should have urged the federal government to shift it out of the Sydenham area, because it is now surrounded by suburbia. The land is left to waste, with sheep and horses agisted on it, which is totally unsuitable for the community and the housing surrounding it.

The talk about electromagnetic fields affecting the ambulance station — when there have been people living around the area for a long time and it has been checked and demonstrated time and again to be an absolute nonsense — is similar to the talk about the high-voltage power cables that go through my electorate and the further ones proposed to be installed. Again, they are trumped-up scaremongering tactics, and I hope the people in my electorate and in the western region generally do not fall for those sorts of traps.

I ask the minister once again to reassure the community of the safety of this radio transmitter in this area. It presents no danger now or in the future. However, now that the federal coalition has won in Canberra, it should shift that radio station, because I am led to believe it has sold the land the radio transmitter station sits on. Perhaps it should address its energy to removing it from the area and improving the site.

Aged care: Kerang facility

Mr WALSH (Swan Hill) — I seek an urgent commitment from the Minister for Health to the master planning process that will deliver capital improvements to Kerang District Health's residential aged care facility, Glenarm. I draw her attention to the long delays — more than three years — that have prevented the capital works planning process for Glenarm from following its proper course. By March 2002 Kerang District Health had prepared a service plan for consideration by the Department of Human Services, which outlined a number of recommendations. Discussions have been ongoing, but Kerang District Health has failed to get a single commitment from the department that would allow it to embark upon the

master plan. There is a considerable human cost to these bureaucratic delays.

Glenarm is currently home to 30 residents receiving high-level residential care. Of the 30 elderly residents, more than half — 16 — share a room with 3 other people. This communal living gives them no privacy and little personal space. In addition, all 16 residents must cross public corridors to use the toilets and the bathroom facilities. No-one would like having an elderly relation living permanently in a four-bed room with a small chest of drawers and a tiny cupboard for all their well-loved possessions.

Surely our senior citizens who have contributed to the community all their lives should not have to eke out their last days in a small space where the only privacy is conferred by a curtain. Proper care of these residents is made more difficult for the staff by the lack of space available in which to manoeuvre wheelchairs, walking frames and breathing apparatus.

As the minister must be well aware, the commonwealth aged care building certification process will require major changes to this facility by 2008. By that time ensuites in all rooms will become a minimum standard and there will be restrictions on how many residents can be housed in one room. The Glenarm building will almost certainly fail to meet the new standards. A further issue raised by the service plan is the need for dementia-specific accommodation within Glenarm. From every perspective the need for certainty in the Glenarm capital planning process has become urgent.

I ask the minister to give the go-ahead to the Kerang District Health service to commence the master planning process so that residents of Glenarm will no longer be housed in inferior accommodation without the space or privacy they need.

HMVS *Cerberus*: gun restoration

Ms MUNT (Mordialloc) — My adjournment matter is for the action of the Minister for Planning. I recently received a letter from a group known as the Friends of *Cerberus* calling for action and funding to save the *Cerberus* at Half Moon Bay. A colleague in another place, Noel Pullen, a member for Higinbotham, has met with this group and made vigorous representations on their behalf. The *Cerberus* sits in his electorate. HMVS *Cerberus* was purchased by the former Sandringham council and scuttled at Half Moon Bay to form a breakwater for the beach. *Cerberus* is a unique maritime treasure. She was owned by the Victorian colonial government, and at the time was an innovative warship whose task it was to protect Port Phillip Bay from enemy invasion.

She was launched in 1868 and she was cutting-edge technology. She incorporated a number of firsts, such as being the first British warship to be designed without a sail. She served Victoria for over 50 years in active service and was in fact the last flagship of our Victorian navy. She has fallen into some disrepair now and may even collapse. Her turrets may fall through her decks. Many years ago I would jump off her and swim around her and walk around her decks. She was still in pretty good shape back then. She was a great playground for us kids. She had big signs on her telling us to keep off and not to go anywhere near her, but we had a good time playing on her and diving from her.

However, she is in desperate trouble now. The funding required to restore her would be close to $5.5 million. I think it is a shame considering her historical importance to Victoria that she was not restored years ago when she was still in reasonable shape, but that time has probably passed, unfortunately.

The Friends of *Cerberus* have applied to the Heritage Council for $80 000 for the removal of the four guns from her decks. They each weigh around 18 tonnes, so they are fairly hefty. I call on the minister to fund the required $80 000 so that this work can be done to save the guns on the *Cerberus* before it is too late.

Patterson River Secondary College: funding

Mr PERTON (Doncaster) — I raise a matter on behalf of the school council of Patterson River Secondary College. The school council is frustrated with the bureaucratic process attached to master planning. The school council is frustrated with the inability of the process to provide the types of facilities required at Patterson River Secondary College. The action I seek from the Minister for Education Services is for her to order her public servants in charge of facilities to provide flexibility and funding to build permanent buildings needed to house the school's students.

Early in 2003 the school received notification via the member for Carrum that the school was to receive a $3 million capital upgrade. This was promised to be completed in the life of this government. In December 2003 a project facilitator was appointed to assist the school in developing an upgrade plan. The company is Davis Langdon Australia, and the project manager is John Brennan.

The school council was then required to produce an educational specification which outlined the goals and targets of the school, locality, student enrolments and projections to 2007, school organisation, curriculum and other issues. From this the master plan was put out to tender and architects selected. Gray Puksand was appointed. The school council and community were excited at this stage about the prospect of not only upgrading existing buildings but also being able to provide much-needed new spaces to cater for innovative teaching in flexible learning spaces.

Members of the school council attended a project review and evaluation panel meeting at 2 Treasury Place chaired by Doug Harnetty, manager, project development and infrastructure branch, on 16 August, where plans were tabled showing an upgrade of rooms and the redevelopment of an area to create a much-needed year 7 learning centre.

Three million dollars was still being mooted with special factors outside of the $3 million — the special factors being infrastructure upgrades such as fire and water services. The school community was happy with this, especially as in a school of this age a large amount of money could be used in these areas alone. As the project has continued the council has become more and more frustrated by the bureaucratic restrictions placed on the project. The major restriction is the school's enrolment as projected by the department, which puts it in the 825 band; therefore it is only entitled to permanent buildings to accommodate that number.

The absurdity of this is that the college has had over 1200 students for the last seven years and has projected figures of 1050 by 2007. The overflow of students is housed in 21 relocatables. The square meterage requirement attached to student numbers has meant that what should be the upgrade of existing buildings and the provision of a new space is now limited to an inferior design solution that fits within its entitlement limits.

There are many factors that the school council wants taken into account. It wants the minister to get down to this. Why am I raising this? The member for Carrum could have raised this, but she has thrown up her hands and basically done what the bureaucracy has told her to do. The last time she mentioned this school in Parliament was in a speech about school bands some three years ago. She has failed to stand up for this school community and should be condemned for her inaction. I hope the minister — —

The ACTING SPEAKER (Mr Nardella) — Order! The member's time has expired.

Dental services: Bellarine

Ms NEVILLE (Bellarine) — I raise a matter for the attention of the Minister for Health, and I ask her to urgently provide additional resources for public dental care in Bellarine. We know that many Victorians cannot go to dentists because they cannot afford it. Dental health should not be a luxury. We know that oral disease has an enormous impact on the economy through lost working days, and that has an enormous impact on the overall health of our community. Poor dental care means pain, inconvenience, poor health, embarrassment and discrimination for those people who are unable to have their dental health needs met.

I am aware of the strong commitment the Bracks government has to improving access to public dental health services for low-income earners. In our first term we committed an additional $40 million to the system, and we committed an additional $20 million in this term. This has enabled us to treat an extra 31 000 people compared to those being treated in 1998–99 under the former Kennett government — an increase of 26 per cent.

We have also ensured that all patients requiring emergency treatment are seen within 24 hours. Overall there has been an increase of 27 per cent in community dental chairs. These are great achievements, particularly in the context of the abolition of the commonwealth dental health program in 1996 — a cut of $27 million in annual funding for public dental services in Victoria. Since then waiting times have continued to increase despite the fact that the constitution clearly provides this as a commonwealth responsibility.

In my electorate I have two key providers of public dental services — Bellarine Community Health, which provides services to residents in Queenscliff, Point Lonsdale, Ocean Grove, Drysdale, Clifton Springs, Portarlington, St Leonards and Indented Head; and Barwon Health, which through the Newcomb community health service provides services to residents of Newcomb, Whittington, Leopold, St Albans Park and Moolap. Waiting times for non-urgent services have continued to grow and are now two to three years.

I was pleased to see the Bracks government continue its commitment to public dental services with the commitment of an additional $97.2 million in the May budget. This is a significant investment and an historic allocation. We will see an extra 131 000 concession card holders treated, and $39 million will ensure that children have access to dental health care. However, it is essential for the dental needs of residents in my

electorate that they have access to their share of this additional money.

I ask the minister to urgently provide a share of this money to Bellarine Community Health and Barwon Health to ensure residents who have substantial dental care needs are treated as quickly as possible.

Kew Cottages: site development

Mr McINTOSH (Kew) — I wish to raise a matter for the attention of the Minister for Environment. It is about the forthcoming application to list a number of historic buildings on the Kew Residential Services site, some of them dating back to the 1880s. The action I seek from the minister is that he join with members of the Kew community, the Kew Cottages Parents Association, the Boroondara City Council and state and federal members of Parliament in supporting the application before the Heritage Council.

Recently I attended the Kew Cottages Parents Association's annual general meeting, where Louise Godwin, the executive officer of the association, and Willys Keeble, a heritage architect, gave a fascinating insight into the history of not only the buildings but the whole area extending from Kew Cottages across the Yarra River and the Eastern Freeway to the Thomas Embling facility, including all the land which now takes in the Studley Park golf course and the former Willsmere hospital site. All this land was reserved in the 1860s for the treatment and care of the mentally insane. To use the language of the day, the land was reserved as a 'lunatic asylum'. It is not insignificant that this large parcel of land was eventually incorporated into Yarra Bend Park. At the time Kew Cottages was considered to be a very modern and enlightened facility, way ahead of its time in the treatment of people with psychiatric disorders and mental disabilities.

The Kew Cottages site has a number of original buildings, one of which dates back to 1887. Importantly these buildings are the remnants of a type of cottage development in Victoria that is located nowhere else. Added to this, a well-researched and extensive botanical survey shows that there are a large number of heritage trees in the vicinity of these original historic buildings. The power of a local community working with politicians at all levels was demonstrated earlier this year, when together with the Boroondara council, members of the Kew Historical Society and members of the Kew Returned and Services League who were concerned about the possible relocation of the Kew war memorial, I was able to attend a hearing of the Heritage Council and ensure the site would be preserved in its current location under the provisions of the Heritage Act.

I am opposed to any unwarranted and unwanted redevelopment of Kew Cottages. I certainly support choice for the residents of Kew Cottages and their families. I do not believe the surplus land should be sold off. Rather it should be preserved for future generations of Victorians as an addition to Yarra Bend Park. Finally I am opposed to any high-rise, high-density development in that area, which would have a detrimental effect on the local community.

I am certainly not asking the minister to usurp the functions of the Heritage Council, but I am asking him to add his weight and authority and that of the state government to help ensure we preserve this — —

The ACTING SPEAKER (Mr Nardella) — Order! The honourable member's time has expired.

Depression: services

Mr MILDENHALL (Footscray) — In Mental Health Week I raise a matter for the Minister for Health and ask her to support and advocate for the highest possible access to depression and lifeline services.

Greg Maddock, the former chief executive officer of Energex in Queensland who tragically took his life three weeks ago, was a high achiever. I started work alongside him in local government in mid 1977. He was a colleague and a mate. He quickly became a leader in his field and held senior leadership roles with the Essendon City Council before becoming the chief executive officer of the councils of Wangaratta, Prahran, Stonnington and Sydney, for the Olympics. He was then headhunted for the Energex job in 2001. He was also a leader on the sports field and represented three states in senior hockey as well as being captain-coach of the Essendon state league hockey team.

His legacy in local government in Victoria includes a wide range of innovative community facilities, commercial enterprises such as the IBM expansion in Wangaratta and activities such as the jazz festival in Wangaratta, and there was his oversighting of the Olympics in his city of Sydney. He was widely regarded for his drive, strategic leadership and results.

Greg Maddock was under intense public scrutiny as a result of electricity supply controversies and unfounded allegations of personal indiscretions that dominated the Queensland media. Compounded by ongoing health issues that required pain management, Greg slipped into bouts of depression. He took his own life when it

seemed the public pressure was about to intensify again. Greg made a significant contribution to his state and his nation. I was part of a recent memorial service in Melbourne. Others were held in Sydney and Brisbane. At the age of 50 he had a lot more to give, particularly to a loving family.

There is a syndrome of middle-aged men in every state not being able to seek and find the assistance they need in times of crisis and depression. Suicide too often is the result of a failure to make a link to help. I raise the matter with the minister to exhort her to continue to focus on and guide depression services in a way that provides maximum access, availability and effectiveness in an attempt to reduce this all-too-common occurrence.

There have been a number of articles in the *Age* and other publications about this issue, which is emerging as a significant social problem in our community. I raise it as a general policy issue that has very obvious personal implications.

State Emergency Service: Warrnambool headquarters

Dr NAPTHINE (South-West Coast) — The issue I wish to raise is for the attention of the Minister for Police and Emergency Services. I call upon the minister to provide the resources to assist the Warrnambool State Emergency Service to move into new headquarters. Currently the SES operates out of headquarters that can only be described as inappropriate, unsafe and absolutely unusable in the future.

It has a litany of problems, including an asbestos roof which has cracks and holes in it. The gutters need replacing, but the SES cannot get a plumber to replace them because of the dangerous situation with the asbestos. The roof has numerous leaks, and water runs down the back of the roof into the electrical wiring system so that the volunteers have to turn off all the power to the building during storms. The State Emergency Service is the primary agency to respond to storms, and it cannot even operate its own headquarters during storms because of the water damage to the building's electricity supply.

There is a situation where there is severe rust in the general purpose rescue truck because it is stored in the garage when it is not in use and the roof leaks so much. The SES in Warrnambool would like to replace the general purpose rescue truck, but the new truck that would be the replacement vehicle cannot be purchased because it will not fit into the garage at the SES headquarters. When the unit sought advice about lifting the side of the garage and replacing it with a new roller door, the tradespeople said they could not do that because they would have to eat into the asbestos roof and that would be at an enormous cost and enormously dangerous.

The Warrnambool SES is magnificent organisation of volunteers that does a great job of responding in a whole range of emergency situations. Whether it is storms, people lost at sea or road accident rescue, it is made up of a very dedicated and committed band of volunteers who do a fantastic job. It has also raised a large amount of funding to ensure it has a full range of equipment to augment the equipment supplied by the state government, yet it operates out of a headquarters which is unsafe and totally inappropriate for its current purposes. It needs a new headquarters, but it needs the state government to assist in delivering that new headquarters.

The state government has assisted SES units at Ballarat and Woodend, yet when this was raised in the Warrnambool *Standard* a spokesman for the minister said it had nothing to do with the state government. I do not think the government's washing its hands of and fobbing off the Warrnambool SES is appropriate. I call on the minister to personally get involved and support these SES volunteers with a new headquarters.

Tabcorp: racing results

Mr ROBINSON (Mitcham) — I raise an issue tonight for the Minister for Racing. I raise this on behalf of the many punters in the electorate of Mitcham and across the state of Victoria who are getting quite excited at this time of the year. I am seeking from the minister his direction to the Office of Racing to check that the requirement to display complete and accurate race results is properly met by Tabcorp and by Pubtab. This is a serious issue at Spring Racing Carnival time, particularly with the Caulfield Cup on Saturday, followed by the Geelong Cup next week — —

Dr Napthine interjected.

Mr ROBINSON — I will come to that in a minute. We have the time-honoured Geelong Cup, then onto the Cox Plate, Derby Day, Melbourne Cup and Oaks Day. It goes on and on. The Spring Racing Carnival is a time of great public interest in horse racing. It is almost an ecumenical thing. Today during question time I offered to the member for Caulfield — she will get into more trouble out of this than I will — my gratuitous advice as to a tip for the Caulfield Cup. For the record, I am happy to say that I was able to offer to her the

selections of Elvstroem, which I think will run very well on Saturday, and as an outsider, Yakama. I hope for her sake and my sake that those horses run very well. The issue I am raising today is timely.

Dr Napthine interjected.

Mr ROBINSON — Only if it gets a start — it is Yakama! I should have thrown that qualification in.

I raise this issue at this time noting that there has been some recent commentary, including in today's *Herald Sun,* about the issue of wagering. I understand there was a Senate candidate who ran on Saturday who some years back put out a pamphlet proposing a call to prayer so we could spot Satan's strongholds in the areas we were living in. He listed gambling places as strongholds. In the eyes of some I suppose that my fondness for a punt makes me a sinner. When it comes to punting, Lord knows I have sinned. There is no end to my sinfulness when it comes to a punt. But the only satisfaction I have is that, if they are going to take me, tie me to a stake and burn me, I will at least know that they have used the members for South-West Coast, Mornington and a few others in this place for kindling. That is the only satisfaction I will get.

The lack of accurate information came to my notice a while ago when upon one of my frequent visits to Pubtabs to check whether I had a collect or not I noticed that the Pubtab records were incomplete. Pubtab is required by law to display written race results but on a number of occasions in respect of a number of races it only listed the first and second horses on the printout. That is incredibly frustrating for punters.

It may have been a technical fault at the hotel's end or a Tabcorp's end. I am not sure. It may have been only temporary and since resolved. But I think in the interests of our great Spring Racing Carnival and in the interests of all punters across the state we need to have the Office of Racing check this out quickly.

Responses

Mr CAMERON (Minister for Agriculture) — Acting Speaker, 10 honourable members have raised matters for ministers, and I will refer those matters to them.

The ACTING SPEAKER (Mr Nardella) — Order! The house is now adjourned.

House adjourned 10.31 p.m.