PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

14 May 2002

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By authority of the Victorian Government Printer

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FIFTY-FOURTH PARLIAMENT — FIRST SESSION

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The Hon. S. P. BRACKS

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

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

Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition:
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Leader of the Parliamentary National Party:
Mr P. J. RYAN

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

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Languiller, Mr Telmo	Sunshine	ALP	Wilson, Mr Ronald Charles	Bennettswood	LP
Leigh, Mr Geoffrey Graeme	Mordialloc	LP	Wynne, Mr Richard William	Richmond	ALP

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

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TUESDAY, 14 MAY 2002

Tuesday, 14 May 2002

The SPEAKER (Hon. Alex Andrianopoulos) took the chair at 2.05 p.m. and read the prayer.

QUESTIONS WITHOUT NOTICE

Road safety: motorcycle levy

Dr NAPTHINE (Leader of the Opposition) — My question without notice is to the Premier. Will the Premier adopt Liberal Party policy — —

Mr Batchelor — You're misleading the house — you haven't got any policies!

The SPEAKER — Order! The Leader of the House will cease interjecting forthwith.

Dr NAPTHINE (to Mr Batchelor) — You've got no major projects!

The SPEAKER — Order! Similarly the Leader of the Opposition.

Honourable members interjecting.

The SPEAKER — Order! This is not a very good start to question time. I ask the Leader of the House and the Leader of the Opposition to cooperate.

Dr NAPTHINE — My question is to the Premier. Will the Premier adopt Liberal Party policy and — —

Honourable members interjecting.

Dr NAPTHINE — I will start again. Will the Premier adopt Liberal Party — —

Honourable members interjecting.

Dr NAPTHINE — Will the Premier adopt Liberal Party policy and — —

Honourable members interjecting.

The SPEAKER — Order! The Chair is getting increasingly weary of the behaviour of members on the government benches.

Dr NAPTHINE — So are the people of Victoria, Mr Speaker!

Will the Premier adopt Liberal Party policy — —

Honourable members interjecting.

The SPEAKER — Order! I ask the honourable member for Narracan to desist from making those sorts of noises.

Dr NAPTHINE — My question is to the Premier. Will the Premier adopt Liberal Party policy and drop Labor's new unfair $50 tax on Victorian motorbike riders?

Honourable members interjecting.

The SPEAKER — Order! I remind the house that it is disorderly to applaud in that way, and that includes people in the galleries.

Mr BRACKS (Premier) — I am pleased that the Liberal Party, as enunciated by the Leader of the Opposition, has indicated that it has a new policy. His new policy is to take off the $50 levy, which will go towards the safety of motorcyclists in Victoria. He would take that off!

The Leader of the Opposition will soon have his first chance on this matter. He went outside and made a claim that if the Liberals got into power they would take it off. He will get his chance, because if he opposes the budget he can take it off! But he will support it; he will vote for it. I can guarantee the Leader of the Opposition will support this measure.

Honourable members interjecting.

The SPEAKER — Order! Earlier I warned the government benches. Now I say the same to the opposition benches: that level of interjection is not acceptable.

Mr BRACKS — I can expect that, given this newly enunciated policy, the opposition will move an amendment to the budget and have it debated, because that will be their first chance to stand up on this matter. Let me go to the facts. The $50 levy will go straight into motorcycle safety, into training and public education, including campaigns on motorcycle safety directed at both motorcyclists and at motorists. If you look at the figures, you can see that they are overwhelming. Regrettably motorcyclists are already 30 times more likely to be killed or seriously injured on our roads than car drivers.

Mr Maclellan — On a point of order, Mr Speaker, the Premier is reading his answer. I ask that you direct him not to read it or to make the paper available.

Mr BRACKS — On the point of order, Mr Speaker, I am happy to respond to the honourable member for Pakenham. I was reading from copious handwritten

notes and details, but I was not quoting from a document.

The SPEAKER — Order! On the point of order raised by the honourable member for Pakenham, the tradition in this house is that members do not read their speeches. I ask the Premier to adhere to the tradition of the house.

Mr BRACKS — Regrettably 27 motorcyclists have been killed already this year, and that represents some 20 per cent of the total Victorian road toll. The government is resolute about doing something about motorcycle safety. There used to be a time in this Parliament when there was bipartisan support for an attack on the road toll. There used to be a time — —

Mr Leigh interjected.

Mr BRACKS — Whether it has been the Wipe Off 5 campaign, speed tolerance or this new measure, we have seen a desperate attempt from the opposition to wreck that bipartisanship.

Mr McArthur — My point of order, Mr Speaker, relates to the simple matter of debating. Will the Premier abolish this iniquitous tax or is he going to keep it going?

The SPEAKER — Order! I do not uphold the point of order that the Premier was debating the question. He was providing information to the house.

Mr BRACKS — This $50 levy will go into motorcycle safety and training, including an awareness campaign for motorists. It is a very important campaign to save lives and to reduce accidents, and the government is absolutely committed to it — even if the opposition is not.

Kendell Airlines: sale

Mr RYAN (Leader of the National Party) — I refer the Premier to the fact that the administrators and the federal government are close to finalising a deal to sell Kendell Airlines, which operates services to Portland and Mildura, to Australia-Wide Airlines Ltd, and further, that if this sale does not proceed soon Kendell may cease operating. Can the Premier inform the house if the state government has offered any assistance for the completion of this sale?

Mr BRACKS (Premier) — I welcome the question from the Leader of the National Party. He is correct: it is very close to a decision by the Ansett administrators as to whether or not they accept purchasing offers for Kendell Airlines.

The Department of Innovation, Industry and Regional Development and the minister responsible have had discussions with the administrators on this matter. They will continue to have those discussions. This does not involve just one state, but every state in Australia. Of course, there will be some cooperation between the states in this matter.

We are yet to see the final business case from the administrators on this. Once we see that we will examine on a viability and cost-benefit basis whether or not this has a long-term sustainable future for our state.

Melbourne Cricket Ground: redevelopment

Ms BEATTIE (Tullamarine) — Will the Premier inform the house of recent developments concerning the Melbourne Cricket Ground redevelopment, particularly any obstacles to this critical project being completed in time for the 2006 Commonwealth Games?

Mr BRACKS (Premier) — As most honourable members would know, the $400 million-plus redevelopment of the Melbourne Cricket Ground (MCG) forms an integral and important part of the conduct of the Commonwealth Games in 2006, and it was in the bid document signed off by the then opposition and now government. This bid document has received bipartisan support at both state and federal levels.

The funding arrangement of the MCG redevelopment has been secured through a contribution from the Australian Football League, a contribution from the Melbourne Cricket Club and a guarantee to the Melbourne Cricket Ground Trust, which has been given in a similar way to the guarantee which was given on the Great Southern Stand. Also the federal government in last year's budget put in a commitment of $90 million, and I was one of the first to congratulate the federal government for that contribution. I welcomed it and I still welcome it as an important contribution to the Commonwealth Games.

The negotiations on the construction of the MCG have been going on for some nine months. They have been going on very well, unencumbered by any other arrangements and with the desire from the Commonwealth Games Organising Committee, the MCG trust and the steering committee of the MCG trust to simply get on with the job of building the Melbourne Cricket Ground, selecting the tender and then getting on with completing the project.

In the last two weeks, though, encumbrances have been put in the way since the federal Minister for

Employment and Workplace Relations decided to take a personal interest in this matter. The minister decided that not only would the $90 million be applied to this project but that he would have special and unique conditions on it which no other state or territory or other administration would have on these arrangements. Despite the fact that he is not, in this case, the responsible minister for this project, he has nevertheless decided that over and above the existing laws he will put other conditions on the project, to the extent that the contractors are saying that the conditions which are being put on by the employment and workplace relations minister make this project unable to be completed — and unable to be undertaken in the first place.

The Victorian government will apply to the letter these special and unique conditions, which are over and above the federal workplace relations laws, to the absolute completion of the project. What the federal minister wants are some special, unique, separate and different conditions, which he knows would mean that the project of the contractor could not go ahead.

There is still the opportunity for this project to proceed as it was proceeding over the last nine months, which is the way that the MCG trust, the MCC members, the AFL and indeed the state government want it to proceed.

We want the federal government to simply live up to its commitments to contribute the money, and we will apply to the letter the federal workplace relations industrial relations laws. If that is not the case, I can indicate to the federal government — and I will be writing to the Prime Minister and phoning him on this matter — that we will still go ahead. If the federal government does not contribute, this project will still go ahead in Victoria.

That would be regrettable because it would mean that the federal government is turning its back on the Commonwealth Games in 2006. I would have thought that the federal government would want to be associated with both the MCG redevelopment and the 2006 Commonwealth Games. I would have thought that they would have stuck to what they said they would do instead of allowing a frolic — and that is what it is — of the workplace relations minister to have his own head in being able to pursue this particular ground as an industrial relations test case that he wants for his own profile.

This should be above politics and industrial relations. This is about the peoples' ground; it is about completing the MCG. We want to complete it; he wants a political and industrial battle. We will not tolerate that. It is time to go back to what the federal government said it would do. If it does not, the ground will be completed anyway and the commonwealth government will not have made a contribution to the Commonwealth Games!

Crime: statistics

Dr NAPTHINE (Leader of the Opposition) — I refer the Premier to Labor's pledge in 1999 to cut crime in Victoria by 5 per cent. Is it not a fact that since the election of the government police reports show that in all major crime areas, including aggravated burglary, robbery, assault and theft of motor vehicles, crime has significantly increased?

Mr BRACKS (Premier) — I thank the Leader of the Opposition for his question. The only thing that was cut under the previous government was police numbers — that is all they cut! We have among the lowest crime rates comparatively of any state in Australia. It is because we have employed 800 net more police on the job. We have the safest streets in the country and we are comparatively the safest state of any in the commonwealth.

Marine parks: establishment

Ms LINDELL (Carrum) — Will the Premier advise the house of recent developments concerning the government's plans to introduce 13 marine national parks and 11 marine sanctuaries to protect Victoria's marine environment for future generations?

Mr BRACKS (Premier) — I thank the honourable member for her question. Can I say that this is a very pleasing and happy day for the Parliament of Victoria, because the marine parks legislation will come into the house this week. This is after 10 years of work by the Environment Conservation Council and one year of debate in this Parliament about the original legislation.

I am very pleased that the legislation that will come before the house will provide for 13 different marine national parks and 11 different sanctuaries, which will be a world first and will mean that a bit over 5 per cent of the whole of our marine waters will be marine national parks. That is a great benefit for our state and internationally.

I want to congratulate all those groups and organisations that have stuck with this project over the last couple of years. Those many people have worked many hours on developing the project. We will be known internationally as one of the best states for

preserving our marine environment, and I look forward to this legislation coming into the house.

Schools: funding

Ms DAVIES (Gippsland West) — I have a question for the Minister for Education and Training. Several very rural primary schools in Cardinia shire lost their rurality funding because they fall on the wrong side of the government's arbitrary metropolitan statistical division line. What does the minister intend to do to address the specific disadvantage suffered by students at those affected schools relative to other rural schools?

Ms KOSKY (Minister for Education and Training) — I thank the honourable member for her question which relates to rurality funding for schools around Victoria. Previously some schools in the metropolitan area have been receiving rurality funding. The previous Minister for Education approved a new metropolitan statistical division (MSD) rurality policy which will provide 50 per cent of normal rurality funding to all 45 schools that meet the enrolment criteria and are located within the MSD boundary but outside the Melbourne, Cranbourne, Melton and Sunbury urban areas. I understand also that transition arrangements were put in place to increase the rurality funding commenced in 2001 for those schools.

All schools around the state are better off as a result of the budget that came down last week. All schools benefited from the additional $550 million on top of the additional funding the Bracks government had put in previously. All schools around the state will benefit from that investment the government has made and from the 925 additional teachers it has provided. Schools in the honourable member's electorate will be benefiting from those resources, as will schools around the state. I am happy to respond to the honourable member in more detail in writing.

Crime: statistics

Mr WELLS (Wantirna) — I refer the Premier to actual police reports that show there has been an increase of an extra 25 aggravated burglaries committed per week against Victorian families — an increase of 106 per cent — over the past two years under his government. Given that the Premier promised to cut crime, will he now acknowledge that the violent crime of aggravated burglary is out of control in Victoria?

Mr BRACKS (Premier) — As I have indicated, Victoria has amongst the lowest crime rates of any state in Australia in comparative terms, and that is because the government has ensured that it has redressed the problems created by the previous government by putting on 800 extra police and giving police the extra equipment and resources they required.

If you look state by state and territory by territory, Victoria has among the lowest crime rates of any state or territory in Australia.

Marine parks: establishment

Mr TREZISE (Geelong) — Will the Minister for Environment and Conservation provide the house with details of the proposed compensation arrangements and other measures to assist those who will be affected by the creation of marine national parks and sanctuaries along the Victorian coast?

Ms GARBUTT (Minister for Environment and Conservation) — I thank the honourable member for his question and for his ongoing commitment to and support of the creation of marine national parks. The government is very proud indeed to be able to announce that it will be bringing in a bill this week to create a world-class system of marine national parks right across the Victorian coast — 13 marine national parks and 11 marine sanctuaries.

In developing the legislation the government wanted to consult widely with affected groups and interested people in the community. It put out a proposals paper back in March outlining exactly what it intended doing and it supported that with an exposure draft of the bill giving greater detail, of course, about what it was proposing to do, which it presented for consultation. This government is committed to consultation. It believes in doing it and it wants to do it thoroughly, and that is what it has done. Since then, the government has listened and has made some sensible changes.

The government always recognised that there would be some small impact on the fishing industry but that in the long term members of the industry would be able to make the adjustment — that they would be able to find the fish they are entitled to outside the proposed marine national parks. Following consultation with all sorts of groups — the industry, conservationists, recreational anglers, and the Liberal Party — we made a number of sensible changes to the legislation. They include — —

Mr Steggall interjected.

Ms GARBUTT — It is interesting that a member of the National Party comments, because it made absolutely no input into the process at all, no comment on the exposure draft or on the proposal at all — it was absolutely silent on the suggestions!

I will outline some of the changes that have been made in response to the consultation. There will be an extension of the compensation period for eligible fin fish licence-holders from one to three years — that will bring them into line with what is proposed for rock lobster fishers. Fishing charter boat operators will be eligible for increased costs, and there is a provision for advanced payment in the case of financial hardship so that licence-holders no longer have to wait for the full 12 months. We have also made some minor but commonsense changes to the boundaries of parks at Discovery Bay, the Twelve Apostles, Port Phillip Heads, Corner Inlet, Cape Howe and Ricketts Point marine sanctuary.

I stress that these are sensible changes and do not undermine the environmental integrity of the Environment Conservation Council recommendations; we have maintained those. Compared to the 2001 legislation, the new legislation will also set up an independent assessment panel to assess and pay compensation, and an independent appeals tribunal to allow appeals against the assessment panel's findings. By including those compensation arrangements in the bill, there is no need for a section 85 provision, so it is a very sensible and fiscally responsible approach to compensation.

We will, of course, also be working with regional communities to help them make the most of those opportunities — and there will be many opportunities in tourism, recreation, and scientific research, as well as in running the marine parks themselves and providing extra enforcement.

The legislation is a world first, and I look forward to bipartisan support when it is introduced. It will be a proud time for all Victorians.

Crime: statistics

Mr WELLS (Wantirna) — Noting that police crime reports indicate that an extra 192 vehicles per week are being stolen in Victoria under this government, I ask: given that Labor promised to cut crime, when will the Premier do something to reduce the Victorian car theft plague?

Mr BRACKS (Premier) — I reiterate that the measures the government has taken — increasing the police numbers in the state and providing the police with better equipment and support — have reduced crime in this state compared to other states in Australia. We have one of the lowest crime rates of any state or territory government in the country.

Agriculture: disease and pest control

Mr MAXFIELD (Narracan) — I have a question for the best Minister for Agriculture this state has seen in many years. Will the minister advise the house what action the government is taking to protect Victoria's crucial agricultural exports from the recent disease outbreaks?

Mr HAMILTON (Minister for Agriculture) — I thank the honourable member for his question and for his great interest as a rural member of Parliament in all matters pertaining to agriculture and agribusiness in this state.

Honourable members will be aware of two very serious disease outbreaks in recent weeks, one an outbreak of anthrax in Tatura and the other an outbreak of Newcastle disease in western Victoria. These are both very serious outbreaks, and it is important for industry, government and individual farmers to be able to respond, and respond quickly.

All honourable members will be aware of the cost of the outbreak of foot-and-mouth disease in Britain. It cost about $30 billion to control, and it cost that much because there was a very slow response by the government and a very poor method of detecting and following the path of that disease. I am very pleased to advise the house that with both of these disease outbreaks in Victoria the response of the government and the department has been absolutely spot on. In the case of the outbreak of anthrax one cow was — —

Mr McArthur — On a point of order, Mr Speaker, this question was asked by the honourable member for Narracan. You would think he would at least be interested in the answer, instead of holding a private conversation at the back of the room.

The SPEAKER — Order! That is not a point of order.

Mr HAMILTON — I know that every member of this Parliament representing a country electorate will be very concerned about these exotic diseases. From his previous occupation the Leader of the Opposition would know how important it is not just for the industry but for individual farmers that these matters are handled properly, correctly and on time.

As I said, disease outbreaks can be very costly. The foot-and-mouth outbreak in Britain cost $30 billion because it was poorly handled at the time, and indeed a lot has been learnt from that episode in the UK. In Queensland, at Mangrove Mountain, an outbreak of Newcastle disease cost the industry something like

$30 million because again it was neither controlled nor isolated. In both Victorian cases government vets have responded quickly. They have detected the disease, isolated it, confirmed it, quarantined the properties and demonstrated clearly that the government's disease control programs work.

Yesterday government vets started the compulsory vaccination of all the cattle on the 80 properties in the Tatura area — about 20 000 cattle in all. That is a significant job, but it is one that we believe — and industry supports us in that belief — should take place because of the previous devastation caused by anthrax in that region.

There has been one outbreak of Newcastle disease on one farm. That farm has been isolated and quarantined, and we believe that will be the only outbreak of Newcastle disease in Victoria. Anyone who has visited any of these properties that conduct intensive agriculture or agricultural production would know of the intense biosecurity measures adopted by the growers, because they are educated to act responsibly.

In this year's budget the government has allocated an additional $4.4 million over four years so that we can again be prepared and able to detect and respond to outbreaks of exotic diseases anywhere in the state.

I am confident that the last couple of actions by government animal health officers and private vets have demonstrated that there has been a great deal of cooperation, understanding and preparation, and very responsible action taken by this government to protect our important animal production industries.

The SPEAKER — Order! The time set down for questions without notice has expired and the minimum number of questions as required by the sessional orders has been dealt with.

Mr Ashley — On a point of order, Mr Speaker, I wish to draw to your attention for consideration an aspect of responses to questions. At the end of her response to the honourable member for Gippsland West, the Minister for Education and Training said she was happy to provide more information in writing, and I think she meant to the honourable member for Gippsland West. I ask you to rule on whether or not it is right and proper that that material, given the nature of question time, should go to all honourable members.

The SPEAKER — Order! The Chair pays particular attention to responses given by ministers. On this occasion I shall examine the record and rule at a later date.

PETITIONS

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

Naval and maritime museum: establishment

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

The humble petition of the undersigned citizens of the state of Victoria sheweth that many naval and maritime museums in Victoria are closing down or being reduced in size.

Your petitioners therefore pray that the Victorian government will foster and support the establishment of a naval and maritime museum, preferably in the Melbourne or metropolitan area.

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

By Mrs PEULICH (Bentleigh) (70 signatures)

Melbourne Maritime Museum: development

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

The humble petition of the undersigned citizens of the state of Victoria respectfully sheweth that:

In view of the longstanding and continuing connection of the city of Melbourne with the sea, the state should reaffirm its strong support for the efforts of the National Trust of Victoria in the development of the Melbourne Maritime Museum. We ask also that the state make sufficient land and finance available for the construction and furnishing of a world-class maritime museum, worthy of the maritime heritage of Melbourne, adjacent to the award-winning barque *Polly Woodside*.

Your petitioners therefore pray that the Premier, the Hon. S. Bracks, and his ministers will implement this request, without delay, for the benefit and education of future generations.

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

By Mr LANGDON (Ivanhoe) (488 signatures)

Laid on table.

PAPERS

Laid on table by Clerk:

Financial Management Act 1994 — Budget Sector — Quarterly Financial Report for the period ended 31 March 2002

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

Baw Baw Planning Scheme — No. C15

Casey Planning Scheme — No. C43

Gannawarra Planning Scheme — No. C2

Queenscliffe Planning Scheme — No. C11

South Gippsland Planning Scheme — No. C4

Yarra Planning Scheme — No. C29.

ROYAL ASSENT

Message read advising royal assent to Building and Construction Industry Security of Payment Bill.

APPROPRIATION MESSAGES

Messages read recommending appropriations for:

Agriculture Legislation (Amendments and Repeals) Bill
Albury-Wodonga Agreement (Repeal) Bill
Casino (Management Agreement) (Amendment) Bill
Environment Protection (Resource Efficiency) Bill
Juries (Amendment) Bill
State Taxation Acts (Further Tax Reform) Bill
Transport (Further Miscellaneous Amendments) Bill

BUSINESS OF THE HOUSE

Program

Mr BATCHELOR (Minister for Transport) — I move:

That, pursuant to sessional order no. 6(3), the orders of the day, government business, relating to the following bills be considered and completed by 4.00 p.m. on Thursday, 16 May 2002.

Crimes (Workplace Deaths and Serious Injuries) Bill

State Taxation Legislation (Further Amendment) Bill

In moving this motion, which contains just two bills, it is important that I explain to the house the government's intentions. In addition to these two bills on the notice paper, it is our intention this week to commence and complete the Electoral Bill, but not by way of reliance upon what is known in the vernacular of the house as the guillotine. Also, this Thursday the house will hear the response by the opposition to the budget. So although superficially it seems a short motion, we have a very heavy and lengthy legislative program this week.

Mr McARTHUR (Monbulk) — The opposition will not be opposing this business program. As the Leader of the House has pointed out, the budget is before the chamber, and debate on that will start on Thursday and run over the next two weeks of sitting. In addition we will also be dealing with the Electoral Bill this week. However it is worth pointing out a couple of things. We are about to see a repeat of this government's sorry performance in every sitting so far of having no legislation at the start and then bringing in an absolute flood of bills towards the end.

During the first three or four weeks of this sitting we had the sorry spectacle of only one, two or three bills being introduced per week. Then last week the government introduced nine bills on the Tuesday and an additional seven on the Wednesday. As a result we are going to have another six bills second-read today. Obviously one is not yet ready, given that there are an additional seven bills listed on the notice paper for their second reading.

We see this again and again in every session, spring and autumn. We see nothing during the first month or two of the sitting and then an unholy rush as it gets towards the end as various incompetent ministers discover that if they do not do something their legislation will not get up. So we see this sad spectacle of a dozen or 15 or 20 bills being presented to the house in a week or a fortnight, with completely inadequate time either for consultation and debate with members of the public or to allow members in this chamber to be fully briefed on the details of the legislation so they get some understanding of the impacts it will have on their constituencies and on the broader community.

Nevertheless the program for this week is manageable, even though we have two very significant pieces of legislation to complete — one by the guillotine and one, hopefully, by agreement, as the Leader of the House put it.

It is also interesting to note that what was referred to pejoratively from 1996 to 1999 as that nasty guillotine is now referred to by the Leader of the House as an administrative method to enable the government to get its legislation through. He talks about it being colloquially referred to as the guillotine. Well, the guillotine is the guillotine, whether he uses it or we use it, and it will never be any different. Let's not beat around the bush: you have been guillotining plenty of legislation, just as we guillotined plenty of legislation. The difference is that you bitched and moaned and groaned about it in public, whereas we realise it is part of the reality — —

The SPEAKER — Order! The honourable member for Monbulk should address his remarks in the third person and through the Chair.

Mr McARTHUR — I am sorry, Mr Speaker, of course you did not do that! He bitched and moaned and groaned about it, and there was a great to do on the public airwaves about legislation being guillotined. But he himself uses it as a weekly method of management. I hesitate to use the word 'hypocrite' in this house, but certainly there are members of the community who regard this as a hypocritical act. They are perfectly entitled to do so, because there is a certain double standard running here.

Getting back to the motion, this business program is manageable. There will be many members who will want to debate the Crimes (Workplace Deaths and Serious Injuries) Bill, just as there will be a number of members wanting to debate the Electoral Bill. I understand there could be a few speakers on the state taxation legislation amendments.

The Leader of the House could well find that one or two members want to make a contribution on the notice of motion under the name of the honourable member for Northcote on the regional strategy plan amendments to the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan. I remind the minister and government members that in the days when the honourable member for Pakenham was Minister for Planning they complained long and hard about any amendment to the regional strategy plan, and that was often debated at great length and with a great deal of enthusiasm in this house by the former member for Richmond, Mr Dollis.

Mr MAUGHAN (Rodney) — The National Party will not be opposing the government's business program. Even though there are only two bills to be gone through before the guillotine, if to that is added the Electoral Bill and the discussion on the budget, I think the house will be fully occupied this week. Many members will want to make a contribution to the debate on the industrial manslaughter bill. It is a very important piece of legislation, and I am pleased that the government has brought it on for debate. We can deal with that bill and dispatch it to the upper house and see what happens there.

The state taxation bill is not a major piece of legislation and should not take too much time. The debate on the Electoral Bill will be very interesting. I am pleased the government is starting the debate on that this week but not subjecting it to the guillotine, so there is no time limit on getting that one through. On Thursday we will be discussing the Treasurer's speech and the budget, and I would imagine every member of the house will want to make a contribution on that.

Again I express concern about what will happen over the remaining two weeks of this sitting of Parliament. I note that we now have 13 bills on the notice paper other than the ones I have mentioned, and another 7 are likely to be introduced this week or next. So we will have to deal with roughly another 20 bills in the remaining two sitting weeks. It is very interesting that we are hearing the same sorts of speeches from the opposition side of the house that we used to hear from the Leader of the House when he was on this side.

Mr Batchelor interjected.

Mr MAUGHAN — I would suggest that the minister think of something original to address the problem, because when he was sitting on this side of the house he used to tell us how much better it would be with the Labor Party in power and how we would not have this bank-up of legislation. But absolutely nothing has changed, except that we are now making the same sorts of speeches that we used to get from government members when they were on this side of the house.

I would just like to see the government, whichever government it is — this time it is the Labor Party — actually introducing legislation, getting it on for debate early and getting it through more efficiently. We were sitting around wasting time earlier in the sitting. But nonetheless we will get through, and as I say, this week will be a good week. There are at least two major pieces of legislation and the budget for members to be dealing with, and I think that is a good workload.

But again I express the view that from our perspective as country members we want to be on the way home no later than 6 o'clock on Thursday evening. We are happy to sit later into the night on Tuesday and Wednesday if that is required, but we will not want to be sitting — —

Honourable members interjecting.

The SPEAKER — Order! The honourable member for Doncaster!

Mr MAUGHAN — I would think that the members on the government side who made a lot of noise about family friendly hours when they were on this side will keep the government in order so that we are not required to sit those lengthy hours. Anyway, as long as we do not sit after 6 o'clock on Thursday the government can be assured it will get cooperation from the National Party in getting its business program through.

Motion agreed to.

MEMBERS STATEMENTS

Parliament: question time

Mr PHILLIPS (Eltham) — I condemn the Bracks government for its absolute misuse of question time over recent weeks. As an individual member sitting up here on the middle or back benches, I do not get a lot of opportunity to interject, but I think the way the Bracks government and a number of its ministers have been using and abusing question time is a blight on us all. It puts the opposition, the minority party, in a very difficult position: we have no option other than to continually interject and raise points of order because of the blatant debating of questions.

It also puts whoever is in the chair, whether it is you, Mr Speaker, or a temporary chairperson like me, in a difficult position. We know you are part of a team and as such have that obligation, but you also have an obligation to be bipartisan in this Parliament. And to have your party continually abusing the system and putting the opposition and you, Sir, under enormous pressure is an absolute disgrace.

I also want to criticise the Independents, who are all the time running out there holier than thou, often walking out of this place in disgust. But rather than walking out in disgust, they should be doing something about it. Question time never used to be like this under the previous Kennett government.

Honourable members interjecting.

Mr PHILLIPS — It always used to be accountable and responsible in answering questions, and I think government ministers should be held to account.

Wellington Secondary College

Mr LENDERS (Minister for Finance) — I draw the attention of the house to some wonderful events regarding my electorate of Dandenong North that happened on Anzac Day last month. I draw the attention of the house to a wonderful experience that affected the Wellington Secondary College on the border of Mulgrave and Springvale North in my electorate whilst honourable members were attending a number of the Anzac Day services that were held in Dandenong and Noble Park on that day.

On that day 12 people from the school community went to the Anzac Day commemoration at Gallipoli. There were six students: Ali Ali, Sam Williams, Zeynep Erenli, Bahire Suleyman, Kade Wilsmore and Chris Haywood; and John Coulson, the school's principal; Hugh Blaikie, the assistant principal; two former students, Mehmet and Saadet Eskin; and two parents, Gary Wilsmore and Bob Haywood.

Honourable members who are familiar with names will be aware that a number of the names I have mentioned are of Turkish heritage. A great number of people went across to Gallipoli from this community. That is significant because 46 per cent of the people in my electorate of Dandenong North were born overseas. This was a reaffirmation among this very multicultural community of the powerful symbols of Australia: Anzac Day and multiculturalism. I commend the school on its initiative.

Rural and regional Victoria: sport and recreation funding

Mr JASPER (Murray Valley) — I express concern for the future of many athletic meetings conducted in country Victoria due to lack of state government support. The Wangaratta athletic carnival has been operating for over 80 years and the Burramine athletic carnival at Yarrawonga has been conducted for over 50 years. Both provide foot-running and cycling events, with excellent entertainment and competition. Sponsorship over the years has been provided from a range of business and industry with major sponsorship in recent years from the Victorian Health Promotion Foundation. Vichealth initially withdrew support for those two carnivals which were held earlier this year. After extensive representations from myself and others, it agreed to continue sponsorship this year but will not guarantee funding for future years.

The two athletic carnivals at Wangaratta and Yarrawonga are essential events for the calendar of competitions for athletes that lead up to major events at Bendigo, and particularly the Stawell Gift. The Victorian government has recognised the importance of the Stawell Gift by becoming a major sponsor of it. However, other athletic meetings around country Victoria are essential parts of the foot-running calendar and yet receive no financial support from the Victorian government.

It is crucial and critical that serious consideration be given to direct government financial support for the athletic carnivals at Wangaratta and Yarrawonga because their continued operation is now in question. I have been involved with both sports clubs, so I understand that support is crucial for the survival and the future of those volunteer organisations.

Peter Rule

Mr ROBINSON (Mitcham) — I place on record my expression of appreciation for the life and work of Mr Peter Rule, who died recently after a six-month battle with leukaemia. For those who are not familiar with the name, Peter was a stalwart of the Victorian information technology industry and had worked for more than 30 years with Ericsson Australia as a senior development engineer. That length of service made him one of the longest serving employees in the company. His record of achievement was such that he rose to be what was colloquially known as the mayor of that company's 42nd precinct at Melbourne Central, which is the development hub for Ericsson. He also served for at least two years on the board of Interact, the multimedia events company. I had the pleasure of chairing that board, and I got to know him over that period of time.

Peter was an extremely considerate individual. He was compassionate to those he worked with and he was a great mentor for younger people in the profession. He was truly one of the skilled information technology engineers who helped forge a reputation for this state over many years. While many of us would like to claim some responsibility for that, he was someone who actually did it. He will be greatly missed, and I offer condolences to his family.

Disability services: funding

Mrs ELLIOTT (Mooroolbark) — In the May 2001 budget the state government promised an extra $1 million for early intervention services for children with disabilities. By December 2001, six months later, none of the $1 million had been spent and no extra early intervention services provided. By May this year several regions, including the northern and eastern regions in Melbourne, had still not received their allocation. This has significantly affected children with autism, because the window of opportunity to help those children is brief. Most are not diagnosed until they are three years of age, so every week after that counts for delivering early intervention.

Many of those children have not seen a cent for early intervention and remain on waiting lists while their parents become increasingly desperate. They hoped that there would be a lifeline in this year's budget. However, all the early intervention funding has gone to provide kindergarten assistants and inclusion aides to enable children with special needs to be included in the kindergarten program. It will not provide specialist early intervention services which are delivered by non-government providers such as Irabina and Biala. The preschool funding is welcome — very welcome — but the government remains derelict in its responsibility to provide early specialist intervention to children with disabilities. The parents of those children and professionals in the field will not let the Bracks government off the hook on this issue, and neither will I.

Budget: initiatives

Ms DUNCAN (Gisborne) — I am very happy to rise today to sing the praises of the Bracks government's third state budget. My electorate of Gisborne has benefited greatly from this budget as it has done in the previous two, as has the whole of the state. The emphasis of this government and this budget as evidenced in this budget is in a government that sees that by growing the whole of the state we all benefit, and that by growing parts of the state that benefit is not shared by everybody. It is definitely this government's commitment to invest right across the state for the benefit of us all. That is obviously paying off with the higher-than-average national jobs growth in this state and lower-than-the-national average unemployment rate. We see falling class sizes, increased retention rates and improved health services.

In this budget once again we see the further investment in health, education, transport and community services. This morning I had the privilege, if you like, of seeing a speeding car screaming past me on the highway. I thought, 'Where is a cop when you need one?'. I would say it was about 15 seconds later that a flashing white car came down the highway and I am pleased that the car was pulled over for speeding — and, I would argue, for dangerous driving. It was evident to me that the police are out there and that is evidence of this government's further investment. This budget has been great for Gisborne, particularly the announcement of funding for the duplication of the Macedon Street bridge in Sunbury. I congratulate the government — —

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

National livestock identification scheme

Mr McARTHUR (Monbulk) — I raise a matter for the attention of the Minister for Agriculture that relates to the national livestock identification scheme (NLIS). As all honourable members would know, the NLIS was part of legislation which was recently passed with the support of all parties in this house.

However, the NLIS program will impose significant costs on agriculture and, in particular, on the livestock

saleyards industry, and it is on its behalf that I would like the minister to take some further action.

Recently members of the Liberal Party's agriculture and water committee and I met with David Pollock, the executive officer of the Livestock Saleyards Association of Victoria. In further correspondence after that meeting David Pollock said, and I quote:

> The saleyard industry supports the NLIS program and believes it is in the national interest that such a program be fully implemented nationally and as soon as practical.
>
> However, its implementation will impose not only significant responsibilities on saleyard operators but also significant costs …

He goes on to point out that these costs are unplanned and unfunded. He argues that as the Parliament has imposed the NLIS system on the industry it is reasonable for the government to provide some additional funding to allow its implementation, which includes scanners and readers as well as adjusting the saleyards themselves. This call was supported by the Victorian Farmers Federation in its comment on the budget this week.

Real estate agents: trust funds

Mr LIM (Clayton) — I congratulate the Minister for Consumer Affairs for bringing real estate agents to account by auditing their activities on an ongoing basis — and I understand the process will take place for the next two and a half years in any case.

More than 500 real estate agents have been investigated, and preliminary audits of their activities have led to 65 undergoing more detailed investigations for breaches of the Estate Agents Act. Last month the minister froze the account of one country agency which had deficiencies in its trust fund and was operating without a licence. There is a range of concerns, some minor and others more serious, such as problems with the proper lodgment of money in certain trusts and the failure to complete police checks on staff who have access to people's houses.

I feel strongly that the minister needs to go further in assisting tenants who have been preyed upon for years, especially those who are new settlers and refugees from non-English-speaking countries who are subject to manipulation and intimidation by both public and private sector landlords, particularly those who are dealing with real estate agents. I ask the minister to re-fund the bilingual tenants support program.

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

Tourism: rural and regional Victoria

Mr PATERSON (South Barwon) — The Bracks Labor government has failed rural and regional tourism. Rather than tourism funding being boosted to give much-needed assistance to regional tourism operators, funding has actually been cut. This will hit operators of bed-and-breakfasts, hotels, motels and caravan parks in Geelong and on the Surf Coast.

The tourism industry needs additional funds for communication strategies, marketing campaigns and other assistance. Tourism in country Victoria is particularly vulnerable at the moment, given the current crisis in public liability insurance. The Bracks government has done nothing to stem the public liability insurance crisis and is now eroding the tourism budget further.

The government should have extended the one-off $10 million rescue package to the tourism industry which was announced after the events of 11 September last year, but even accounting for last year's bonus payment the Bracks government has cut tourism funding. This is a kick in the guts for Victorians who are dependent on the tourism industry.

Regional tourism should be becoming a higher priority for the Bracks government, not a lower one. The number of domestic visitor nights recorded in Victoria has fallen since the Bracks Labor government came to office. This is another example of the government's rhetoric on its commitment to rural and regional Victoria not stacking up with the results.

The ACTING SPEAKER (Mr Richardson) — Order! The honourable member for Preston has about 1 minute.

Reservoir: mobile phone tower

Mr LEIGHTON (Preston) — On Sunday, 26 May, I will be attending a rally of local residents at the Leslie Reserve on the corner of St Vigeons Road and Mais Street, Reservoir. Local residents are objecting to the proposal by Hutchison Orange to erect a mobile phone antenna on top of a two-storey building at 51 Banff Street. This is a vacant shop surrounded by residential areas. Literature put out by Orange, which talks about safety precautions for workers and its intention to place towers 1 to 2 kilometres apart, has done nothing to alleviate residents' concerns.

I call for federal legislation to be amended to give state and local authorities a say in planning issues when it is proposed to locate mobile phone towers or antennas on privately owned land. I particularly wish to express my

concern that the owner of 51 Banff Street can take money from Orange without having any regard to the views of local residents.

The jury is still out on the issue of safety, and local communities and residents have every right to be concerned and to seek a cautious approach.

The ACTING SPEAKER (Mr Richardson) — Order! The time allotted for members statements has expired.

UPPER YARRA VALLEY AND DANDENONG RANGES REGIONAL PLANNING STRATEGY

Amendment no. 114

Ms DELAHUNTY (Minister for Planning) — I move:

> That pursuant to section 46D(1)(c) of the Planning and Environment Act 1987, amendment no. 114 to the Upper Yarra Valley and Dandenong Ranges regional strategy plan be approved.

This regional strategy plan has been in place since 1982 in consideration of the unique environmental tourism and agricultural aspects of the Upper Yarra Ranges, Upper Yarra Valley and Dandenong Ranges. On the whole it has been supported by both sides of the house. It is implemented under the Yarra Ranges Planning Scheme, and thus any amendment to the planning scheme must be in conformity with the regional strategy plan.

Amendment 114 follows the need to make amendment C20 to the planning scheme. The amendment proposes to enable land at 52 Bartley Road, Belgrave South, to be subdivided into two lots. The land was previously used as a church convention centre and at the moment contains three dwellings.

Amendment 114 was exhibited at the same time as the planning scheme amendment, and it is important to note that no objecting submissions were received as a result of this public exhibition. It is also important to note that as no development is proposed on these two lots there will be no impact on the vegetation of the site or, we believe, on the environment in general.

This is an important issue for Parliament in that in the past we have had bipartisan support for these amendments. Both sides of the house have an investment and a belief in the protection of the unique circumstances and features of the Upper Yarra Valley and Dandenong Ranges regional area.

Mr BAILLIEU (Hawthorn) — I am happy to flag that the opposition supports amendment 114 to the Upper Yarra Valley and Dandenong Ranges regional planning scheme. As the minister has reminded us, it is a very important region and it is precious to the people of Victoria. Certainly the opposition supports its maintenance as an area of vital significance and one that is, as I said, precious to the people of this state.

As the minister said, the amendment deals with 52 Bartley Road, Belgrave South, just south of the Belgrave Heights Convention Grounds and a few hundred metres south of Puffing Billy, for those who are less familiar with the area. The details of the amendment are that the area of the site is currently around 9000 square metres and that it is proposed to be divided into two lots. There are existing dwellings on that site.

The process for the formulation of this amendment has been going for more than two years. Formerly there was a church and convention centre facility on the site; it is now in the hands of people who use it for residential purposes. As the minister said, the amendment was advertised and exhibited and no objections were received.

The opposition intends to support this amendment. It is important and perhaps will come as no surprise to those who pay due attention to these amendments, a number of which have gone through the house over the years, to observe that, contrary to the minister's suggestion just now that there has been bipartisan support for these amendments over the years, the government when in opposition vigorously opposed some of these amendments and attacked the former government for introducing them. The depth of the government's hypocrisy on a number of these amendments is shown up very ably by the amendment it now proposes. The former honourable member for Richmond, my friend Demetri Dollis, who now enjoys a regional planning scheme in Europe — —

Mr Smith — Diplomatic status!

Mr BAILLIEU — Diplomatic status and the regional planning scheme in Europe, and I am sure he is enjoying himself well. Mr Dollis chose to use these amendments for political purpose and to beat up on the previous government on the basis of some alleged environmental vandalism. Nothing could have been further from the truth. Despite the minister telling us there has been bipartisan support in the past, the contrary is the case. A number of divisions were called over these amendments, and I want to make some remarks in that regard.

This is the third such amendment that this government has brought to the house since it was elevated to office. My predecessor, the honourable member for Box Hill, remarked in one of these debates that the process warranted further attention, given the lack of notice on previous occasions for these amendments. I acknowledge that the minister introduced this amendment to the house on Thursday and as the shadow minister I was written to in a letter dated 6 May. That is an improvement on the past process but arguably still inadequate time to allow an adequate briefing. Suffice it to say that the seats involved in the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan are held by the Liberal Party, and advice and briefing from members of this side of house have provided useful information in the interim.

Those previous amendments were raised by the government after its elevation in December 1999 and October 2000. The October 2000 item concerned a subdivision of rural land for residential purposes, the very amendment which was railed against by the government when it was previously in opposition, and the December 1999 amendment was to do with covenants around the Silvan Dam area, and there was some debate on that at the time.

However, it is the amendments that occurred on 8 and 10 April 1997 which raise some interest in the context of the debate we are having today. Those amendments are numbered 97, 98, 99 and 100. Amendment 97 was uncontroversial; 98 was a restructuring of old and inappropriate subdivisions; 99 was a 3.5-hectare subdivision into two lots, and the then opposition argued vigorously that this was most inappropriate, given there was a minimum lot size well above 3.5 hectares at the time. Nevertheless the then opposition allowed that amendment through without calling for a division. However, it chose to find something completely different with amendment 100, which was about a 17-hectare lot. The subdivision proposed dividing it into two for the purpose of separating two houses on the land.

The authorities at the time said that this amendment would provide no opportunity for extra development and would pose no threat to the environment or to the planning scheme, and yet amendment 100 was the issue on which the then opposition, now government, chose to take a stand. The current Minister for Transport, who is not in the house on this occasion, at the time described this amendment, again on a subdivision of an existing property with houses on it which confined the subdivision and future development to the building envelopes which already existed, as a 'shabby attempt to destroy the environment and the delicate and sensitive nature of the Dandenong Ranges'; and said this would 'send a shiver of fear through all the people who work and live in this area'.

It was a load of nonsense — a load of garbage — at the time and still is. It was anything but; it was a legitimate subdivision of a property. There was no threat to the environment; there was no threat to the planning scheme, and everybody except the then opposition, now the government, said so.

Again on 11 November 1997 amendments 105 and 106 were presented. In particular amendment 106, which was about a Lilydale subdivision, proposed two houses on one lot. It was a very similar subdivision to the one which is now being considered by this amendment. It is interesting that the then honourable member for Richmond, Demetri Dollis, who was at the time the shadow Minister for Planning said:

> Any member who supports it will be responsible for a planning system which has no place in Victoria.

Divisions were called at the time, so it was far from bipartisan support being given for the amendments. The reality is that there was no material change to anything in the Upper Yarra Valley and Dandenong Ranges region, and those amendments were appropriate.

That is the point of raising the matter on this occasion because this amendment is exactly the same in principle as the amendments which the government when in opposition so vigorously opposed. However, we are not going to play political games with these amendments. We believe this is an appropriate amendment; it has been appropriately dealt with at a local level; there are no objectors and it receives the support of the council and of the opposition, and I trust that in future when these amendments are brought before the house we will have a straightforward and simple debate about them and that there will be due briefing before they are tabled in the house.

Mrs FYFFE (Evelyn) — The history of the Upper Yarra Valley and Dandenong Ranges Regional Authority is a lesson in communities and councils working together. Back in 1982 there were four councils that got together and decided they would like a regional authority to help control any inappropriate developments in the Yarra Valley and Dandenong Ranges. They were very wise, as has been proved by the success of that region because of the tourism and the agriculture that is happening there.

In 1994, during the period of local government amalgamations, the four councils went into one so the authority was disbanded. In 1996 the Kennett

government brought in legislation to protect the region, hence the reason for this amendment today, the third such one that has been brought before this house since 1999.

The application concerns land at Belgrave Heights. The application has been in the planning system for two and a half years and it is fairly low key, according to the council, with no objections from neighbours. The site was formerly owned by a church which used it as a camp and put several buildings onto it. The subdivision creates two lots around existing dwellings. The subdivision would appear to fit in with the size of the blocks and the number of dwellings on them in surrounding areas, and the council itself has no objections to it.

The Upper Yarra Valley and Dandenong Ranges Regional Authority was started by the Hamer government and had support through the Cain and Kirner years. During the period of the Kennett government when the authority turned into the Yarra Valley and Dandenong Ranges Regional Strategy Plan the then opposition, now the government, seemed to develop a different attitude to it and bipartisanship went out the window. In fact, the now Minister for Transport said on 10 April 1997:

> There are many locations where a single title has two houses on it …
>
> The opposition will not join with the government in trying to destroy the Dandenong Ranges. We reject that approach, we will not do it …

Yet here it is turning around and doing it — that is, making a fairly sensible amendment. The two houses exist and there is no objection from the local residents, and yet this government when in opposition attacked the former Kennett government for making similar applications. In fact, the Minister for Transport also said, again on 10 April 1997:

> It is saying that this will be the future criteria used to determine planning applications. So we can see what really drives this government.

We on this side know what really drives this government!

The former member for Richmond, Demetri Dollis, said on 8 April 1997:

> Let us not misunderstand what we are doing today. We are making further incremental changes that are slowly diluting the protection previous governments … put into place.

Where is the criticism now? Where is the criticism of what this government is doing when it is agreeing to a sensible application? Where are those people? Why is the Minister for Transport not thundering about how terrible it is, as he did in those Kennett years?

I, too, am concerned about incremental changes to the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan, and I would be the first to stand up if I thought that any changes would damage not just the beauty of the area but also the agricultural productivity of the Yarra Valley and Dandenong Ranges, which have some of the most productive land in the state. However, this amendment does not affect agricultural land and therefore I have no objection to the motion.

Mr DELAHUNTY (Wimmera) — The National Party will also not be opposing this motion that has been brought forward today. On my understanding from speaking to our spokesperson on planning, the Honourable Jeanette Powell, who is an honourable member for North Eastern Province in another place — —

Mr Nardella — And a good shadow minister, too!

Mr DELAHUNTY — I thank the honourable member for Melton for his interjection. I am pleased to see he recognises talent when he sees it.

Mr Nardella — Absolutely!

Mr DELAHUNTY — Absolutely. The Honourable Jeanette Powell said in discussions with me that this application has not been a problem. This application comes under the control of the Shire of Yarra Ranges, which has informed her that the application has been on the table for about two and a half years. The site is owned by a church, is currently used as a camp and has several buildings on it.

Importantly, as speakers before me have stated, land-use planning is a critical issue, particularly in the Shire of Yarra Ranges, from the point of view of agriculture and also of tourism. From the point of view of agriculture, land-use planning plays a very important role in the use of high-value land, given the pressures of residential development spreading out in this area.

On my understanding the application we are discussing relates to a subdivision of land into two lots. No objections to this proposal to amend the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan have been lodged with the shire. The shire has played a leading role in this process, and it is good to see that the government has finally addressed the issue which, as I said, has been lying on the table for two and a half years. The National Party will not be opposing this motion, and it supports its speedy passage through the house.

Mr MACLELLAN (Pakenham) — My constituents will be very welcoming of the fact that there is support from all sides of the house for this motion. The proposed amendment will acknowledge the situation that in reality the buildings are already in existence. The amendment will merely draw a line by creating separate allotments and subsequently separate titles for the lots concerned.

It seems that the control ought more importantly to be on the creation of buildings rather than on the creation of allotments under buildings, if I can put it that way — in other words, when the shire is willing to have two houses, it seems to me to be a signal that there ought to be two lots. If it does not want two lots then it should not allow two houses.

In many parts of our constituencies — the honourable member for Evelyn and I have a mutual boundary — there are properties which are allowed to have bed-and-breakfast residences, caretakers' residences and all sorts of things that are not houses. I am not suggesting, just because there is a separate building with a roof on it, that it should be on a separate title, but where there are two separate residences and where they have separate intended uses and everybody knows of them and the use has been there for some time with the approval of the council, it seems to me that it would offer no threat to the environment at all if those were simply on separate allotments able to be separately owned and separately dealt with.

We are not into forms of collective living in Victoria, if I can put it that way. Having more than one house on a lot sometimes becomes a complication for families, and many families come to see me — I am sure the honourable member for Evelyn would have the same situation — saying, 'We have two houses and we were given permits to allow the two houses to be built, but our family circumstances have radically changed'. It would not be hard to imagine circumstances of divorce, ageing parents, family members moving in different directions, family members getting employment in different areas and a range of other circumstances where the family has two houses on the one title — like what used to be called Siamese twins, although that expression is no longer politically correct — and is unable to get money out of the property and make a fresh start somewhere else.

To avoid having people locked together in uncomfortable circumstances, from time to time these amendments are made, and the honourable member for Evelyn is correct to chip the government about the fact that when in opposition it found reason to stylishly try to pretend to oppose these things. It was safe for it to do so because it did not have the numbers in the upper house and therefore it could make the noise without bearing the responsibility. Now, in government, it bears the responsibility and it brings these amendments to the house as it is required to do.

It is a good thing that these amendments come to the house and it is a good thing that they are exposed to public gaze, and it is a good thing that the process is open and accountable. The minister is to be commended for bringing the matter here. It is a pity the former minister did not bring any of these sorts of amendments to the house, presumably because he had some reluctance to be shown to be at odds with the sort of attitude he had in opposition, whereas the present Minister for Planning has no such hesitation and is courageous enough to bring them before the house. We should commend her for it and look forward to many more resolutions of the small-scale problems that exist in Evelyn, in Pakenham and also in Monbulk and other non-suburban areas of the Dandenong Ranges and Yarra Valley where these sorts of difficulties arise.

On behalf of my constituents I say thank you to the honourable member for Horsham on behalf of the National Party — —

Mr Delahunty — The honourable member for Wimmera.

Mr MACLELLAN — I thank the honourable member for Wimmera, which has Horsham in it — or Horsham and beyond, I should say; the honourable member for Evelyn; the shadow minister, the honourable member for Hawthorn; and the minister herself. I hope the motion is assented to in the other place and that this proposal goes forward.

Motion agreed to.

TOBACCO (MISCELLANEOUS AMENDMENTS) BILL

Second reading

Mr THWAITES (Minister for Health) — I move:

That this bill be now read a second time.

I am proud to present this bill to the house today. It represents another significant step forward in the Bracks government's tobacco reform agenda.

Almost 5000 Victorians die each year of a smoking-related illness. Around 21 per cent of Victorian adults smoke regularly and 32 per cent of schoolchildren aged 16 and 17 years smoke.

Smoking costs Victoria in excess of $3.3 billion every year. This is more than two-thirds of the total cost of all drugs, including alcohol and illicit drugs.

Reducing smoking rates is the single most effective way to enhance the health status of Victorians, and to impact on rising health care costs.

It is for these reasons that, in its first term of office, the Bracks government has continued to take action to stem active and passive smoking.

In the last two years, the Bracks government has introduced major tobacco reforms into Parliament, which represent the most significant achievements in tobacco control since the Victorian Tobacco Act was first introduced 15 years ago.

Tobacco control in Australian has a proud history of bipartisan support. In Victoria this began in 1987 with a landmark piece of legislation, the Victorian Tobacco Act. This legislation significantly influenced tobacco laws enacted in other states.

It is time for Victoria to once again provide leadership to the rest of the nation. And to do so through the support of this Parliament.

The Victorian government's recent initiatives include the introduction of:

- smoke-free dining;
- smoke-free shopping centres;
- laws prohibiting tobacco advertising in shops that sell tobacco;
- strict limits on displays of tobacco in shops that sell tobacco; and
- tough penalties for retailers who sell cigarettes to children and teenagers less than 18 years of age.

The Bracks government is proud of its record of achievement in tobacco control so far. But passive smoking remains a significant health issue that cannot be ignored.

It is estimated that passive smoking causes about 1600 deaths per year in Australia. One hundred and forty-six of these deaths are due to lung cancer, and 10 times this number are from heart disease.

This equates to about 400 Victorian deaths, or more than one Victorian death every day, from passive smoking.

Over the past 20 years, research has increasingly revealed the harms caused by second-hand or passive smoke. There are now more than 600 published medical reports that link exposure from passive smoking to cancer and respiratory diseases.

Lung cancer, heart disease, low-birth-weight babies and respiratory problems in children can be attributed to passive smoking.

These statistics should be of concern to all members of this Parliament and have compelled this government to introduce further tobacco reforms.

In summary, the key measures contained in the bill will mean that:

- smoking will not be permitted in the vast majority of gaming rooms within approved gaming venues;
- in the case of Crown Casino, the main gaming floors will be required to be smoke free;
- licensed venues with two or more rooms in operation will be required to indicate that smoking is prohibited in one of those rooms;
- bingo centres will be required to be smoke free;
- in other places where bingo is played, such as in school halls or sporting clubs, the area where bingo is played will be required to be smoke free during the bingo session; and
- the definition of 'product line' in relation to tobacco products, will be amended.

With the exception of the amendment to the definition of 'product line', these reforms will be effective from 1 September 2002.

The smoke-free gaming areas policy is based on the fact that currently in most cases the restricted area, which will be known as the 'gaming machine area' in the new gaming legislation, is the entire gaming room.

If gaming venues consist of only one room, only the 'gaming machine area' in that room, as defined under the Gaming Machine Control Act 1991, will be required to be smoke free.

In these venues it will be possible for the bar to be excluded from the gaming machine area, meaning the bar will not be required to be smoke free.

In venues with two or more rooms, smoking will be prohibited in the room that has gaming machines.

The Department of Human Services will monitor the application of these new provisions. If it appears that new or existing venues are attempting to avoid the new smoking restrictions by becoming single-room premises, consideration will be given to further changes.

These reforms mean that from 1 September 2002, 90 per cent of the 533 gaming venues in this state will be required to make their gaming room entirely smoke free.

Smoking will generally not be permitted within Crown Casino's main gaming floors.

The government has stated that Crown Casino will be permitted to apply for exemptions for VIP gaming areas with substantial international high-roller clientele.

Exemptions from the smoking bans may also be considered for some of the bars on the main gaming floors of Crown Casino.

Exemptions for Crown Casino are still under the government's consideration. However, it is anticipated that any exemptions will amount to less than 10 per cent of the gaming floor space at Crown Casino and would be tougher than smoking laws governing casinos in other Australian states.

The bill provides that any exemptions for Crown Casino from the smoking prohibitions will be given effect through a ministerial declaration made by me, in consultation with the Minister for Gaming.

Victoria's 30 bingo centres will be required to be smoke free, on a 24-hour basis.

In other premises where bingo is played, such as RSL clubs or church halls, the area within the venue where bingo is played will be required to be smoke free during a bingo session. The ban on smoking in such premises is more limited because of the multifunctional nature of these premises.

The smoking restrictions also require licensed premises with more than one operating room to set aside one of those rooms as smoke free. This will affect 90 per cent of Victorian hotels, nightclubs and licensed clubs that have two or more rooms.

The legislation will mean, for example, that if a three-room premises closes the room in which smoking is prohibited, such as a dining room, at an earlier time than the other two operating rooms, then one of the remaining two rooms must convert from smoking to non-smoking for the remainder of the time that both rooms remain in operation.

This measure will affect close to 5000 licensed venues in Victoria and will mean that patrons can choose to socialise in a smoke-free environment, away from the harms of passive smoking.

Where a licensed venue has three or more rooms in operation and one of these is a gaming room, they will also be required to prohibit smoking in another operating room, in addition to having a smoke-free gaming room.

As with all aspects of tobacco legislation, the new laws will be enforced by environmental health officers in local councils.

The bill provides penalties for those who smoke when smoking is not permitted and for those in charge who permit smoking, or who do not display the required no-smoking signs.

Finally, the definition of 'product line' will be amended to ensure the aim of the tobacco display provisions is achieved.

Current restrictions on tobacco displays aim to ensure that only one front facing of each tobacco product is displayed.

By removing 'trademark' as a defining feature of tobacco product line, the act will ensure that only tobacco products that differ on the basis of brand name, flavour or nicotine or tar content are considered to be different product lines.

This amendment will come into effect on the day after the day the legislation receives royal assent.

The Victorian government has been impressed by the willingness of industry groups, health groups, unions and local government peak organisations to be part of an ongoing consultation process about the new legislation.

Consultations with these stakeholders must continue to ensure the smooth transition of the reforms. We recognise the importance of industry being fully informed about their new obligations well before the 1 September deadline. The Department of Human Services will undertake a statewide communication campaign to inform both industry and the community about the changes.

The government will approach stakeholders in the near future to be part of an advisory committee to provide it

with advice about the rollout of the communication campaign.

I also wish to make a statement pursuant to section 85 of the Constitution Act 1975 about the reasons for altering or varying that section by clause 13 of the Tobacco (Miscellaneous Amendments) Bill.

That clause inserts a new subsection (3) in section 42b of the Tobacco Act, which states that it is the intention of section 42, as it will have effect after the amendments come into force, to alter or vary section 85 of the Constitution Act 1975.

Section 42 of the Tobacco Act provides that an action does not lie against a person for the failure to do anything that would constitute an offence under the act. This was included in the act when it was first passed in 1987.

The bill creates a number of new offences. It is necessary that section 42 apply to those offences in the same way that it applies to existing offences.

In conclusion, this bill will build on the tobacco reforms passed by the Victorian Parliament in 2000 and 2001. It contains important measures to address passive smoking and will help make Victoria a healthier place in which to live, work and do business.

The community is ready for further passive smoking reforms, and community support for smoking restrictions in bars and gaming venues is high.

The government's Victorian population health survey that was undertaken in November 2001 showed that 83 per cent of the community supported either total or partial smoking bans in bars.

The survey also showed that 92 per cent of the community support either full or partial smoking bans in gaming areas.

Therefore I am confident the reforms I have outlined today will enjoy the full support of the Victorian community.

I commend the bill to the house.

Debate adjourned on motion of Mr BAILLIEU (Hawthorn).

Debate adjourned until Tuesday, 28 May.

RESIDENTIAL TENANCIES (AMENDMENT) BILL

Second reading

Ms PIKE (Minister for Housing) — I move:

That this bill be now read a second time.

Introduction

On behalf of the government I am pleased to be able to present the Residential Tenancies (Amendment) Bill 2002 today.

This bill balances tenants' needs for security of tenure and the need for landlords to protect their assets, and maintains market investment incentives, thereby strengthening the role of private rental accommodation as part of the total housing system.

Furthermore, this bill addresses the government's commitment in the better housing policy to review the Residential Tenancies Act 1997 with a particular focus on tenure security and fair rent mechanisms.

This bill builds on the protections for both landlords and tenants contained in the current act and addresses areas of concern for a number of key stakeholders about the operation of the act. In this way the best features of the current act have been maintained, and the intention to simplify the operation of the act is given effect through streamlining the administrative processes.

It is important to note that the amendments represent moderate and responsible change that modernises this important legislation whilst maintaining certainty for market investment and therefore the future of the Victorian rental market.

Much work has gone into the development of the legislative amendments proposed in this bill. It represents the culmination of broad consultation with key stakeholders in the residential tenancies sector and the deliberations of the residential tenancies legislation working group, chaired by Ms Jacinta Allan, MP, member for Bendigo East. Membership of the working group included the Real Estate Institute of Victoria, Tenants Union of Victoria, the caravan park owners association and other key sector representatives. The bill represents a balance of the views of these key stakeholders.

The working group returned a substantial number of recommendations for the government to consider, and the changes incorporated into this bill reflect both the perspectives of the working group and an analysis of

the impact of changes on all aspects of the Victorian rental market.

Security of tenure

The act currently allows for a landlord, rooming house owner or caravan park owner to give a tenant or resident 90 days to vacate without giving a reason. The bill provides that this notice period will increase to 120 days. This amendment is intended to deter property owners from using the no-reason notice to vacate inappropriately. This is an important provision that will increase the security of tenure for tenants and residents; however, it does not limit landlords' proprietary rights, as the act provides a series of specific-purpose notices to vacate as an alternative to the revised 120-day notice.

This is a balanced and even position, supported by key stakeholders, that places Victoria at the forefront of reform in this area.

Tenure — caravan parks

Currently a person must have occupied a site in a caravan park as his or her only or main residence for a minimum of 90 consecutive days before he or she is regarded as a resident and eligible for protection under the act. Under the new provisions this period will be reduced to 60 days. This will afford longer term occupiers of caravan park sites rights and protections under the act sooner than is currently the case, without interfering with the provision of accommodation for tourism.

This amendment therefore reflects a balance of the dual roles of caravan parks of providing accommodation in the tourism sector and as suppliers of long-term accommodation to individuals, and is supported by industry sector representatives.

Rent increases

This bill reintroduces the limit of two rent increases per year and commensurately reduces the notice period for a rent increase from 90 days to 60 days. It is not the intent of the amendment that there be two increases, rather that there be no more than two. This is consistent with the position that applied prior to 1997.

This amendment has been based on two factors. First, the removal of the restriction on the number of rent increases in 1997 has undermined tenure security and the ability of tenants to budget, as the unrestricted ability to raise rents has reduced their certainty and predictability. Secondly, the 90-day notice period requires property owners and agents to forecast rental prices at least three months in advance and potentially set higher prices to cover future inflation.

Additionally the 90-day notice has proven in practice to be cumbersome for tenants and landlords, requiring a reminder letter to be sent closer to the date of the actual rent increase. This amendment creates greater certainty and predictability for tenants while maintaining property owners' ability to seek financial return from their investment and respond appropriately to market movements.

In addition the bill will expand the criteria which may be considered in determining whether or not a rental increase is excessive. They include:

the number of rent increases issued in the previous 24 months;

the size of previous rent increases; and

the period since the last rent increase.

This will ensure that comprehensive information is available to all parties together with the information currently supplied about the rental housing market and the cost of goods, services and facilities provided with the rented premises.

This will enable the tribunal to be in a better position to assess each case on its merits, rather than relying purely on information about the market in general.

Benefits — simplifying the act

Landlords identified a number of administrative difficulties in working with the act.

In addition to addressing the impact of the 1997 act in regard to tenure and fair rent mechanisms, this bill includes significant changes to eradicate red tape that will be of benefit to landlords and their agents.

The government's recognition of these issues is reflected in the large number of amendments aimed at improving the operation of the act and streamlining administrative procedures where possible. Generally these amendments address administrative anomalies that have been identified by users and administrators of the act over the first three years of its operation.

In order to address a number of specific concerns raised by landlord representatives, a number of new provisions have been introduced. For example, the bill will allow a landlord, rooming house owner or caravan park owner to apply for an urgent hearing in the Victorian Civil and Administrative Tribunal if a tenant or resident refuses entry to a property. This section of

the act will apply when entry is required to show the premises to a prospective buyer or to a lender who will be taking a security interest over the property.

Violence, penalties and receipts

There are three significant areas of amendments that the government would like to highlight in this bill. These relate to:

dealing with potential misuse of the provisions allowing for residents to be suspended from rooming houses and other high-density accommodation for allegedly violent behaviour;

penalties; and

the issuing of receipts.

Misuse of the violence provisions

Communal high-density living, such as rooming houses and caravan parks, can lead to conflict between residents. Part 8 of the act contains special provisions to deal with violence in rooming houses, caravan parks and other managed high-density accommodation. These provisions are required to ensure that managers and owners are able to respond quickly and effectively to dangerous and violent behaviour by suspending residents or their visitors from the premises for two business days in response to that behaviour.

Nonetheless, while it is acknowledged that property owners have a right to protect their asset from damage and other residents from injury, there have been situations where these provisions appear to have been misused to exert authority or in retaliation against residents.

The act provides that the suspension provision may only be used in response to a serious act of violence. The bill proposes the introduction of a new offence in circumstances where this power is used inappropriately. A penalty would only apply where a person does not have reasonable grounds to believe that a serious act of violence by the resident or resident's visitor has occurred on the premises or that the safety of any person on the premises is in danger from the resident or the resident's visitor.

This is consistent with the penalty for attempting to evict a tenant or resident other than in accordance with the act.

Penalties

Extensive consideration has been given to strengthening the mechanisms used to enforce the act. Accordingly a number of new offence provisions have been created to discourage parties from not complying with the provisions of the act.

Offences created in this bill include failure by a landlord to provide a copy of a completed bond lodgment form to a tenant or for a landlord to enter a rental property other than in accordance with the act.

Failure to comply with either a monetary or non-monetary order of the Victorian Civil and Administrative Tribunal with respect to the operation of the act will also be an offence under the act.

Receipts

The bill contains provisions to update the requirements for landlords or their agents to maintain records of rent payments. This amendment is required to bring the act in line with recent technological developments and ensures electronic payments of rent are sufficiently recorded.

Consistency, efficiency and clarity

The balance of the amendments can be broadly classed into three groups of issues:

areas identified by the working group where greater consistency between provisions is deemed beneficial;

amendments required to improve the existing processes in the act; and

amendments required to clarify the act.

For example, the bill clarifies the exemption from the act for premises which are ancillary to an educational or training institution. It does this by ensuring that only premises which are owned or leased by, or are formally affiliated with, an educational or training institution are entitled to this exemption. This will provide appropriate protection for students who are living in residential facilities which are not truly connected with an educational or training institution.

The bill extends the period to 90 days that an owner of the rented premises must keep personal documents that are left behind at the end of a tenancy before disposing of them. It also removes the requirement for landlords, rooming house owners and caravan park owners to place expensive advertisements of their intention to dispose of these documents at the end of the 90-day period. These amendments balance the need to ensure that residents' and tenants' personal documents are protected, while reducing the financial burden on

landlords who wish to dispose of these documents after an appropriate period of time.

Working group

Earlier I mentioned the work of the residential tenancies legislation working group. All members of the working group invested a significant amount of time in identifying issues, arguing the merits of various positions and representing their constituents. While the working group did not always achieve a consensus, all members demonstrated a commitment to the process and reached fair and common ground where possible.

The efforts of the residential tenancies legislation working group were the impetus behind the amendments in the bill.

The government would like to thank the chair of the working group, Ms Jacinta Allan, MP, for her commitment and dedication. It is not easy to chair a large group charged with examining such complex issues. The results, however, have been extremely valuable, and the government would like to commend the honourable member on her management of the process.

The government would also like to thank all of the members of the working group.

Finally, the government would also like to extend its thanks to the many members of the community who took the time to provide input into this process. It would like to thank all of the people who attended consultation sessions or provided written submissions on the issues raised during this process. This feedback was valuable in informing the working party of various perspectives and highlighting issues of concern.

The provisions in this bill meet the government's commitment to review the balance of the act. This bill introduces moderate and responsible change which will improve the balance of rights and duties of landlords and tenants or residents by providing greater certainty for tenants and predictability for landlords and by significantly improving the operation and efficiency of the act.

I commend the bill to the house.

Debate adjourned on motion of Mrs SHARDEY (Caulfield).

Debate adjourned until Tuesday, 28 May.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (PLANNING PROCEEDINGS) BILL

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

On 12 April 2002, the Supreme Court handed down its decision in *The Warehouse Group v. Bevendale Pty Ltd* [2002] VSC 108. The decision involved an appeal from an order made by the Victorian Civil and Administrative Tribunal, constituted by a legal member sitting alone, in its planning and environment list.

Schedule 1, clause 52 of the Victorian Civil and Administrative Tribunal Act states that VCAT must be constituted by a member who possesses 'sound knowledge of, and experience in, planning or environmental practice in Victoria' when hearing planning matters.

In the Warehouse case, counsel for the appellant argued that VCAT was not properly constituted when it made the decision under appeal. The basis for this argument was that the member, while otherwise possessing extensive qualifications and experience in the law relating to planning, did not possess practical experience as a planner.

The Supreme Court accepted this argument. It held that the VCAT act requires all planning matters to be heard by a person with hands-on experience as a town planner.

The decision has very serious ramifications for VCAT and the wider planning community. It means that only town planners can hear matters in the planning list when sitting alone. No 'non-planning' member, including the president of VCAT himself, may now preside over a mediation, directions hearing or hearing without a town planner also being present.

Valuable VCAT resources are now being used to constitute the tribunal with two members, rather than one, to meet the requirements of Warehouse. The government has provided additional funding to VCAT to enable this to occur without creating delays in the planning list. However, this is only an interim measure.

The government is committed to establishing and maintaining a settled planning environment. It is concerned to ensure that there is certainty in how the VCAT should be constituted when hearing planning matters. It is also vital that residents, businesses and the

development community have confidence in the legality of past VCAT decisions.

This bill restores certainty to planning matters by attempting to return VCAT to the position it was in prior to the Warehouse decision. The bill will enable the president of VCAT to appoint people with a sound knowledge of and experience in planning and environmental practice, as well as people with a sound knowledge of and experience in planning or environmental law, to sit alone in planning matters.

The bill also seeks to validate past actions of VCAT. An effect of the Warehouse decision is that the validity of many previous VCAT planning decisions, such as those made by legal members sitting alone, can now be called into question. The bill makes it clear that where something has been done by a tribunal constituted of a person with sound knowledge of and experience in planning practice, or a person with sound knowledge of and experience in planning law, that action is valid.

The bill specifically provides that the rights of the parties to the Warehouse decision will not be affected by this act of validation.

This bill promotes the government's commitment to providing greater certainty to residents, businesses and the development industry in planning matters, and ensures that VCAT members hearing planning appeals possess appropriate qualifications and experience.

I commend this bill to the house.

Debate adjourned on motion of Dr DEAN (Berwick).

Debate adjourned until Tuesday, 28 May.

SPORTS EVENT TICKETING (FAIR ACCESS) BILL

Second reading

Mr PANDAZOPOULOS (Minister for Gaming) — I move:

That this bill be now read a second time.

I introduce this bill with a determination to see greater transparency and fairer access in the ticketing for major sports events in Victoria. The bill reflects the government's resolve to ensure the maximum number of tickets to major sports events are made available to sports fans at face value. Poor ticketing practices are known to sustain ticket scalping activity, which clearly disenfranchises the average sports fan and, in respect of the AFL grand final, only serves to cause ongoing resentment amongst club members.

The bill empowers the minister to direct event organisers to arrange their ticketing in such a way so as to minimise opportunities for scalpers to sell tickets contrary to the arrangements established by the event organiser. The bill is based on considerable research and incorporates world best practice in ticketing legislation.

For more than two years the government has made it known that unless the industry took steps to both improve their ticketing practices to ensure greater transparency in distribution arrangements and to discourage unauthorised or undisclosed reselling arrangements then legislation would be introduced.

A discussion paper was released to the industry and community in August 2001. That paper canvassed a broad range of issues and evidence pertaining to ticket scalping practices and the related issues of ticket distribution and allocation for major events, and in particular major sports events such as the AFL grand final. The discussion paper outlined various actions taken around the world to curtail unauthorised ticket sales at inflated prices.

The discussion paper noted that consumer protection and consumer rights are presently compromised by poorly managed ticket distributions and clandestine reselling practices. Consumers are not able to ascertain the bona fides of most ticket resellers and have difficulty in identifying agents that are essentially operating in the market as de facto authorised resellers.

The discussion paper concluded that consumers, and the sport event industry, would benefit from enhanced standards of conduct and disclosure as well as better industry monitoring and control of organised and commercial but unofficial ticket reselling.

The industry's response to this discussion paper was disappointing. The few responses which were provided offered little new information or insight into ticket reselling and ticket distribution practices in Victoria. Critically, no evidence was presented to demonstrate how the reselling of tickets for sports events was in the public interest or in the best interests of sport.

Yet as the number and popularity of hallmark major sports events grow, the complex network of persons actively deriving huge profits from the resale of tickets continues to evolve and flourish in this state. To leave unchecked the growth in ticket distribution systems that favour wealthy individuals and companies but greatly limit or otherwise deny access to ordinary fans is not in

the public interest. Certainly such ticketing arrangements fail to sustain and reward the grassroots support base upon which major sports events ultimately rely, and on which Melbourne's reputation as a great event city is based.

Ticket distribution and allocation practices are obvious areas where strategic enhancements must therefore be made. Improved ticket distribution management and monitoring practices have the potential to minimise the opportunity for professional ticket resellers to obtain significant quantities of premium tickets and then profiteer at the expense of the general public, club members and the sport.

The development of a legislative framework has become necessary to help deliver such improvements in the ticketing practices for major sporting events and discourage the growth of the unauthorised and highly inflated ticket reselling industry.

The government is firm in its intention to ensure that major Victorian sports events are not diminished by a lack of affordable access by the general public. As such the guidelines developed in the context of the legislation will seek to ensure that event owners and the government work together to protect affordable spectator access to hallmark events and prevent such events from becoming the sole domain of the wealthy or the well connected.

The purpose of the Sports Event Ticketing (Fair Access) Bill is to put in place a legislative framework for the development of a code of industry self-regulation. This legislative framework will promote equitable access to prescribed major sports events and be one that is subject to independent government inspection and audit supported by an appropriate penalty system.

The bill is designed to:

maximise the access by members of the general public to major sporting events by ensuring a fair and transparent process of ticketing;

entrust the industry to establish the appropriate processes and standards to ensure maximum access to tickets by the general public but provide for penalties when this trust is broken;

provide scope for the government to develop, in consultation with event owners, guidelines for fair access to tickets to prescribed major sports events;

reduce the growth in unauthorised ticket reselling and pirate corporate hospitality service provision by individuals and companies.

The legislation is envisaged ultimately to have four substantive parts dealing with the declaration of events, the approval of ticket schemes, guidelines for the development of ticket schemes, offences and the powers of authorised officers.

An appropriate level of authority is vested in the minister administering the act to make orders facilitating the implementation and approval of ticket schemes for prescribed major sports events.

Part 2 of the bill provides an administrative process whereby the minister gives notice of an intention to declare an event. Such notice must, however, be given no less than nine months before the event is held. The bill is about fairness, and it is only fair that there is appropriate notice to event organisers to arrange their ticketing processes. The process will also ensure the event organiser has the opportunity to make a submission on whether an event should be declared.

Part 3 of the bill makes provision so that the minister may, by order published in the *Government Gazette*, declare an event and require the submission within 60 days of a ticket scheme proposal from an event organiser. The minister may require the event organiser to submit further details within 28 days of receiving the proposal or may refuse to approve the ticket scheme should the event organiser fail to comply with the guidelines or fail to submit further details if requested to do so by the minister. The event organiser will also be required to ensure that any authorisation to sell or distribute tickets to the event is given in writing and that the minister is notified in writing of the name and contact details of each person who is given such authorisation. Provision is also provided for the submission of replacement proposals and for variation or cancellation of proposals.

The bill contains a number of provisions necessary to facilitate the development of ticket scheme proposals. Thus part 4 specifies that the minister must make written guidelines setting out the requirements for ticket scheme proposals.

Part 5 of the bill sets out offences related to the holding of a prescribed event before an approved ticket scheme is in place or where there is failure, without reasonable excuse, to comply with an approved ticket scheme. The sale of tickets contrary to any event ticket conditions imposed by the event organiser will also be an offence.

The inclusion in the bill of measures to prosecute companies or persons that sell tickets in contravention of the ticketing schemes instituted by organisers has been included specifically at the request of a number of sports that have taken measures to curtail the unauthorised distribution and resale of tickets to their events.

Under part 5 each time a person knowingly contravenes a ticket condition for a prescribed event which is printed on a ticket and prohibits the unauthorised sale or distribution of that ticket, they will attract a fine. The fine payable for each offence will not exceed 60 penalty units in the case of a person or 300 penalty units in the case of a body corporate. The total fine payable for multiple offences in respect of a declared event held on a particular day is capped at 600 penalty units in the case of a person or 3000 penalty units in the case of a body corporate.

Part 6 of the bill enables the appointment of authorised officers for the purposes of monitoring compliance with approved ticket schemes. The enforcement functions and powers of the authorised officers are clearly established and are similar to those provided to inspectors under the Fair Trading Act.

Part 7 sets out the review functions of the Victorian Civil and Administrative Tribunal in the context of certain decisions made under the legislation and also enables regulations to be made.

Part 8 amends schedule 4 of the Magistrates' Court Act 1989 in respect of providing for indictable offences under the legislation.

The government is delighted to present this bill as the first step in protecting the rights of sports fans. In summary, the provisions contained within the bill will:

encourage proper and transparent ticketing processes;

assist event managers in discouraging the diversion of tickets to unauthorised or undisclosed ticket resellers which were intended for direct access by sports fans and club members at face value;

make prescribed sports events more attractive to fans by reducing public scepticism in respect of the fairness of the ticketing arrangements.

I commend the bill to the house.

Debate adjourned on motion of Mr BAILLIEU (Hawthorn).

Debate adjourned until Tuesday, 28 May.

GAMING LEGISLATION (AMENDMENT) BILL

Second reading

Mr PANDAZOPOULOS (Minister for Gaming) — I move:

That this bill be now read a second time.

The purpose of this bill is to further the government's election commitment to secure a more balanced approach to gambling and to better protect the community from the adverse effects of gambling on gaming machines.

The bill contains four groups of amendments. The first — harm-minimisation measures — aims to reduce problem gambling without unduly affecting recreational gamblers. The second — probity measures — includes a suite of regulatory changes that will streamline regulatory processes. The third — the introduction of community benefit statements — requires venues to prove they are operating as genuine clubs or lose access to lower tax rates. The fourth comprises industry specific amendments.

1. Harm-minimisation measures

The bill introduces measures to reduce harm to problem gamblers.

The bill has four categories of harm-minimisation amendments. The first modifies game and gaming machine design, the second restricts cash accessibility in gaming venues, the third regulates player loyalty programs, and the fourth enables more stringent advertising restrictions to be introduced.

(i) Game and gaming machine design

The bill provides a number of measures to reduce the rate of spending by players of gaming machines.

The gaming machine design amendments include:

banning $100-note acceptors on machines;

prohibiting the reduction of machine spin rates below the current fastest level of 2.14 seconds;

banning autoplay facilities; and

clarifying the minister's power to set bet limits on gaming machines in approved venues and the casino — this power will be used to set the maximum bet limit at $10.

Gaming venues will be able to apply for exemptions to these machine design measures for some of their machines, but only if they meet strict new rules on player protection. Such exempted machines will not be accessible to the general public. They must be operated by a card, a PIN number or some other similar technology, and players must set a limit on the amount of time and net loss that they can incur in any 24-hour period as a condition of use of the machines.

The government will closely monitor the implementation of these machine design measures, and if venues or operators are shown to be abusing the exemptions available, the government will further tighten the strict rules that apply. For example, the government will not accept operators drastically altering the distribution of their gaming machines in order to take advantage of these exemptions.

The government will continue to investigate other options for enhancing player protection. Any such options, however, will need to be assessed in terms of effectiveness, privacy and difficulties associated with implementation.

(ii) Cash accessibility

It has been widely agreed that unplanned access to funds in gaming venues is a significant contributor to problem gambling. The bill introduces a series of cash accessibility amendments:

limiting access to ATM and EFTPOS facilities at venues to $200 per transaction;

prohibiting cash withdrawals from credit accounts from ATM and EFTPOS facilities at a gaming venue;

requiring winnings or accumulated credits in excess of $2000 to be paid by cheque, with optional payment by cheque of such winnings or credits below $2000; and

prohibiting venues from cashing cheques issued by the venue (that is, the winnings cheques).

These cash accessibility restrictions will apply only to gaming venues themselves and not to the cash facilities provided in any shopping centres or complexes in which a gaming venue may be located.

(iii) Player loyalty schemes

The third category of harm-minimisation amendments relating to player loyalty schemes deals with the increasing use of card technology and the emergence of databases that collect and manage consumer information on the spending and playing patterns of customers.

The providers of loyalty schemes will be required to provide participants with activity statements at least once a year.

In order to assist consumers to control their spending:

loyalty club providers will be required to provide participants with information regarding the risks associated with problem gambling;

consumers will be able to set limits on their gaming losses and the maximum time they wish to spend playing gaming machines;

loyalty club providers will be required to enable members to opt out of the scheme, and providers will not be permitted to send these former members any further promotional material about the scheme;

self-excluded gamblers will be prevented from using their loyalty scheme cards; and

loyalty club members will have an ongoing right of access to information held by providers about their use of gaming machines. This will enable individuals to review their gaming behaviour, which is the first step in identifying strategies for reducing harm.

In addition to the consumer protection measures I have outlined, non-identifying data collected through the loyalty schemes will be provided to the Gambling Research Panel or other organisation as directed by the Minister for Gaming for research purposes.

(iv) Advertising restrictions

There have been several complaints about the limitations of the current advertising regulations, particularly in relation to print advertising. To strengthen these restrictions and reduce impulse gaming the Bracks government will enforce more stringent advertising restrictions and require modest signage.

The government has regulation-making power to regulate advertising relating to gaming. But this power is not wide enough to cover indirect advertising such as the names of gaming rooms or the use of symbols that are associated with gambling, such as neon palm trees, banners, flags or hot air balloons.

To remedy this, the bill will expand the current regulation-making power to enable regulations to be made to restrict or ban advertising and signage at

venues which are generally associated with gaming. Such regulations may also specify the size and number of gaming operator logos (such as Tatts Pokies and Tabaret logos) that may be used and ban the use of signs advertising gaming rooms such as 'Wild Cash room', 'Fortunes', 'Easy Winnings', 'Lucky's' et cetera on the outside of gaming venues.

Advertising restrictions will also be strengthened to restrict gaming incentives by banning all gaming-related vouchers or coupons. In particular, it is intended to prohibit venue vouchers being redeemed for cash or gaming-related purposes. The regulations will not restrict sponsorship by gaming venues or operators provided they do not explicitly promote gaming.

2. Probity measures

The bill further amends the gaming legislation to make a series of regulatory changes that will streamline regulatory processes.

(i) Casino exclusions

The bill establishes Victoria's participation in a national system of casino exclusions. In December 2000 a NSW government inquiry into the conduct of the Sydney casino licence called for a national approach to casino exclusions. In particular, the inquiry proposed that the police commissioners of all states and territories be given the power to effect the exclusion of criminals from casinos. New South Wales has since requested all other states and territories to legislate for the establishment of a system of reciprocity for exclusions by police commissioners.

(ii) Raffle suspensions

The bill will also help protect the community from unscrupulous raffle organisers. The Victorian Casino and Gaming Authority will be given the power to suspend a raffle in the public interest until it is satisfied that the raffle should continue or the raffle permit should be revoked.

The authority currently has power to revoke a declaration of a community or charitable organisation which is authorised to conduct raffles if it is not in the public interest for that organisation to continue to be declared for the purposes of the Gaming No. 2 Act 1997. The revocation can only take effect after the organisation is given at least 28 days to show cause why the declaration should not be revoked. The bill amends the act to empower the authority to suspend a declaration in the public interest pending a final decision on revocation. This power is consistent with the power in the Public Lotteries Act 2000 and enables the authority to act swiftly in circumstances where the integrity of the process of conducting a raffle has been questioned.

3. Community benefit statements

When gaming machines were originally introduced in the early 1990s there was a clear expectation that the introduction would benefit local communities. Currently hotels with gaming machines pay a higher tax rate than clubs on the expectation that clubs return more of their earnings to the community.

The bill will require all clubs and hotels to provide an annual community benefit statement to the Victorian Casino and Gaming Authority outlining their contributions to the community. Each of these statements will be published by the authority, providing a tangible means of showing the public how and in what ways gaming machines provide a community benefit.

Clubs will be required to show that they have contributed the equivalent of the hotel tax rate back into their community. If a club fails to meet this criterion, it will be required to pay the hotel equivalent tax rate for the following calendar year.

4. Industry specific measures

The bill introduces the following industry specific amendments.

(i) Eases Tabcorp shareholder restrictions

The individual shareholder limit for Tabcorp will increase to 10 per cent, and the 40 per cent non-resident (foreign) ownership restriction will be abolished. These measures are proposed as the original intention of the restrictions — to allow smaller investors to own part of the company — has been met, as these investors have now had sufficient time to buy the desired number of shares. Also, this amendment will remove an inconsistency arising under the current regulatory regime where the ownership restrictions are different for Crown Casino (and its owning company, Publishing and Broadcasting Limited) and Tabcorp.

(ii) Allows non-monetary prizes to be offered for public lotteries

The bill provides that the holder of the public lottery licence may award non-monetary prizes as jackpot prizes. To avoid any potential abuse of this provision, a lottery supplier will be required to offer winners a choice of the monetary equivalent.

Conclusion

The Bracks government is committed to gaming reform that encourages responsible gambling and prevents harm.

This bill is based on the need for balance —

the need to balance the benefits of this industry with its potential for harm;

the need to balance the rights of the individual with the responsibility to assist the vulnerable;

the need to balance the industry's drive for profits with its duty of care to its patrons.

The bill furthers the government's commitment to protect the community from the adverse effects of gaming.

These measures, with those previously implemented, present the most comprehensive package of gaming measures introduced in any jurisdiction in Australia. They will ensure that Victoria remains at the forefront of gaming reform.

To ensure that the measures work, we will be monitoring their effectiveness and researching their impact on problem gambling.

When we came to office there were no problem gaming measures in place; we now have legislation which is among the toughest governing any gaming industry in the world.

I commend the bill to the house.

Debate adjourned on motion of Mr BAILLIEU (Hawthorn).

Debate adjourned until Tuesday, 28 May.

CRIMES (WORKPLACE DEATHS AND SERIOUS INJURIES) BILL

Second reading

Debate resumed from 22 November 2001; motion of Mr HULLS (Attorney-General).

Government amendments circulated by Mr HULLS (Attorney-General) pursuant to sessional orders.

Dr DEAN (Berwick) — It is not unusual to find that a bill of this nature coming from this government and relating to a topic which should be taken seriously and appropriately is in fact badly drafted and ill thought out, that it reverses the direction that industrial relations has taken over the past decade and threatens to take industrial relations back to the situation where workplace confrontation was the order of the day, thereby undermining the great gains that have been achieved in workplace safety.

This is in fact a shocking piece of legislation. It is one of the worst pieces of legislation I have seen come before this house, not only because of what it attempts to do but in fact does not do, but also because of the way it has been drafted.

The first question I had in my mind when this legislation hit the Parliament was: why? Why would you introduce a specific criminal law in relation to specific people in the workplace which is in breach of all the principles of criminal law and industrial law, which does not do what it says it will do and which is unjust, unfair and — worse — unnecessary?

Why would you introduce this piece of legislation when, according to the Attorney-General in the opening paragraphs of his second-reading speech, it was one of the government's highest priorities to improve workplace health and safety and that this legislation was an important part of that package, and when in fact over the past 10 years workplace deaths have been reduced by 70 per cent and non-disease workplace injuries have been reduced from 104 686 in 1989 to 45 000 in 2000 — in other words, when you have a formula that is working and working incredibly well?

If any reductions like that were to be found in, for example, statistics on road deaths or any other aspect of our life in this community, they would be applauded as a huge success. Yet for some reason which is not explained by the Attorney-General and this government — I will come back to that because there is a reason — legislation is introduced which is unnecessary and goes completely counter to the formula that over the past 10 years has been so productive in reducing deaths in the workplace. That formula has been: cooperation between employer and employee; enforcement of occupational health and safety standards; cooperation with occupational health and safety officers; and a workplace environment where training and education has been the basis of a successful outcome.

I said I would come back to the real reason why, out of the blue, legislation of this nature has been introduced like a slap in the face to those parties — both employers and employees — who have been so successful in reducing workplace deaths. It is a bit like a footy game in which the coach says to the full forward, 'Go onto

the field, get the ball and kick some goals — that is what I want you to do'. The full forward goes onto the field, and he does not kick just 3 or 4 goals; he kicks 10 goals. What does the coach do? He says, 'Hey, you — off the field! You're out of the game!'. The bill is a similar slap in the face for those people who have had a huge success in achieving what they set out to achieve — that is, a reduction of deaths in the workplace.

I said I would come back to the real reason for introducing the legislation. The real reason is obvious, and this government is quite embarrassed about it. For some time it has been trying to say to the employers of this state, 'Look, we know as a Labor Party that we've had some differences with you in the past. The union movement is very close to us, but we want you employers to have faith in us. We want you to know that we're acting for you as well as for the employees'. And the employers nearly believed them! Then out of the blue comes this disgraceful piece of legislation which is not only unfair and badly drafted and which does not do what it says it will do, but is also a slap in the face for employers. Where has it come from? It has come from the union movement!

All this nonsense we have been hearing over the past few weeks about how the union movement is moving away from the Labor Party, with people saying, 'In the future we're not going to be as close as we were', is driven by the union movement in Victoria. As the union movement in Victoria is the strongest in any of the states of this country, it wants to get the legislation up in Victoria because it wants it to spread across the rest of Australia. Its representatives have come to the Labor Party and said, 'We want you to do this', and members of the Labor Party — even though they are totally embarrassed — nevertheless say, 'Yes'. Why do they say, 'Yes'? Because the relationship between the union movement and the Labor Party will never be greater, and when the union movement says, 'Jump!', the Labor Party asks, 'How high?'.

We are told by the Attorney-General in his second-reading speech that this is to catch — to use his words — the big rogue companies. When we ask, 'Why introduce such legislation to catch these big rogue companies?' and then look at this legislation to find an answer, what do we find? We find that there is not one provision — not one word and not one section — which in any way angles the legislation towards large companies — none whatsoever! In fact, it is quite clear from the provisions that they will be able to be exercised against small to medium-size companies far more easily than they will against large companies. I can assure the house that the Director of Public Prosecutions, who has a duty to prosecute and prosecute according to a budget, will go for the small and middle-size companies as part of his or her duty before going for the big companies. Nothing in this legislation directs him or her to large companies.

The government says, 'But this is to overcome situations where large companies have got away with manslaughter. We need to be able to aggregate, otherwise large companies won't be able to be caught'. That, again, is complete and utter hogwash! Members of the Liberal Party have asked time and again for examples of situations where large companies have either not been prosecuted or have got away with manslaughter as a consequence of common-law manslaughter legislation not working appropriately.

I was very pleased to receive and interested to read the Law Reform Commission's report into criminal liability for workplace deaths and serious injury in the public sector. The Law Reform Commission has gone about its usual procedures when dealing with a government. I have said in this place before and I say again: the reason why the previous Law Reform Commission got into trouble was because it was too close to government and was acting pretty much as the handmaiden of government. Here we have another example of that. There was absolutely no reason for the Law Reform Commission to be given the brief to determine how to get the public service into this legislation. That is a matter of law and for a legal person — an adviser, the Solicitor-General or any other legal person of whom there are legions in the Attorney-General's office — to undertake, but, no, it was given to the Law Reform Commission.

The Law Reform Commission report starts off, as they nearly always do, by explaining why the government has to introduce this legislation — a little free kick for the government in relation to this legislation. It says it is about the difficulties in getting home on manslaughter charges against large companies. So one reads very carefully and says, 'Here at last we're going to find out the names of all those cases in which using common law has not been sufficient to catch a company'. What does the Law Reform Commission come up with? It comes up with one unreported case! This is the Law Reform Commission that obviously, with all its resources, is looking for cases against large companies that have failed as a consequence of the fact that manslaughter does not apply.

So I went to this unreported case. It is a judgment of Justice Hampel, whom I know very well and who has operated in the criminal jurisdiction. That is fine, and he gives a very good judgment. What I am concerned

about is that in its note the Law Reform Commission gives this as an example of a situation where a large company got away with it as a consequence of the current common law not being good enough on manslaughter — therefore the need for an act. But when you read the decision you find it is nothing of the sort! I must say that I cannot believe that the Law Reform Commission, which is meant to have intellectual integrity in what it does, would put this case up as an example of such a situation.

The case was all about whether or not an explosion was caused by a couple of people who were employed in a company that stored gum resin. In particular a Mr Hill and a Mr De Zilva, who were middle management, were responsible for trying to block a breakage, or a problem, that occurred in a storage tank, which eventually blew up and burnt people. These are the two people who had to be caught — by way of aggregation, or whatever — for the company to be caught. If these people were caught, then the company would be caught.

Justice Hampel said:

> The actions, particularly of Hill and De Zilva, which are capable of being found to have been negligent are not, in my view, in the category of criminal negligence sufficient to support a conviction of manslaughter.

So the very first thing Justice Hampel says is that these two people did not commit manslaughter. All of a sudden this is not a case about whether a company is guilty of manslaughter, because the two people involved were, he said, negligent but not criminally negligent. He then went on:

> Those matters in combination could well amount to negligence but not, in my view, criminal negligence. The negligence alleged against the others is well below the standards required for criminal negligence.
>
> As none of the individuals' negligence is sufficient, the prosecution cannot rely upon the concept of aggregation to move what may, in individual cases, be negligence to the realm of criminal negligence which can then be attributed to the company.

Then Justice Hampel went on to say, 'All right, let's just pretend for a minute that they were criminally negligent' — but they were not, so the whole case has nothing to do with criminal negligence. Anyway, let's just assume they were. He went on to say:

> Even if it were open in this case to conclude that the acts of any of the individuals were capable of amounting to criminal negligence, such actions could not properly be attributed to the company. However the test of attribution is expressed, it could not be said that either Hill or De Zilva were acting as the company. Their acts were personal failures to act so as to give effect to the will of the company.

He is basically saying that these people were acting quite separately. They were not acting according to either some instruction from the board or the will of the company; they were individually negligent. So he is saying you could not even aggregate, anyway. Then he said some very important things:

> Where attribution is inappropriate, where it cannot be said that an individual has acted 'as the company', the company cannot be vicariously guilty of manslaughter.

This is a matter which the opposition believes in very strongly. This is why I say that this legislation is incompetent and breaks some of the fundamental principles of criminal law. Justice Hampel went on to say:

> … and the position of the individuals whose actions were being examined as giving rise to the attribution doctrine is incredibly important.

What he is saying is that in common law we can, if you like, add together, and we can go through attribution, but in this case you have to look at the position of the individuals before you start attribution.

Now that may sound like a little comment, but it isn't. It is a big comment, because the whole point of the government's bill is that under common law you cannot aggregate, that under common law you cannot actually look at individuals and say, 'We will look at their conduct and impose that on the company'. But here is Justice Hampel saying that under common law it is possible, although in this case he is saying their positions were such that you could not aggregate — and position is very important. So you should not aggregate conduct where people's positions are such that it is not fair to impose their conduct on the company. That is a very good point, which this legislation completely ignores. He went on to say:

> A company may be liable for criminal negligence in extreme cases of failure to provide a safe system or to supervise its implementation. This is not such a case because there was undoubtedly a safe system …

He is saying that at common law this business of not being able to find a company guilty of manslaughter is not true. A company can be liable for criminal manslaughter at common law if there is an extreme failure to provide a safe system of work; and yet we are told that is the whole point of this bill — that the common law cannot do that! Yet here is a judge in the common law saying that we can do it: if there is an unsafe system of work, that can lead to a charge of manslaughter against the company.

I have no idea why the Law Reform Commission picked this case; it is an absolute dream case for

anybody who wants to shoot down the argument they want to put up. The judge also said:

> During his submissions [the prosecutor] issued me with a tempting invitation 'to do justice in this case' as I was not bound by authority. I accept that invitation but with a different result to that for which Mr Gyorffy contended. To do justice according to law, especially the criminal law, and especially by a trial judge, is not to expose a person, whether real or fictitious, to liability for one of the most serious crimes known to law by expanding the basis of liability.

He is saying that if you want to have aggregation and do those sorts of things you do not do them through criminal law. You do not aggregate the conduct of some people to make some other person guilty in criminal law. Being guilty in criminal law is a very serious matter; and for someone — whether a fictitious person or not or a company or not — to end up being found to be liable even though it was someone else's conduct, is disgraceful. That is a disgraceful breach of principle.

This judge, in referring to other cases, said:

> The court in *Meridian* indicated that the question of liability by attribution is one of construction rather than metaphysics and as a general approach one must look at the structure of the company, the functions performed by the company and who performs them in practice, and the policy underpinning the rule of law enforced.

Again he is saying that attribution at common law is quite possible but you have to look at things like: the functions performed by the company; who performs them in practice; and the policy underpinning the law. As he says, it is not just as simple as adding people's behaviour and saying, 'Right, that adds up to criminal law'.

Later, in quoting from another case, the judge said:

> An obvious example was used to make the point, namely:
>
> > '… the fact that a company's employee is authorised to drive a lorry does not in itself lead to the conclusion that if he kills someone by reckless driving the company will be guilty of manslaughter'.

Thank you, judge — nor should it! That is a very important principle, yet, according to this legislation, it is quite possible that the company could be. The judge also said, quoting from another case:

> 'The underlying idea manifestly is that there should not be vicarious responsibility for an infringement of the act committed without the proper consent and connivance of an employer'.

That is the point where this legislation goes right off the rails. Nowhere in the world has legislation of this nature been accepted — in fact, they have been debating it for six years now in the United Kingdom under the Labor government, and it still has not been accepted because that government, unlike this Attorney-General and this government, has some concept of criminal procedure and the law.

What the bill says is, 'It is very hard to prove the will and mind of the company at common law if it is a big company'. I believe I have just demonstrated that the courts say, 'No, it is not. We will look at the directors, at the people they delegated and at what they did, and if we think they delegated that responsibility and are manifestly unjust, they are exercising the will and mind of the company and are guilty'. Putting that aside, however, the legislation says, 'You can aggregate the conduct of any employee, any independent contractor, any employee of an independent contractor, and so on and so on; and if you add all that conduct up together and you believe that amounts to reckless negligence then that company goes down the chute'. That means that it is possible for a company to be guilty of criminal manslaughter when the guiding mind and will of the company is actually innocent.

In other words, because this legislation has made no link to the guiding will and mind of the company — that is, no link to the directors and those people making the decisions — it is possible for those people making decisions for the company and the intention of the company to be completely divorced from the whole process, completely innocent and declared in court to be absolutely innocent, but the company still goes down because the employees further down, who have nothing to do with the will and mind of the company, are caught. In attempting to get to the will and mind of the company and make it easier, the government has reversed it! It has taken the will and mind of the company out.

Now a company can go down for manslaughter when the people running the company have absolutely nothing to do with the death of an employee and did absolutely everything right — and the government wonders why the employers are a bit upset! Can you imagine a situation where an employer in a small to medium-size firm has given a job to a contractor to do and done everything right — looked at the contractor's record, looked at all the things that have been done — but because that contractor, its employees and the employees of the employees have done something wrong that is aggregated and he goes down the chute. That is not industrial relations; that is thuggery. It is not criminal law; it is a breach of every principle of criminal law.

I could almost cope with it if it were some civil matter or an occupational health and safety matter; but to do it under criminal law and bring criminal law into the workplace is a total nonsense!

It is also ridiculous to introduce such legislation into the workplace, because all business people do not have law degrees. They are smart people who have left school and gone out into the workplace to run a business. They have put their heart and soul into it and built it up, and they do not have time to think in legal terms about everything they do. Nor do they have lawyers right next to them advising them on a minute-by-minute basis. So what do you do? You can introduce occupational health and safety legislation that clearly sets up the hurdles they have to jump: 'If you do this you are okay; if you do that you are not okay'. Employers say they are happy with that, because it gives them an indication of what they must do. It tells them in simple language when they have crossed the line.

With the introduction of this ephemeral act about criminal law and manslaughter and all the concepts involved therein, here are some of the words the employer will have to be thinking about on a day-to-day, minute-by-minute basis. The employer will have to ask, 'Am I a senior officer?' 'Senior officer' is defined under the Corporations Law, so he will have to go to there to try to work it out. There have been cases where the definition of 'senior officer' has been argued all the way to the High Court. The employer will have to work out which person is a senior officer in his company. Then he will have to work out what a serious injury is, because if the injury is a serious injury, he is in; if it is not, he is out. But he does not know that, either.

I do not know if the next term I will refer to is still in the legislation. I hope it is, because frankly it is worth it just to hear it. There is 'serious injury' and then there is 'really serious injury'. So the employer has to think about whether it is a serious injury or a really serious injury — or a really really serious injury! What a load of nonsense to expect an employer to have to work that out.

But it gets worse. The employer has to determine if he is responsible. The notion he has to use to find out if he is responsible is 'organisational responsibility'. What a wonderful term! I have asked the lawyers in the best firms in Collins Street to tell me what 'organisational responsibility' means. They say they have not got a clue, so it will be for the courts to determine as they go along. 'Thank you very much', says the employer in a business environment where he has to make decisions on a minute-by-minute basis. How will he decide that?

I can just imagine the Japanese investor and his advisers. When he asks, 'Will we invest in Victoria or New South Wales?', his advisers will tell him that Victoria has just introduced new criminal manslaughter legislation. When he asks if it affects him, he will be told, 'My word it does, because if you are guilty under this legislation they take you from Japan, bring you to Victoria and prosecute you'. When he asks how he knows whether or not he is responsible, they say, 'That is easy, you will be responsible and taken from Japan to Victoria to face criminal charges if you are organisationally responsible'. When he asks what that means they will tell him they have not got a clue. He will say, 'Tell me about New South Wales'. What absolute nonsense!

Whether an independent contractor is caught or not will be determined by whether the employer has control over the independent contractor. The crop-duster and the farmer will be asking, 'Do I have control over this person or not? Does this put me in or not? He is an independent contractor, but do I have control? What does that amount to?'.

This is incompetent legislation, because it is that sort of nonsense that is being brought into the workplace. Of all the people who are meant to understand the workplace and industrial relations and that things have to be simple and done by cooperation, it is the Labor Party.

The bill is incompetent because at the same time as it introduces this new concept, which has been rejected all over the world, it slips in some extra penalties under health and occupational safety. This government has a wonderful habit of doing this. It comes up with critically important and difficult legislation and then tacks on all sorts of other things just to make life a bit more difficult. I do not know how on earth any legislation with all the little tack-ons can ever be passed in this place, because half the time the opposition agrees with the principle of the bill but the tack-ons are no good, so the bill goes.

The government has tacked on to this bill, which is dramatically about manslaughter, increases in certain penalties under occupational health and safety, which is a different topic. One of the increases relates to interfering with an occupational health and safety officer of the union. The fine was $250 000; now it has been increased to $750 000 — in other words, it has been tripled. This is from an Attorney-General who has just accepted and hailed from the ceiling to the sky Professor Freiberg's report, which says that if there is one thing we have absolutely proved it is that increasing penalties does not lower crime. It is about

how you treat the person and how you get over it. Yet the same Attorney-General who agrees with that principle has tripled penalties. If the Attorney-General decided to triple criminal law penalties there would be absolute mayhem.

Why has the Attorney-General opened himself up to this nonsense? It is because the union movement has said that is what it wants. If a union representative goes in and says there is something wrong with a machine and the employer says there is not, the union movement wants the union representative to say, 'We are talking about $750 000 here'. When any employer running a medium-size business thinks about $750 000 he will say, 'Right, that's it, whatever you say', because a $750 000 fine means you are out of business — kaput!

I do not mind discussing increased penalties, but when someone says they will triple the penalty because they feel it is the thing to do, contrary to every principle the Attorney-General holds about other criminal law, you have to ask, 'What is going on here? Who is telling whom what?'. I am not surprised the Attorney-General is not in the chamber, because the government should be ashamed of the way it has gone about this.

Then we come to the second part. We have gone through the reversal in the provisions relating to the will and the mind of the company on corporation manslaughter. We now have a situation where even though the boss is completely innocent, the conduct of the employees can be added together and the whole company can go down, which is a complete reversal of criminal law. Another provision says that if a company is guilty of manslaughter then there is a second offence just for senior officers. A senior officer can go down for this special new crime in the bill. The officer has to be organisationally responsible, to have contributed materially to the event and to have known of the substantial risk — and that it was a high risk; and it has to be unjustifiable for that officer not to have done something. Anybody who does that ought to be guilty of manslaughter. They are already!

I have been to see every major firm in this area and asked, 'If a person is guilty of all that, would they not be guilty of manslaughter in any event?'. There is no problem about aggregation or anything, because they are just a person. If they know about the risk and know that it is a high risk and that it is totally unjustifiable for them not to do anything about it, they are responsible for it. That is criminal manslaughter at common law, and every one of the principals of the firms I asked that question of agreed. So what is this about? This is why employers are angry. They are already responsible for common-law manslaughter, which carries 15 years and not the 3 years contained here. They are asking what this is all about. They want to know why there should be something directed just at them, which is already unnecessary and seems just a punch in the face for good luck. It is just to let them know that there is something else here: if you go down for common-law manslaughter you can go down for this as well. And the government wonders why the employers think this is a bit unfair!

What happens if an employee who is not a senior officer does all that? Why is there not a special statutory provision that covers them and says they are down for manslaughter as well? The union movement would say, 'Not on your nelly! You cannot have special laws for employees who are reckless like this, no way!' They would be right, and that is why this legislation is so unfair.

The Premier himself decided to get into the act. Just to support my case that this move has come from the union movement — it is something it has wanted for a long time and it has put it to the Labor government — the Labor government has said, 'Yes, the tail is wagging so I will do what I am told'. This is what the Premier said on radio when he was asked about this very question. The question by Mike Cooper on the program *Ballarat Today* was to the effect of, 'This manslaughter thing is a bit tough, isn't it?'.

The Premier explained it this way:

> … you can only be prosecuted under this bill under the draft legislation if you can prove to have deliberately caused the death of an employee. That is, you set out to deliberately cause the death by your practice in the workplace.

In regard to culpable driving the Premier said:

> … if you set out for your car to swerve onto the footpath and deliberately run over someone as an act of deliberate deliberation, well, of course you are culpable of manslaughter as a driver.

He goes on to say:

> So it's not to do with accidents or mishaps or things that were omitted or went wrong, it's all to do with the intention. It has to be an absolute deliberate and proved intention that you set out to cause the death of someone in the workplace.

The Premier says, in effect, 'I think any reasonable person would think that was a reasonable test'. The Premier is dead right, because that is murder, and yes, if an employer deliberately set out to kill one of his employees any reasonable person would be very upset. But that is nothing to do with this legislation. This legislation is about exactly what the government said it

was not about. It is to do with accidents and mishaps that recklessly occur.

What does this tell you? It tells you that the government and the Premier himself are not initiating the legislation or have not put their mind to this legislation. This tells you that the union movement has a totally inappropriate impact on and influence over this government. When the government comes up with something which is not right, not fair, not in accordance with criminal procedures, will not do what it says it should do and will possibly change the whole workplace culture, what does it do? It says, 'We'll bring it in' — and off we go!

I have already mentioned the unfairness of it all. The reason we have made progress with workplace relations in the last 10 years is that fairness has been part of it. Employers and employees talk to each other and work out agreements. They get angry with each other, but in the end if it is fair they go along with it. That is why the number of deaths in the workplace has reduced by 70 per cent over the last 10 years. That is why the number of serious non-disease injuries has been reduced by approximately two-thirds from 104 000 to 45 000. That is why it has happened.

The government is introducing into that environment, or that successful formula, something which is aimed directly at employers which is unjust, which says nothing about employees and which does not even say to the employer, 'If you have an employee who can cause you and your company to go down for manslaughter, you can get rid of them'. There is nothing in there to allow the employer to say, 'I am going to go down for this conduct. Can't I have some way of getting rid of this person?'. No, unfair dismissal means you go through the process. That is not fair. There is no balance in it at all, and you wonder why the employers kick up a fuss.

I want to make two more points. In Australia criminal law applies to everyone equally. Under criminal law if you are a citizen in this country the law affects you the same as it affects anyone else. To introduce into the workplace a specific criminal law designed only for people who have the misfortune to end up as senior officers is disgraceful. These people are human beings like everybody else. Why have a special criminal law for them? It is contrary to every notion of fair play in this country to have special criminal laws directed against particular people because they happen to be in a particular situation.

The opposition's view and its policy which it will be releasing in due course in terms of workplace deaths and injuries is all about training. It is about cooperation. It is about occupational health and safety standards. It is about all those things that have worked so well to date, and it is not about conflict in the workplace. Under this law if someone is injured in the workplace or someone, unfortunately, dies in the workplace, the employer thinks to himself, 'All right, I could call occupational health and safety, but there is this law that I do not quite understand. It is called the manslaughter law and it is just against me. It is a criminal law, so after I have rung the ambulance, the first person I am going to ring is my lawyer'. That is what he would be entitled to do, because any person in this country who is in the gun for a criminal act under criminal law is entitled to call their lawyer. That is their absolute entitlement, and I would recommend that.

Mr Robinson interjected.

Dr DEAN — It is no good coming in here to try to do a little bit of the interjecting thing, because no-one would agree that it is not the entitlement of every person in this country if they are in the gun of the criminal law to call their lawyer. What happens when you call a lawyer? I know, because I am one. The first thing you say is, 'Do not talk to anyone. Say nothing'.

The whole key to the success of dealing with deaths in the workplace up until now under occupational health and safety is that everybody tries to work out what is happening. Everybody has a responsibility. The employer cooperates, and the employees cooperate. They want to know how to get around it for the future — but not under this law.

You will now have the lawyers saying, 'Say nothing', and the employer would be quite right, as any citizen would be, to say, 'Right, I am not saying a word. If the occupational health and safety people want to talk to anyone, let them talk to my lawyers'. That is not what we want in workplace safety. That is not what we should be doing. That is going in completely the opposite direction.

In summary, what I want to say about all this is that I can understand that it is very important that if an employer is criminally negligent and someone dies, that employer goes down for it. There is a law which exists which would ensure that any senior officer involved would go down not just for 3 but up to 15 years. There is a law which exists, and I have gone through it, which would ensure that in such a case — and this is the point of difference between us and the government — the people running the company are in some way responsible. You can aggregate the conduct of people at common law, but the guiding will and mind of the company has to be somewhere responsible. So long as

that is the case, guilt and intention are there and they should go down for it. We agree with that.

If you want to talk about penalties and so forth in the industrial relations and employer–employee scene you go to occupational health and safety legislation, you do not go to the Crimes Act.

I hope that eventually when all the dust settles the government will come to the view that if it wants to continue the reduction of deaths and serious injuries in the workplace it must grab hold of the formula which has done it so well to date and use that with a mix of training, education, responsibility, occupational health and safety standards and penalties and not gratuitously come along with a criminal law which someone has thought up somewhere and which has been rejected everywhere. As I said, I could not find one country that has a law like this. In the United Kingdom people have been proposing this now for six years, and for six years the House of Commons and the House of Lords have said no — and that is under a Labour government.

So I hope that sense will prevail, because when it comes to deaths and injuries in the workplace we all stand on the same footing. I have news for employees. I hope it is not news, and in most cases I do not think it is news: employers do not want that either, not only because they are human beings and if someone dies in the workplace, that affects them as human beings, but even if you want to say that employers are not human and it is all a matter of dollars and cents, it affects that too. Once you have an injury or even a death in your workplace the effects of that in terms of dollars and cents and bottom line are horrific, and employers do not want that.

Let's keep the lawyers out of the workplace. Let's pursue the policies that have worked to date. Let's stop the nonsense. Let's try to explain the way the thing ought to operate. Let me say to the Labor Party that I can understand why the union officials want to see this up: it is a sign to their constituents and workers that they are working for them and are doing these things. I am absolutely stunned that the government is bringing in legislation which creates disharmony and so forth because my view of the modern union movement is the exact opposite, that it has attempted to get away from that. I think it has made a bad error, possibly for the right reasons, and I hope the government will think twice about going on with it.

Mr RYAN (Leader of the National Party) — The National Party opposes this legislation. We believe it is ill conceived, and for a variety of reasons that I will explore in the course of my remarks this evening we strongly urge the government to rethink the process which is embodied in this bill. We do not think it is necessary. We believe it is regressive, divisive and discriminatory.

I suppose the greatest pity of it is that we think it flies in the face of a commonly held principle right across the floor of this Parliament — that is, the very ready acceptance that one death or one injury in the workplace is one death or injury too many and that there is a truly tripartite recognition of that by the government and the opposition, together with the Independents in this place. Nobody ever wants to see the tragedy of a death or injury in the work environment.

I declare my position again at the start of this contribution, on the basis of having for many years represented people who were injured at work or the widows or widowers of those killed at work. It is an appalling consequence for anybody to have to suffer. Nobody wants to see it occur. But there are fundamental problems in this legislation which do absolutely nothing to reflect that sort of belief which I have just enunciated and which, on the contrary, offer the distinct prospect of a throwback to an age gone by in industrial relations in this state.

They are some of the matters that I want to reflect on in my contribution in the house, but to do so in the sense of wanting to assure all concerned that from the National Party's perspective the result of any workplace accident which brings about death or injury is something which always causes us enormous worry.

As a first principle in developing the argument may I say that I simply do not understand why the Attorney-General wants to be ahead of the pack in this sense. There is reference in his second-reading speech to the model criminal code. I have it with me as I speak. It is a tome of some 120 pages. It is a document dated December 1992, and it says on the front of it:

> These are the final views of the Criminal Law Officers Committee (now Model Criminal Code Officers Committee). They do not represent the views of the Standing Committee of Attorneys-General.

On the interior of the document there is a statement which talks about chapters 1 and 2 — model criminal code, and it is an explanatory note of 1999. It would seem to suggest on the face of it that the attorneys-general have in fact adopted most of this document which was prepared and eventually released in December 1992. The thing that I do not understand about this is that the model criminal code explores many of the issues which are reflected in some ways in

the context of this legislation, yet this legislation does not represent what is in that model criminal code. There are aspects of it, but it is not a complete reflection of it at all.

As an adjunct, the other point is that, as a state, we have employed enormous resources over the past few years in harmonising our corporate legislation with that of the rest of Australia, and the same thing has occurred around the nation. A tremendous effort has been dedicated to making certain there is consistency in the application of corporate law. We have seen the benefit of that, not only from a commercial perspective but also from the position which in one sense underpins the legislation that is before us. What we are going to do here will throw Victoria completely out of kilter. We will present ourselves in a way that no other state does. There is no other state or jurisdiction in Australia, and no other nation that I can identify, that has laws the nature of which is being contemplated in this legislation.

As I said, I simply do not understand why the Attorney-General and this government are hell bent upon this process when we have all seen the harmonisation of our corporate laws as an appropriate goal. During his time in government he has stood here in the Parliament many times and introduced template legislation that has been developed either by the commonwealth or in some other jurisdiction in the land. Here we are doing precisely the opposite, and I do not understand why.

If the Attorney-General is hell bent on this course, the proposals embodied in this legislation should go back to the Standing Committee of Attorneys-General and be considered in that environment. Appropriate commentary should be made on what is proposed, and by that process — not only at that level but by extended consultation across all aspects of the community, including the stakeholders involved — perhaps we can get an outcome which is more representative of our community's view. But no, that is not what is happening here. Rather we have a bill that is the result of this Attorney-General's hell-bent intent to be first ahead of the pack, in circumstances where, as I think can be demonstrated, there is simply no need. Not only is this legislation born of the model criminal code to which I have referred, in some ways it is also reflective of the work done in the United Kingdom, to which the honourable member for Berwick has referred and which I will address in a moment. I reiterate that I do not understand why the Attorney-General wants to proceed on this course.

In Victoria, for example, we have a situation where, regrettably and tragically, road deaths are on the increase. All concerned are doing their level best to make it otherwise. In fact this government has promised the people of Victoria that it will be otherwise. When this sort of circumstance arises, amending legislation is introduced or different positions are taken with regard to policy. Initiatives are developed which are appropriate to the problem at hand — and we have seen that done just in the last few days. The government has recently made an announcement with a particular emphasis on motorcyclists, and I do not refer specifically to the imposition of the extra $50 tax, which the government imposed in the budget and which it says is devoted to issues to do with motorcycle deaths and injury. Rather I am referring to initiatives which the government and the police intend to pursue to try and redress the increasing levels of deaths and injuries of motorcyclists out there on the road.

From time to time such initiatives are proposed with regard to pedestrians, drivers, and passengers. That can happen in a context in which we are trying to contend with the problem of an increasing pattern of death and injury. In that way, through its government and through other interested groups, the community can move to address the issue at hand. That is perfectly understandable, but it is not the situation represented in the workplace, and I will address that in a moment.

One can understand it when there are deaths in an environment of true criminal conduct — for example, after the Port Arthur tragedy some years ago, after which laws were instituted which made radical changes to the way in which firearms are owned and used in this nation. Those laws were introduced by the states but under the general umbrella of the federal government. So changes were made in an environment where there was deemed to be a need to bring about the outcomes we now have in relation to gun laws.

But what is the position in the workplace? In Victoria the workplace is precisely the contrary in the sense of the trends that this bill ostensibly looks to accommodate. To see that you only need have regard to the material which is publicly available in the Victorian Workcover Authority's 2001 annual report. A number of relevant issues are explored in the report, one of which pertains to deaths and injuries in the workplace. It states that deaths in the workplace have reduced: in 1996 there were 124; in 1997, 126; in 1998, 133; in 1999–2000, 106; and last year they were down to 88.

I recall reading in the submission prepared by the Victorian Employers Chamber of Commerce and Industry that non-disease deaths in the workplace were

down from 102 in 1988–89 to 31 in 2000–01. Tragically, 11 of those deaths occurred on farms, 7 in the construction industry, 5 in the manufacturing industry and the other 8 in a variety of environments. Where can it justifiably be said that there is a trend in those tragedies to which one could properly accord this legislation?

During 1990–91 there were more than 95 000 injuries at work. Back in 1988–89 the figure was over 104 000; in 1999–2000 it was just a touch under 46 000; and in 1997–98 it was a couple of hundred less than that. However, in 1999–2000 lost-time injuries in the workplace, bar for that one other year, were the lowest in the history of the records kept by the authority. Where is the need for this legislation?

It is interesting to reflect on the issues canvassed in the Victorian Workcover Authority's annual report for 2001. While bearing in mind that the authority is the entity with primary responsibility for the enforcement provisions of the many aspects of workplace safety, I note an absolutely outrageous statement by the chair, James Mackenzie, about common-law claims. I cannot let this opportunity go without reflecting on it. In his report at page 6 he states:

> The failure to anticipate this surge in claims at the time that old common law was abolished in November 1997, coupled with the failure to effectively manage the old common-law system when it was in place, were symptomatic of a Workcover scheme that had not been properly managed for a decade.

That is an unbelievable statement. I only wish Mr Mackenzie were able to properly reflect upon those years before 1992 when the former government assumed control of this state and unfunded liabilities were $2 billion. Do not worry about the several hundred million dollars — the unfunded liabilities were $2 billion and going backwards!

Various issues are explored in the report. At page 8 reference is made to preventing workplace injuries and illness and to the initiatives undertaken by the authority. At page 10, under the heading 'Preventive injuries and illness', it refers to the success the authority has been able to achieve through its efforts, particularly — and quite properly — through the approbation accorded to the Worksafe team.

At page 14, under the heading 'Prevention', the report again refers to that issue in the following passage:

> Preventing workplace injury, illness and deaths is not only a social imperative, it is critical to the long-term viability of the Workcover scheme.

Interestingly, under another heading, 'Constructive compliance', it states:

> The concept of constructive compliance is built around a multi-tiered approach to helping companies comply with their occupational health and safety (OHS) obligations. The approach focuses on:
>
> information, education and communication;
>
> financial incentives;
>
> enforcement; and
>
> investigations and prosecutions.

It refers to the figures on deaths in the workplace, that I have just outlined.

At page 16 it refers to enforcement provisions. A table on the next page outlines how the different forms of prohibition notices and improvement notices have been on the increase over the years. It also deals with voluntary compliance and total compliance and reflects that the record of the authority, of Worksafe and of employers have combined to achieve excellent outcomes.

The Esso case is mentioned and the following appears:

> In his sentencing comments, Justice Cummins spoke of the "vital importance of workplace safety" and stated that the essence of workplace safety was prevention.

That is what the report refers to. Interestingly, although the report is structured on the basis of addressing the challenges ahead, what needs to be done to make things better and how we can collectively bring about better outcomes than we have at the moment, no mention — not the slightest reference or even in passing fashion of any sort of commentary — is made of legislation the nature of that which is before the house. The report is presented on behalf of the authority, which has primary responsibility for this area.

I went back a further year and looked at the annual report of the Victorian Workcover Authority for 1999–2000. On page 13, under a heading 'Future directions', it states:

> New legislation will propose increased new penalties for health and safety offences and the offence of industrial manslaughter.

Yet in the succeeding year, when there was plenty of opportunity for the authority, through its report, to be able to develop a case for the necessity for that direction, there was no appearance, Your Worship. Absolutely nothing! Apart from that line in the 2001 report, there is nothing in here, either. One cannot help but wonder: where does this come from? What is the drive to introduce this sort of legislation?

When you look at the figures and the trends, you find that they speak of a culture of change which has been introduced into the workplace. They describe in practical terms how employer and worker relationships have taken a radical change over the past decade. They talk about mutual responsibility for health and safety. They talk in an indirect sense about the notion of the carrot and the stick, and I recognise that, that is fine. But they do not talk about producing a club in the nature of this legislation and belting employers around with it because that is seen to be the way to improve the position that applies in the workplace. Why ever would you do it?

The figures and trends talk about employers' respect for employees. They carry that message because the reality in this day and age is that in raw clinical terms employers have a huge investment in their employees. Businesses — corporations or otherwise — simply cannot function properly, particularly in these days of multiskilling, without there being an appropriate level of respect between employer and employees. These trends also reflect things such as employee share schemes, where employees themselves have an important interest in the management of organisations, including corporations. Again, it begs the question as to why it is only employers who are the subject of this legislation.

The report sends all these messages, and quite properly it reflects the fact that we have made enormous advances in the way in which we have developed our workplaces over the years. So you have to ask, in a rhetorical sense of course, what it is in the Victorian experience which justifies this legislation having to be brought about. I say there is nothing. I also say that all the trends in the outcomes which are reflected in those raw figures contained within that report from the authority bespeak the fact that the results we are achieving in reducing deaths and injuries in Victoria — while any one of them is too many in either category — nevertheless show that we are making progress in ensuring the safety of those people who are employed on work sites around Victoria.

So then you turn to the English experience. What is the English experience? I turn to it on the basis that there is passing reference in the course of the second-reading speech to what is occurring in England, but also because it is about the only other area where I can at least find something which is roughly comparable to the legislation before the house. So it is valid to consider what is actually happening in England.

In the sense of the style of legislation that is now before the Victorian Parliament, the simple answer to what is happening in England is that nothing is happening. There has been some discussion over the last several years concerning a proposed piece of legislation — I will make specific reference to that in a moment — but it is also instructive to consider how that debate has even occurred. That is a fair question in the context of legislation which is directed at accidents in the workplace and which is intended to accommodate accidents, deaths and injuries that are happening in the workplace.

How is it that we have had the discussion, such as it is, in England? These matters are explored in the course of a document over the signature of the then Home Secretary, Mr Jack Straw, in a paper which was distributed in May 2000. Partway through this document at page 12 is the heading 'The need for reform'. Paraphrasing what comes under that heading, it comes down to this: over the years and indeed over the decades a series of disasters has befallen the British community.

The first referred to in this document was the *Herald of Free Enterprise* disaster on 6 March 1987 — 187 people killed — and there were subsequently prosecutions against seven of the people who were involved in the company. The cases failed because of what is said to be the fact that the acts of negligence could not be aggregated and attributed to any individual who was a directing mind. In 1987 also there was also the Kings Cross fire which occurred on 18 November that year; 31 people died in that event. In 1988 the Clapham rail crash occurred on 12 December; 35 people died and 500 people were injured in that single event. In that instance British Rail was criticised because of work practices, and this issue that we are now discussing was raised again.

The Southall rail crash occurred on 19 September, 1997. There were seven deaths and 151 people were injured. Again there was discussion about this issue. Subsequently since this paper was distributed in May 2000 other tragedies have occurred in the British rail system. As recently as only this week there was yet another incident where people were killed or injured.

The point of it all is that the discussion that was generated in the United Kingdom occurred because there had been a series of disasters across the whole community environment. This was not related to accidents in the workplace in the sense that we are discussing here today; this occurred in circumstances where people — for the main part, regrettably, using the transport system — were killed or injured. There was subsequent investigation, usually by inquests; recommendations were made about offences being

prosecuted; and it was said that the system was lacking because the offences were not appropriate to the legislative structure.

I say again that these are events unrelated to or removed significantly from the bases upon which this legislation has come before the house. That is the first point, in terms of how the discussion has occurred in England.

What has happened to the discussion? In 1994 the Law Commission provided a report in the United Kingdom entitled *Criminal Law — Involuntary Manslaughter*. In 1996 it produced another report entitled *Involuntary Manslaughter* and in the course of doing so it produced some model legislation which is called the Involuntary Homicide Bill. There was then ongoing discussion about that and eventually the government made a response to that report, and that response is the subject of the document by the Home Secretary to which I have already referred and which was released in May 2000. I have with me the 28 pages it contains, and everybody will be relieved to know I will not read through them. However, I will make reference to the draft bill, which is the bill that is appended to the report from the United Kingdom and which is essentially the outcome of the discussions, such as there have been, in the United Kingdom.

I pause to say that the bill now before the house is about 25 pages long. It has a multiplicity of clauses and is convoluted in the extreme in a way that I will highlight later, and it is the love child of our current Attorney-General. As opposed to that, there is the Involuntary Homicide Bill which is appended to the report from the British Home Secretary and is the result of protracted investigations over a period of many years relating to appalling disasters that have occurred in the English community in a variety of circumstances. It consists of four pages with a schedule comprising another three, and it is 11 sections long.

The clauses of the bill are headed as follows: clause 1, 'Reckless killing'; clause 2, 'Killing by gross carelessness'; clause 3, 'Omissions causing death'; clause 4, 'Corporate killing'; clause 5, 'Remedial orders against convicted corporations'; clause 6, 'Alternative verdicts'; and clause 7, 'Abolition of involuntary manslaughter'. Clauses 8, 9, 10 and 11 are consequential provisions. That is the sum total of what the United Kingdom draft legislation contains.

What is contained within the recommendations of the Home Secretary's paper, entitled 'Reforming the law on involuntary manslaughter — the government's proposals'? How did the United Kingdom government respond in the face of this relatively minuscule piece of legislation which was offered as a draft and as an appendix to its report of May 2000? What did the UK government say about the issues about which our learned Victorian Attorney-General has now lowered his head in typical form and bolted at the gate in the form of the well-known bull?

I quote from what the government in England has said at page 6 of the 28-page overview of this draft legislation:

> The government would welcome views on any aspects of the proposals, whether on matters of general principle and policy or on the details of the proposals. Specific questions are asked at certain points in the text: these are not exclusive but indicate that views are sought on these particular issues. The government would particularly welcome views on the likely practical consequences of the proposed changes.

What has the British government said about the notion of corporate killing? The paper discusses potential defendants and corporations as potential defendants. It then discusses unincorporated bodies as prospective defendants. Then there is a preferred alternative to those two options, which is described in this paper as 'undertakings'. It is an interesting concept because paragraph 3.2.4 states:

> An alternative is that the offence could apply to 'undertakings' as used in the 1974 act. Although an 'undertaking' is not specifically defined in the 1974 act, HSE have relied on the definition provided in the 1960 Local Employment Act where it is described as 'any trade or business or other activity providing employment'. This definition could avoid many of the inconsistencies which would occur if the offence was applied to corporations aggregate but not to other similar bodies.

The British government is addressing an issue about which the bill before this house is patently discriminatory. For some reason this bill has corporations in the gun but it does not apply to partnerships, trusts and other business structures.

What does the government of the United Kingdom say about this? Its paper states:

> The government would welcome comments on whether the application of the offence to 'undertakings' is preferable to applying it solely to corporations.

On the issue of Crown immunity, under the heading 'Government and quasi-government bodies', the United Kingdom government, when exploring the issues, states at page 15 of its document:

> The government would welcome any comments on the application of Crown immunity to the offence of corporate killing.

I will not read through these 28 pages, but the bottom line is that in May 2000 the United Kingdom issued a

report over the signature of the Home Secretary in which it sought input from all the community stakeholders on a four-page Involuntary Homicide Bill and it encouraged, through the use of this overview document, plenty of public input to all the aspects reflected in that proposed legislation. Where is that legislation as of today? It has gone nowhere!

The reality is that the legislation now before this house is simply not a proper approach to achieve the sorts of outcomes it is meant to achieve. All the complexities associated with the bill have inevitably meant that even though they have a Labour government over there, it understands that to do what is embodied in the terms of the bill is simply not the way to proceed. Is it any wonder that I have come across no legislation that is reflective of the style of the legislation before us?

I turn to the bill itself. When considering legislation before the house — or any course of conduct by parties generally — it is sometimes instructive to look at the proverbial fine print. Often what appears to be the most innocuous content is the best guide to where you really ought to be directing your attention. That is what has happened here. I direct the attention of the house in particular to the amendments to section 54 of the Occupational Health and Safety Act proposed by clause 14, headed 'Discrimination against employees etc.'. They are tucked away at the back, on the second-last or third-last page of the bill.

For a start, I turn to what section 54 presently provides. The section is headed 'Discrimination against employees etc.', and subsection (1) states:

> An employer shall not dismiss an employee or injure an employee in the employment of the employer or alter the position of an employee to the detriment of the employee by reason only that the employee —

performs any function as a health and safety representative, assists an inspector, makes a complaint about health and safety, and so on.

The essence of the section is that an employer cannot sack someone 'by reason only', as the legislation states, that that someone comes within those categories as described.

Subsection (2) of section 54 states basically the same things, but it refers to the notion of prospective employees and the principle that an employer cannot refuse someone employment only because they have been a health and safety representative or a member of a health and safety committee, because they have performed functions or duties as such a representative or member, and so on.

The two subsections of section 54 deal with those circumstances: you cannot sack someone whom you currently employ only because they fulfil such roles as are described; and you cannot refuse to employ someone as an employee only because they have fulfilled such a role.

What are the penalties? The current penalties provided for in section 54(3) are as follows:

> Any person who is guilty of an offence against this section shall be liable —
>
> (a) where that person is a body corporate, to a penalty of not less than 50 penalty units —

which is $5000 —

> nor more than 2500 penalty units —

which is $250 000. The current range of penalties for a company is not less than $5000 and not more than $250 000.

Section 54(3) provides alternatively:

> (b) in any other case, to a penalty of not less than 10 penalty units nor more than 500 penalty units or to imprisonment for not more than five years or both.

Breaking that down, the first interesting thing is that it states 'in any other case'. So by definition in the event of a breach a partnership, a trust or an individual could face a penalty of not less than $1000 and not more than $50 000.

What is going to happen now? Under this apparently innocuous clause — and it is only about a dozen lines tucked away at page 24 of this bill — we take out the word 'only'. The clause inserts proposed section 54(2A), which says:

> In sub-sections (1) and (2), it is irrelevant whether or not a reason is the only or dominant reason as long as it is a substantial reason.

Can you just imagine what is going to happen in the workplace? Can you just see what is coming, like a train along a tunnel? Let's take the circumstance of an employee who, once upon a time, risked being sacked only because he or she fulfilled the role of the safety officer or only because they had done any of the other things referred to in subsection (1). But it does not have to be only because of these reasons. What we are saying now is that it is irrelevant whether or not a reason is the only or dominant reason, as long as it is a substantial reason. That is what the government is changing it to. What is it going to do with the penalties? For the penalties you have to go to clause 12. In the case of a corporate entity they will go from a maximum of

$250 000 to a maximum of $750 000. There will be no prescribed minimum; there will just be a maximum. In the case of an individual or an enterprise other than a corporate entity, it will go to a penalty of not more than $150 000 or 12 months jail, or both.

Can you just imagine what will happen in the workplace? The difficulty with this is that it is just like a beacon. This is a throwback to the them-and-us thing. This is all about the notion of recreating the divisions of the class culture — as the Deputy Leader of the Opposition says — in the work environment. This is all about employers and the workers and about having work environments which are representative of an age gone by. It has no place in this legislation; it should not be there. By its very nature it will create enormous stress across the work environment. More particularly though, the real devil of this provision is that it is precisely reflective of what this government wanted to do in bringing this bill into the house. That is the first problem with it.

Let's work through a few others. As I said a moment ago, on the face of it the bill is discriminatory. It discriminates against corporations because it picks them out. In this day and age there is a variety of arrangements whereby businesses function in our commercial community. But corporations are the ones that are picked out.

It is also discriminatory in that it selects senior officers, as they are defined. Senior officers will now be facing the music in a specific category. If it were not discriminatory it would reflect upon employees. It is not at all difficult to think of situations where employees of a corporation could well be involved in the sort of conduct to which this legislation refers, yet they are exempt from it. You cannot help but ask why it is so. Why will only corporate bodies and senior officers bear the brunt of this?

It is dealing with issues of criminal law, one of the basic tenets of which is the issue of certainty. If you are going to charge someone with an offence, if someone is going to be convicted of an offence before the criminal law, issues of certainty are imperatives, and there are plenty of statements of law to that effect. This is not civil jurisdiction, not the sort of thing that ought properly to be open to the sort of interpretation that is going to have to be applied to this legislation.

Then there is the notion of intention, which is absolutely pivotal to the operation of the criminal law. Provisions in the bill do not, I believe, give proper effect to that other fundamental tenet of the criminal law. Clause 3 of the bill inserts proposed section 14B(1), which is vague and circuitous in its terms and includes the provisions:

> (1) For the purposes of section 13, the conduct of a body corporate is negligent if it involves —
>
> (a) such a great falling short of the standard of care that a reasonable body corporate would exercise in the circumstances; and
>
> (b) such a high risk of death or really serious injury —
>
> that the conduct merits criminal punishment for the offence.

What does that mean? I could see a court spending forever interpreting the true meaning of that provision; and it is but one example of the vague content of this legislation.

Proposed sections 13 and 14 refer to negligence. Proposed section 13 deals with corporate manslaughter, and section 14 deals with negligently causing serious injury by a body corporate. In the second-reading speech there is plenty of talk about the necessity for gross negligence to be proved. That is a term that is repeated throughout the second-reading speech, but in my reading of those provisions — and, in 14B, the definition of negligence — the word 'gross' does not appear. How can it be that such reliance is placed on a principle so fundamental to the way this legislation operates yet the term simply does not appear in the bill? It is going to be a question of interpretation by the courts as to what is said to constitute gross negligence or indeed whether that principle applies at all in interpreting the term 'negligence'.

Proposed subsection 14B inserted by clause 3 contains another of the quirks in the bill. Subsection 14B(1)(b) contains the expression 'really serious injury'. The term pops up out of nowhere. In proposed section 11 we find that the expression 'serious injury' has the same meaning as it has in clause 4 of the bill, but reading that clause does not add to one's understanding; yet other parts of the bill simply use the expression 'serious injury' per se, whereas proposed section 14B(1)(b) suddenly contains the expression 'really serious injury'. I see the court system fiddling about for an eternity trying to make sense of a definition of serious injury contained in the legislation — and serious injury as referred to in a variety of places in the bill — and then all of a sudden in the manslaughter provisions in proposed section 13 we find the notion of a 'really serious injury'. Again, questions of interpretation will inevitably arise.

Proposed section 14B(2) bears a remarkable resemblance to the United Kingdom draft legislation to

which I have already referred. That proposed subsection of the bill before us states:

> For the purposes of section 14, the conduct of a body corporate is negligent if it involves —
>
> (a) such a great falling short of the standard of care that a reasonable body corporate would exercise in the circumstances; and
>
> (b) such a high risk of serious injury …

Clause 4 of the draft United Kingdom Involuntary Homicide Bill states, on the matter of corporate killing:

> (1) A corporation is guilty of corporate killing if —
>
> (a) a management failure …
>
> (b) that failure constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstances.

I cannot help but wonder if they have plucked a bit out of here and a bit out of there for the purpose of drafting the legislation before the house.

With regard to the definition of 'negligence', proposed section 14B is characterised by vague, relative and subjective terms. It is going to be an absolute nightmare for interpretation by the courts. The expression 'agent' appears in proposed section 14A and should not be there at all; it should be deleted from that part of the bill. The Australian Institute of Company Directors contributed to debate on this legislation and has made various observations on this point, amongst others — but I will come back to that.

Proposed section 14A is headed 'Attribution of certain conduct', and the Australian Institute of Company Directors comments on it as follows — and I pause to say that this addresses the point I started to make a moment ago:

> By making a corporation liable for the acts of an agent, this creates vicarious liability in serious criminal offences contradicting the statement in the Attorney-General's second-reading speech that vicarious liability should not be used as a basis for determining liability for serious criminal offences. On that basis the reference to 'agent' should be removed from subclause (2). The clause also appears to contradict clause 14B(5)(b)'.

The senior officer offences are referred to in proposed section 14C of the Crimes Act. Again, as a first principle, under the terms of this legislation a group of people are being singled out in a way in which they are not prospectively singled out in any other part of the world, and most assuredly not within any jurisdiction in Australia. Senior officers have a number of things to contend with. Firstly, proposed section 14C(1) states:

> If it is proved that a body corporate has committed an offence against section 13 —

that is the manslaughter provision —

> (a) a senior officer of the body corporate —
>
> (i) was organisationally responsible …

I pause to ask what 'organisationally responsible' means, even though a definition appears in proposed section 14C(3). I would hate to be reporting this later on, because I am having trouble following it myself! A number of criteria are set which determine whether a senior officer is organisationally responsible for the conduct that has been complained about as having resulted in the death of an individual. It says, in coming to a conclusion as to whether the person concerned is organisationally responsible:

> … consideration may be given to —

it does not have to be given, it 'may be given' —

> (a) the extent to which the senior officer was in a position to make, or influence the making of, a decision concerning the manner in which the conduct, or that part of the conduct, was performed; and
>
> (b) the participation of the senior officer in a decision of the board of directors of the body corporate concerning the manner in which the conduct, or that part of the conduct, was performed; and
>
> (c) the degree of participation of the senior officer in the management of the body corporate.

There is enough in there to keep a thought going for a week as to what it will all mean in terms of what might reasonably constitute a charge pursuant to this legislation of the offence dealt with under this section.

Again vague and subjective terms are used, all accompanied by extraordinarily heavy penalties in a situation where, as I have said from the start, there is no definable reason why this should happen at all.

The same sort of construction occurs in the next provision, which deals with people who are injured. I will not run through it all again, but I pose the same query: why is it that we need all this terminology, which of its very nature is as vague as it is?

The next issue I raise is that for some reason volunteers are exempted. In one sense that is good, in that volunteers should be exempt for all the reasons that attach to discussions about volunteers' contributions. On the other hand, as a matter of consistency in the application of the principle there is no reason why volunteers should be exempt. If a senior officer is being paid some nominal amount of money, for example, he

will get caught up. If the senior officer has taken on the role with the corporate entity because he has been prevailed on to do so but is doing it at a cut rate to help someone out for a while, he will get caught up. However, if the same person has volunteered his or her services, they will escape. As a matter of logic it does not seem to be sensible or consistent.

There also seems to be an inconsistency in proposed section 14C(5). I understand the provision is intended to relate to the situation where a company has gone broke but where a prosecution can nevertheless be launched against senior officers, albeit that the company is in liquidation. But if one looks at proposed section 14C(5) and then at 14C(1), one sees that they are in complete contradiction. I do not see how they will be able to operate. Proposed subsection (5) states:

> A senior officer of a body corporate may be prosecuted for an offence against sub-section (1) or (2), whether or not the body corporate has been prosecuted … against section 13 or 14 …

Proposed section 14C(1) states:

> If it is proved that a body corporate has committed an offence against section 13 —

and then later on it talks about 14. For those two provisions to apply there has to be a conviction against the organisation. Yet proposed section 14C(5) says it does not matter. I would like the government to explain how it is that that inconsistency can be reconciled against what is contained within the legislation.

Proposed section 14D is a particularly draconian provision. It deals with a situation where a court may order offenders to take what are termed specified actions. I suppose it is an extension of a basic tenet of the criminal law that if you do the crime, you do the time. You go to court, you are prosecuted; and if you are found guilty, an appropriate penalty is imposed. There it is: it is done. It is intended that there can be a mix whereby the corporation can go through the process I have just described and be fined and other penalties can be imposed, but the court can order a range of things at the company's expense which will bring it into the public eye as having erred and having been prosecuted and penalised — yet this is to happen on some sort of ongoing basis.

The problem is that you get cause and effect, and an unintended consequence. Let's say, for example, that a major corporation is convicted under one of these preceding provisions and then is convicted under the one to which I am now referring. It would then go along to court and be subject to these additional penalties regarding the publication of what it has done, including the public flogging that goes with that. As for the unintended consequences, that company might be a major investor within Australia. It might be one of those corporate entities that are part of a package of superannuation investments, for example. After going through the process contemplated by this section, you might well find that the value of the company is slashed. It may therefore have an enormous impact on the financial position of many people who, completely apart from the operations of a major investing organisation such as a superannuation fund, have invested in the entity. There will be a cause and an effect, and a classic, unintended consequence.

What will happen to the employees of this major organisation who are faced with having to read about this sort of result in the newspapers when it is thrust under their noses day after day? What will happen to the corporation's clients? To what extent can the penalties which are to be imposed on the organisation be truly measured?

I have grave concerns about the operation of proposed section 14D, which I ask the government to reconsider. I believe it flies in the face of what is generally regarded as fair and reasonable regarding the imposition of penalties on individuals or organisations that come before the courts.

The next issue I want to touch upon is the content of proposed section 14F, headed 'Territorial nexus for offences'. Under the terms of this clause we are faced with the distinct prospect that people involved in organisations outside Victoria, perhaps outside Australia, face the risk of being dragged into this legislation. That is not just on the basis of the fact of it. Sometimes these things are assessed by people on the basis of thinking to themselves, 'Don't be ridiculous about this; that can't happen', or 'This can't happen'.

If you are a prospective investor in Victoria or in Australia and those sorts of things are being tossed at you by the people who give advice on these issues, of course it has an impact. Of course it has a propensity to give people cause for pause. Of course they ask the next question, which is, 'Where can I go within Australia where I am not faced with the prospect of these sorts of things happening?'. At the moment the answer will be, 'Anywhere else you like. You can go anywhere you want to apart from Victoria and you will not be faced with these sorts of consequences'. Or, 'Don't invest in Australia at all. Go anywhere else and you won't face the sorts of consequences contemplated by these sorts of provisions'.

It is one of those instances where people sometimes, with the best will in the world, give instructions that

these sorts of provisions be drafted without having proper regard to how they will ultimately take effect.

Part 3 of the bill is headed 'Amendment of Dangerous Goods Act 1985'. Clause 7, headed 'Indictable offences', inserts a subsection which provides that charges can be laid in relation to the offences contemplated under the terms of this legislation. Subsection (4) of clause 7 goes on to provide that the charges can be made after this bill is enacted:

> … irrespective of when the offence to which the proceeding relates is alleged to have been committed."

On the face of it that legislative provision is patently retrospective. You could find companies are charged under the terms of the Dangerous Goods Act 1985 in relation to activities which occurred prior to the legislation taking effect. It is retrospective in content and should not be included.

As a general principle, I do not have a problem with the provisions increasing penalties. But these things are a question of balance. The government needs to be very careful that is not seen to be lifting the bar on these issues, without having regard to all matters of relevance to this important piece of industrial relations legislation in Victoria.

This bill is 'bad law' for all the reasons I have been talking about, not only because it seeks to apparently address a situation of benefit to employees. It seeks to achieve that end by belting employers, with a focus on corporations. They are singled out. It flies in the face of how industrial relations are run in Australia generally, and in Victoria in particular. It was summed up in an advertisement placed by various employer groups in the *Herald Sun* of Monday, 15 April 2002. I believe this advertisement is unique to the term of this government. Never before has an advertisement such as this been placed on behalf of a collective of employers. It also flies in the face of what I am sure this government considers to be the ground it is making in dealing with employers.

But to the wider world this legislation is a window, and when you look through it what it really tells you is the true philosophy that drives the government in its relations with employers. I have said to many of them since this legislation was introduced that it is political philosophy that drives public policy; it is not the other way around. What we have here in this legislation is a clear example of a political philosophy which, if this government had its druthers, it would think through again. But it is committed to it now and there is no other course than to go ahead.

But when this advertisement was published on 15 April it was signed by the Australian Industry Group, the Victorian Farmers Federation, the Master Builders Association of Victoria, the Printing Industry Association of Australia, the Australian Retailers Association Victoria, the Victorian Employers Chamber of Commerce and Industry, the Victorian Automobile Chamber of Commerce and the Victorian Transport Association. Its heading reads:

> Minister Hulls, the solution to workplace deaths will not be found in bad law!

It goes on to explore some of the issues that I have referred to in the course of my contribution this evening. It is right about the bottom line, that the real problem with this legislation is that this is bad law. The fact of the matter is that we do not need it in Victoria. We do not need it in any jurisdiction in Australia. The English very obviously do not think they need it because it is still hanging out there in the ether somewhere.

At least if this government is genuine about wanting to advance the cause which it says is reflected in this legislation it should go back to square one. It should go back to the Standing Committee of Attorneys-General and submit the propositions which are contained in the bill, let everybody make a comment about it, and let's then see where we get. But let me tell you, Mr Acting Speaker, the National Party is opposed to this legislation in the form in which it now appears before this house.

Sitting suspended 6.30 p.m. until 8.02 p.m.

Independent amendments circulated by Ms DAVIES (Gippsland West) pursuant to sessional orders.

Mr WYNNE (Richmond) — I rise to support the Crimes (Workplace Deaths and Serious Injuries) Bill. I think there is no sharper example of the difference between this side of the house and the opposition parties than the debate on this bill. This is an extremely important piece of legislation which goes to the very heart of protecting workers. That is what this bill is about. It is a Labor thing to do. It was only the Labor Party that stood up at the last election and said, 'We are going to introduce legislation to prosecute those few' — and we recognise there are only a few — 'rogue employers who criminally seek to take advantage of workers and in fact cause serious injury and in the most tragic of circumstances death'.

It is the Labor Party that is prepared to stand up here today and debate this piece of legislation, because philosophically what it is on about is providing a fair

level of protection to workers in this state. I would summarise what we have heard from the speakers for the opposition parties, the honourable member for Berwick and the Leader of the National Party, as basically legal obfuscation. They sought to cloud their contributions in points of legal debate when really what we are talking about here is a basic philosophical position: do you support the rights of workers to be protected, or do you not? I think from the contributions that have been made by both the honourable member for Berwick and the Leader of the National Party the answer to that question is a resounding no.

The Victorian Trades Hall Council, which of course is a representative body for workers in this state, has mounted an extraordinary campaign in support of this legislation — indeed, as the honourable member for Tullamarine says by interjection, for decency in the workplace. Of course it has been headed by the Trades Hall, which has indicated in its literature a particularly tragic case which to some extent portrays in a very personal way what this legislation is about and the genesis of the framing of the legislation.

It was a case of a handsome young man, a beautiful young man, of 18 years of age. On 12 November 1998 two 18-year-old boys started work, Anthony Carrick and his mate. It was Anthony's first day at work, and it killed him. The boys were dropped off at Drybulk Pty Ltd in Footscray by a labour hire firm, with no training or safety equipment. They were told to sweep the floor in front of several 5.5-tonne cement walls. The unrestrained slabs had been known to shift and wobble through the vibration of nearby traffic on Coode Road. The slabs were in place to protect the shed's walls. One fell. Anthony was killed, and his mate received serious crushing injuries to his back, pelvis and legs.

Drybulk was fined $50 000, but the company liquidated, and to date the fine remains unpaid. In that brief portrayal what justice was there for this boy? There was no justice for this boy who went off to his first day at work and never came home. What justice can there be for his mother, Jan Carrick? How can this Parliament look her in the eye and say that justice was done for her? No justice was done for her. That company was liquidated. It did not care about this boy. It wrongfully sent this young man to his death and caused his young colleague serious injuries which could be permanent. The firm got off scot-free because it liquidated, and now it is operating again. What justice is there for that family and all the families who have suffered these appalling losses?

Now opposition members ask in their contributions in fact, 'What's the problem here? We had only 32 deaths last year. That is not bad, it is down from a high of some 125 deaths'. One death is too many. For this side of the house one death is too many. This Parliament should send out a clear and unequivocal message that one death in the workplace is one death too many.

If you accept the twisted logic of the opposition in relation to this matter you should say, 'The road toll has progressively gone down from 1000-odd to between 400 and 500. Should we in fact abolish the offence of culpable driving?'. Surely in this circumstance we need to have a very clear and unequivocal position where this Parliament stands up and says that when somebody goes to work, like the young person I have just portrayed this evening, or in fact any worker, they should have a safe workplace, and their family should be able to be confident that they will come home again, that they will not die or be seriously injured in their workplace.

This legislation will deal only with those rogue employers, those who so manifestly disregard their obligations as employers. They should be criminally liable. They should be liable for their actions both as corporations and as individuals. After the corporation has been found legally liable, those who are directly responsible for the workplaces and the control of those workplaces also should be found legally liable for their actions. Surely that is a just outcome for those people and for the victims — those who suffer workplace injuries and deaths.

What does this legislation do? As I indicated, whilst most employers take their occupational health and safety obligations seriously, sadly there are some rogue operators who ignore their workers' safety. Existing criminal laws are clearly inadequate, as I have outlined in my contribution on the matter in the Parliament today. The proposed laws will target corporations which are grossly negligent. That is the test: they have to be grossly negligent towards their employees and, in that context, fines should be imposed. We should impose a maximum fine and send a clear message: a $5 million fine for a corporation convicted of manslaughter, and a $2 million fine for a serious injury. That is a serious fine and sends a serious message to the community that, as a government, we take these matters seriously.

The new laws will target those senior officers within a corporation who have been reckless about their employees' safety, are organisationally responsible for, or who have materially contributed to the offence — and this is a true test — and whether the corporation has already been proved liable. So it is a secondary matter: after the corporation has been proved liable,

then the senior officer can be dealt with in the same way. We are only going to target behaviour that warrants criminal punishment. If somebody has been killed in the workplace and, as the employer, I have been criminally negligent, why should I not have to go before the courts and answer for that behaviour?

I am going to finish in a moment because I know many of my colleagues want to contribute, but there are a number of things this law does not do. There have been all sorts of lobbying campaigns, most particularly by employer groups opposing the legislation. These laws do not impose any extra obligations on employers beyond their existing occupational health and safety responsibilities. The laws do not target honest mistakes or unavoidable incidents. They do not target people at operational level or volunteers, nor do they put responsible employers at risk. In our view, the new laws certainly have proper checks and balances within them.

This is an opportunity for the Parliament to stand up and say, 'Where an employer or a senior officer has been criminally negligent, under a reasonable test for their actions, they should be able to go before the courts. They should be answerable, as the rest of us are, for their actions'. In this context, the legislation is important. It is fundamental legislation for the Labor Party because, at the end of the day, the Labor Party says that a workplace should be a safe place in which a person should be able to lawfully pursue their living. You should not be in a situation where you go to your workplace and sometimes, tragically, you do not come home or you are so seriously injured that you may never work again.

In that context I strongly support the legislation, and the Labor Party strongly supports it. We campaigned on this legislation at the last election but, tragically, the opposition parties cannot see their way clear to support us. This is basically ideologically driven by the opposition parties. I commend this piece of legislation to the house and sincerely wish it a speedy passage.

Ms ASHER (Brighton) — I agree, and the Liberal Party agrees, that one death in the workplace is one too many. The legislation has a laudable aim, but unfortunately the method that the Labor Party has chosen is wrong. The bill brings in new offences of industrial manslaughter and of negligently causing serious injury. Under this bill, a body corporate will be liable where it is shown to have owed a duty of care. The fines for corporations will be raised to $5 million for industrial manslaughter and $2 million for negligently causing serious injury. On top of that, under certain circumstances corporations will also be obliged to place advertisements in newspapers advertising their culpability.

The bill allows prosecution of directors and senior officers, with a maximum penalty for senior officers of five years in jail and/or a $180 000 fine where the corporation has committed manslaughter and, again, a maximum penalty for senior officers of two years jail and/or a $120 000 fine where the corporation negligently caused serious injury. Of great significance is that the bill allows for an aggregation of conduct and allows for an aggregation of the conduct of agents, employees and casual workers to end up as a sum total for senior officers, directors and the like. This is a significant change.

The bill also increases fines for offences against occupational health and safety laws to make them the highest in Australia. As the Liberal Party's spokesperson on industry, I have to say that I am prepared to come to the table to discuss issues like occupational health and safety. However, I do not believe the approach put forward in this house tonight by the Labor Party will yield any results, and I do not believe it will necessarily result in a decrease in the number of deaths in the workplace. Despite the emotion of the whole set of circumstances, I would have thought that a decrease in deaths and injuries in the workplace is what every responsible member of Parliament would want to achieve.

I believe the Labor Party has approached this matter from an incorrect perspective for a number of reasons. Again, I reiterate my party's commitment to the objectives stated in the Attorney-General's second-reading speech. He said:

> Victorians want — and deserve — workplaces that are safe and productive. Victorian families have a right to expect that, when they see their loved ones off to work each morning, they will return home safely each night.

That is my party's objective too. Where we differ is on the method to achieve that objective. I want to go through why I believe this bill is wrong. Firstly, it is wrong because it turns back the clock on cooperative arrangements. I am prepared to pay tribute to the work the trade union movement has done, I am prepared to pay tribute to the work employers have done, and I am prepared to pay tribute to the work Workcover has done in taking a cooperative approach to achieving a desired outcome. What we have seen over the last 16 years is a movement towards a desired outcome — a reduction in workplace deaths and injury. As a result we have seen workplace deaths decline by a third since 1989.

I refer to a discussion paper put out by the Victorian Employers Chamber of Commerce and Industry (VECCI) entitled 'The Crimes (Workplace Deaths and Serious Injuries) Bill — Have we given up on prevention?'. To my mind the title of that paper is particularly significant, because this bill indicates that the Labor Party has given up on prevention.

When I look at everything in our society — for example, drugs and road safety — it appears that the whole thrust of what we are on about is prevention. There has been universal agreement that prevention is the best approach, but what we are seeing in this bill, unfortunately, is an abandonment of prevention for a very aggressive approach that will yield little result.

This discussion paper states that, unfortunately, 31 deaths were recorded in the workplace last year. Thirteen of these — that is, the largest category of them — were in the agricultural sector, followed by 7 in construction and 5 in manufacturing. My heart goes out to the families of those people who died in the workplace. I suspect they are looking for an assurance that it will not happen again and that the best possible practices are in place.

The Workcover figures on page 12 of the VECCI paper show that over time as part of a cooperative relationship between employees, trade unions and employers we have seen a reduction in workplace deaths. In 1988–89 there were 102 non-disease deaths, which is the technical term, in the workplace. We have seen that figure steadily slide to 31 deaths in 2000–01. They are 31 deaths too many, but gosh that is a significant decline in the trend, born of a cooperative approach based on prevention, not on jail terms.

Likewise, the claims for injuries in the workplace have also declined. In 1989 there were 104 686 injuries, and that declined to 45 966 in 2000. Given that we are seeing progress, why do we have to have such an aggressive approach which will completely remove the cooperative attitudes we have seen in the workplace?

I particularly refer to a paper entitled 'Farm fatality and injury data 1997–2001' prepared by Ron Ruff. From 1 January 1985 to 31 December 2001 unfortunately 154 adults and 26 children were killed on farms. Does jailing somebody bring back the lives of those children? The total farm fatalities in that period were 180!

The bulk of farming accidents occur because of tractor rollovers. I want to take a moment of the house's time to look at the sector with the largest number of deaths in the workplace, which unfortunately is the agricultural sector. In noting the 13 farm fatalities in 2001, I ask members of the Labor Party to tell me how jailing somebody, indeed having this legislation, would have avoided these deaths?

On 24 January a 16-year-old son of a dairy farmer died when an ATV rolled over. On 26 January a 60-year-old farmer was found deceased in a paddock — his tractor having moved off down the slope. On 8 February a 60-year-old farmer, employed by his own company, fell 10 metres to his death after having been knocked off a windmill by a wind vane. On 12 February a 65-year-old employee of a tobacco farming company suffered death as a result of a tractor accident.

On 13 March a 78-year-old self-employed farmer died at his workplace through a tractor-related incident. On 31 March an 86-year-old farmer was bringing in cows with his wife when a cow knocked him down. He sustained abdominal injuries and died the next day.

On 4 April a 60-year-old hobby farmer was crushed when the tractor he was driving, which was not fitted with rollover protection — I am proud to say I was part of a government that introduced it — rolled over. On 20 April a 41-year-old female hobby farmer died when the tractor which she had been driving rolled over. On 22 May a 77-year-old retired farmer was found dead with head injuries caused by a bull that was kept near the house. On 1 August a retired dairy farmer died as a result of a felling accident while excavating pine trees.

On 3 November a 41-year-old part-time farmer who was slashing grass on his property died as a result of a tractor accident. On 26 November a 58-year-old friend of a farmer was struck on the head while shifting soil with a tractor and bucket attachment. On 23 December an 11-year-old daughter of husband and wife employees was killed on a dairy farm after becoming trapped by a stall feed-and-release system.

I ask this house to consider just last year's sample of farm deaths — the biggest component of deaths. If we had Labor's legislation in place, would one of those deaths have been avoided? I think not. Those deaths are tragic and Labor's legislation will not avoid any one of these deaths. Labor's legislation would only imprison family members, friends of farm owners and the like. Labor's legislation is misguided.

I turn now to the second reason why we should and will vote against this legislation. This legislation labels every employer a potential criminal. The Labor Party is saying to each employer in Victoria, 'You are a potential criminal'. Unfortunately that does not sit well with either my party or the future of employment in this state.

I turn to the news release by the Victorian Employers Chamber of Commerce and Industry and note that many employers are saying that when they ask for advice from occupational health and safety officers there is no provision. I quote an employer's comment that appears on page 9 of the paper:

> I wouldn't mind being exposed to the risk of fines if only they (Worksafe) were prepared to tell me whether my existing work practices comply or not.

So we have a regime of imprecision being foisted on employers.

An honourable member interjected.

Ms ASHER — Not only your government! You will do an inspection. Last time employers were named in this house, indeed in relation to Workcover, inspectors were sent down. There is no way I am naming people to subject them to the Labor Party's punitive practices!

The third reason we should reject this legislation is that the government does not understand its own legislation. The Attorney-General does not understand his own legislation. Indeed, the Attorney-General wrote to me on 1 March 2002 advising me that:

> The changes outlined in the brochure relate to the Crimes (Workplace Deaths and Serious Injuries) Bill, which has been introduced to target rogue employers who turn a blind eye to workplace safety.

That is great rhetoric! The problem is that it is not reality. The changes are designed to target every employer.

Honourable members should make no mistake about this: not even the Premier knows what this legislation will do. I refer to a transcript from Media Monitors. When the Premier was asked about this legislation on the Mike Cooper show on 3BA FM, *Ballarat Today*, he said:

> … you can only be prosecuted under this bill under the draft legislation if you can prove to have deliberately caused the death of an employee. That is, you set out to deliberately cause the death by your practice in the workplace.

The Premier said also:

> So it's not do with accidents or mishaps or things that were omitted or went wrong, it's all to do with the intention. It has to be an absolute deliberate and proved intention that you set out to cause the death of someone in the workplace.

Well, pardon me, Madam Acting Speaker, I am no lawyer but I thought that was murder. In our society we call it murder if you deliberately set out to kill someone, and it is a great shame the Premier does not know that. Whether you are an employee, employer, or unemployed in this community, if you deliberately set out to kill somebody, you will be charged with murder. The reason I have quoted that is to show that the Premier does not understand what is in the bill, more is the pity.

The fourth reason we should reject this bill, as we will, is that it is bad law. Let me give an instance in farm deaths. A farmer dies at work. What does the Labor Party want to do? It wants to jail the farmer's wife! I just indicated that the Premier does not understand his bill, so I do not believe his back bench will understand it, either. If a farmer dies at work they want to prosecute and jail the farmer's wife. That is bad law.

Mr Maxfield interjected.

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Narracan will desist from engaging in unparliamentary behaviour and language.

Ms ASHER — The fifth reason we will vote against this bill is that it is based on ideology. It is a sop to the unions and it is anti-employer. I remember the Attorney-General standing outside the other day addressing a demonstration. He talked about employers wanting a licence to kill. Again that is a nonsense. The bill is based on ideology and the Liberal Party will not support it.

The sixth reason we will vote again against this bill is that under this bill you could be jailed for something you did not even do. You could be jailed for something that is not your fault. Under the aggregation principles contained in this bill — —

Mr Nardella — That is not true!

Ms ASHER — I know that is very true. Read the bill! The problem is the Premier does not understand it.

Ms Duncan interjected.

The ACTING SPEAKER (Mrs Peulich) — Order! I call on the honourable member for Gisborne to desist from using unparliamentary language. If she continues to disregard the Chair I will call the Speaker to the chair to deal with her.

Ms ASHER — Under the bill conduct relating to a range of employees could be regulated and the senior officer or director held accountable for a range of conduct, and indeed under this bill you could be jailed for something you did not do.

The seventh reason we will vote against this bill is that no other jurisdiction in the world has it. Indeed, the United Kingdom government has been consulting for six years and will not move on this because its members know the difficulty attached to it.

The eighth reason we will not vote for this bill is that there will be an effect on business investment in Victoria. Again I refer members to the Victorian Employers Chamber of Commerce and Industry paper which indicates clearly that we live in the real world and if businesses wish to invest in Victoria but the Labor governments of Queensland and New South Wales in particular choose not to have this legislation then it is a very easy decision for business — they will simply locate in other states.

The ninth reason we will not vote for this bill is the level of opposition that is prevalent against it. Indeed, I cannot recall unanimity by employers such as we have seen about this bill. The Australian Industry Group, the Victorian Farmers Federation, the Master Builders Association of Victoria, the Printing Industry Association of Australia — —

Ms Duncan interjected.

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member will stop interjecting across the table.

Ms ASHER — The Australian Retailers Association Victoria, the Victorian Employers Chamber of Commerce and Industry, the Victorian Automobile Chamber of Commerce, the Victorian Transport Association — all those bodies are opposed to this legislation because it is bad law and because it will unfortunately not result in a reduction of deaths in the workplace.

Again I refer honourable members opposite to their newsletters to see how ineffective this bill is, how bad it is in law, and, indeed, how much this bill will fly in the face of the cooperative approach that we have experienced in Victoria in the reduction of workplace deaths and workplace injuries over the past 16 years.

I have two final comments about this bill. The first is that this government says it is pro-business. It is spending $2 million on an advertising campaign trying to dupe business into believing that the government is pro-business. Members of the government talk about car exports. They should go and speak to people at Toyota and Holden about where they see themselves in relation to this bill. This government is not pro-business; this government is not pro-employment; this government is not pro-jobs in this state, which is the reason it has brought forward this bill.

Ms Pike interjected.

Ms ASHER — The minister at the table reminds me that she should be filled with gratitude that the upper house will knock this back and she will continue to see investment and jobs in Victoria. The fundamental question is: will this bill work; will this bill reduce the tragedy of industrial deaths; will this bill result in an improvement in the situation we have seen; will this bill diminish human tragedy in the workplace? The answer to those questions is no. This bill will do nothing to reduce the volume of human tragedy that unfortunately we still see today, despite the cooperative approach we have seen in the work force

Mr Nardella interjected.

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Melton will desist from projecting his booming voice across the chamber. It wakes everyone up!

Ms BEATTIE (Tullamarine) — It saddens me to have to speak on this bill tonight. Usually one stands up and says, 'It is with great pleasure I speak on the bill', but tonight I am saddened to have to speak on this bill. We see a deputy opposition leader, stripped of her shadow Treasury portfolio months ago, trying to regain that portfolio by bringing economic — —

Ms Duncan interjected.

The ACTING SPEAKER (Mrs Peulich) — Order! I ask the honourable member to pause. I am sick and tired of the honourable member for Gisborne using the privilege of being a government member and abusing the Chair from the side. I ask her to desist from doing so. If she cannot, then she should leave the chamber.

Ms BEATTIE — We have before us the face of Anthony Carrick, a young man who was born on 29 January 1980 and died on 12 November 1998 and who has been the public face of the campaign by Trades Hall to bring this bill into the house. But what does it matter if Anthony was young and handsome? A person who is old should have the same rights as Anthony Carrick had to return home from work and to be protected in their job. It makes no difference what Anthony looked like. It makes a difference that he had family and friends who loved him and who sent him to work expecting him to return home, as we all expect to do. The opposition would say, 'Anthony was one person. This was a terrible mistake that Drybulk Pty

Ltd made, and it won't happen again because suddenly corporations are going to become responsible'. Anthony was not just one worker who died, he was one of many. I will bring to the attention of this house others who went to work one day, died in their workplaces and did not return home to their families that night.

The opposition wants this bill debated in the house at night, when it thinks nobody will call it to account. But there are people in this place who will call it to account and who will protect workers. In a press release of 23 August last year the shadow Attorney-General announced that:

> No-one would argue that if a person has knowingly and negligently caused someone's death … they should not be charged with manslaughter and that should apply in all circumstances whether it is on the roads … in the home or in the workplace.

If we can take the shadow Attorney-General at his word, then we look forward to his support for this important piece of legislation.

The opposition would have you think that Anthony Carrick's death is one workplace death and that such a thing will not happen again. It will happen again, and this government is determined to make workplace health and safety a long-term issue. Nobody should go to work and die doing their job. The Bracks government has already boosted the number of workplace inspectors to approximately 280, while the Kennett government — those opposite should remember this — quite happily deregulated occupational health and safety — —

Honourable members interjecting.

The ACTING SPEAKER (Mrs Peulich) — Order! Members on the government benches are drowning out their own member, who is speaking on an issue that is very important to her.

Ms BEATTIE — Thank you for your protection, Madam Acting Speaker, but they will not drown me out, I can assure you! The opposition took a lacklustre, hands-off approach to the lives of working Victorians, but Labor realises that governments have a vital role to play in ensuring workers' livelihoods are not put at risk. I will list some of the other workers besides Anthony Carrick who have lost their lives just by going to work. I repeat: they lost their lives not by doing anything negligent but by going to work!

What we are talking about is bringing fundamental justice to the families of those loved ones who have been killed on the job and stopping unscrupulous employers from avoiding their real responsibilities. We are talking about rogues! Good solid employers who follow workplace health and safety regulations have nothing to fear.

I want to talk about Kole Chekov, a 45-year-old father of two who was killed on 9 July 1999. Kole was a painter on a refurbishment job at the Edinburgh Castle Hotel in North Melbourne. He was required to paint the outside of the hotel, but his employer did not provide any scaffolding or any other support at all. Kole leaned over the side of the building to paint the parapet and fell 11 metres to his death. My understanding, from advice I have received and from what I have been told, is that when Kole's body was still warm his employer jumped in his car and rushed not to get an ambulance but to see his lawyers.

Mr Chekov was classed as self-employed when he was clearly a direct employee, and the employer denied any responsibility for compensation. Eventually the employer was convicted, but he was fined not even the $50 000 that Drybulk was fined but $10 000 plus costs for failing to provide a safe workplace! The members of Mr Chekov's family received no compensation at all, and if it had not been for the generosity of the Construction, Forestry, Mining and Energy Union they would have had nothing to serve at their Christmas lunch last year. What a disgrace! The industrial manslaughter legislation will ensure that employers like that face much tougher penalties for their obvious disregard not only of health and workplace safety but of human life.

I will relate to the house another tragic episode. The opposition would say, 'You want to imprison a farmer's wife'. The government does not want to imprison a farmer's wife, it wants to imprison people who are deliberately and grossly negligent. Another tragic episode was the death of Robert Briscusso, who was working on renovations to a house of a millionaire restaurateur in South Yarra only a few weeks before Christmas two years ago. The workers were told that the home owners insisted that the job be completed before the Christmas break. Safe workplace practices were let slip, and while spraying concrete against another concrete wall — —

Mr Baillieu — On a point of order, Madam Acting Speaker, I seek your clarification. I believe the matter the honourable member is referring to is currently before the court.

The ACTING SPEAKER (Mrs Peulich) — Order! I am not aware of the details, but I take the point raised by the honourable member for Hawthorn and

urge caution on the part of the honourable member for Tullamarine, because the matter may be sub judice.

Ms BEATTIE — I am not aware that the matter is before the courts at the moment, but I will not speak on it if others caution me that it is. I hope the courts will deal with that matter appropriately, as I am sure do the honourable members opposite who have pointed this out to me.

I turn again to the case of Anthony Carrick, who is the public face of the Trades Hall campaign. He was a young man aged 18 who was killed on his first day of work, as the honourable member for Richmond said, crushed by a 5-tonne concrete panel that surrounded sheds storing livestock feed. The employer must have thought he had to protect the livestock feed and not Anthony and the other young worker who was permanently injured.

I pay tribute to the families of those killed in workplace and industrial accidents. I quote Anthony Carrick's mother, who wrote:

> Anthony and his coworker had been directed to undertake dangerous work. They had not been given any health and safety training, no site safety induction, no information about the potential hazards the work involved. Industrial death is like no other death and should not be treated in the same way. We didn't get to say goodbye to Anthony. He went off to work in the morning and he never came home again.

That is the story of Anthony Carrick. It is not only Anthony's story, it is the story of many others. I quote Percy Bysshe Shelley, who wrote:

> Stand ye calm and resolute,
> Like a forest close and mute,
> With folded arms and looks which are
> Weapons of an unvanquished war …

That is what we have here — an ideological stance. In the end we heard the Deputy Leader of the Opposition talk about money. The government is not talking about money; we are talking about lives. We stand for lives, whereas the opposition stands for money — and it stands condemned.

Mr WILSON (Bennettswood) — The bill before the house is flawed legislation. It originated as a pay-back to the union movement in Victoria.

Honourable members interjecting.

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable members for Richmond and Tullamarine have had their opportunity. The same opportunity ought to be extended to opposing members of Parliament.

Mr WILSON — As I was saying, the bill originated to pay back the union movement in Victoria, one of the few organisations that remained loyal to the Labor Party during its dark days throughout the 1990s. The government is not genuinely committed to this legislation. The Premier wishes that it would go away. He knows that it seriously erodes his credibility with the Victorian business community. He knows that the bill has the potential to harm the Victorian economy. He knows that it will deter investment in this state. He knows that the only advocates of this bill are members of the Trades Hall Council and his crusading, or should I say marauding, Attorney-General.

Mr Maxfield — Hang your head in shame!

The ACTING SPEAKER (Mrs Peulich) — Order! Just because the honourable member for Narracan is a government member does not mean he has a licence to flout the rules. If he is going to interject I suggest that he return to his place in the chamber and take part in debate. He cannot continue with the sort of behaviour we have seen of late.

Mr WILSON — Ironically the Attorney-General also holds the portfolio of manufacturing industry. Most, if not all, manufacturers in Victoria would be shocked and dismayed that the Minister for Manufacturing Industry, under the guise of being Victoria's Attorney-General, would bring such a damaging bill to the floor of this house.

In his second-reading speech the Attorney-General advised the house that the Labor Party's 1999 election policy committed the government to a comprehensive occupational health and safety strategy, including

> … introducing new criminal offences to effectively deal with workplace deaths.

That election promise must be seen in the context of the Labor Party never expecting or imagining that it would win the 1999 state election. Unfortunately the Labor Party did form government — albeit a minority government — after the last election, and tonight we are seeing the Labor Party's inability to act as a responsible government. This bill is proof that the Bracks government is held captive by the Trades Hall Council and is incapable of governing for all Victorians.

Last week, which was budget week, the government was keen to project the image of being pro-business and pro-investment. The Premier and the Treasurer are obsessed with the task of proving their credentials in the area of good economic management. When it suits, the government — —

Ms Beattie — On a point of order, Madam Speaker, we are talking about the Crimes (Workplace Deaths and Serious Injuries) Bill, yet the honourable member is talking about the budget. I urge you to bring him back to the bill.

The ACTING SPEAKER (Mrs Peulich) — Order! Unfortunately I was at that precise moment engaged in discussion with the Leader of the House, so he is to blame for my being unable to rule on the point of order. But up until the time I was distracted by the Leader of the House the honourable member was within the parameters of the bill. I ask him to observe normal parliamentary practice.

Mr WILSON — Thank you, Madam Acting Speaker, and I was observing every practice of the house. If the honourable member was listening carefully she would know I was making a passing reference to the fact that last week, which was budget week, the government was very keen to convince the Victorian community about its economic credentials.

As I was saying, the Premier and the Treasurer are obsessed with the task of proving their credentials in the area of good economic management. When it suits, the government is ever willing to quote the favourable things said about its policies or performance by peak bodies such as the Victorian Employers Chamber of Commerce and Industry (VECCI). Let me quote what that organisation has said about the bill before the house:

> Worksafe's own figures show a steady decline in workplace injuries and death since the Occupational Health and Safety Act was introduced in 1985. Why then, when the current cooperative framework has been working, is the government looking at introducing a punitive new system?
>
> …
>
> The bill represents a fundamental switch in focus for the government from prevention to punishment — with increased penalties and potential jail terms. Such a switch risks compromising the cooperative approach that has been working in Victoria.
>
> …
>
> The government has produced no evidence that this legislation is justified when workplace death and injury has been steadily declining, and the government has also failed to produce any evidence that this type of punitive legislation will work or be more effective than the current framework.

Similarly, the Victorian Congress of Employer Associations wrote to me on 11 April, and I quote from that letter:

> The proposed legislation is an attempt to turn the clock back to an adversarial system which was discarded in the 1980s. OHS cannot be achieved by strict regulation and penalties. It can only be achieved by cooperation between management and employees and by a constant process of education and leadership.
>
> The proposed legislation is flawed by a lack of clarity in relation to the degree of culpability required, burden of proof and standard or level of compliance. It is only after the event that a business will know whether it has provided a safe workplace and taken all reasonable precautions within the meaning of the proposed legislation.

An adversarial system will not bring about the improvements the government desires. As many honourable members have argued, just one death in the workplace is one death too many. However, the bill before the house will not prevent a single fatality in the workplace; and deaths in the workplace have fallen significantly over the past 15 years from an appalling 102 deaths in 1989 to 31 deaths in 2001. That is 31 deaths too many in 2001, but not one section of this bill will make the workplace safer.

Against this background, VECCI has raised some very legitimate issues about the bill, and they include the following:

> What evidence exists to suggest the bill will act to reduce the incidence of death and injury in Victorian workplaces?
>
> Is this an objective of the bill at all or is it just about drastically changing the balance between punishment and prevention?
>
> …
>
> Is a focus on compliance, at the expense of a risk management approach, likely to be less effective in preventing death and injury?

And finally:

> Is the bill likely to cause a shift in the balance between prevention and punishment that is detrimental to prevention?

Nothing I have heard tonight from the Attorney-General or other government members offers adequate or convincing arguments in favour of this legislation. A letter I received from the Victorian Farmers Federation (VFF) supports my contention as follows:

> The proposed legislation would have a major negative impact on employment in rural and regional Victoria, especially in those industries associated with agriculture.
>
> The bill changes the treatment of workplace accidents in Victoria. Its provisions are punitive and will turn accidents in the workplace into 'crimes' under Victorian law for which punitive criminal law prosecutions could be applied to business owners and management.
>
> …

> The VFF believe the proposals fail to provide a solution to workplace deaths and will have a negative impact on the management of health and safety at the workplace. The provisions offer no encouragement for employers to improve occupational, health and safety policies or practices.

Finally, I draw the attention of the house to the three main purposes of the bill. First, the bill introduces new criminal offences called 'corporate manslaughter' and 'causing serious injury' in addition to the existing crime of manslaughter, with severe penalties for companies for breaches of the act. Secondly, under these laws directors, company secretaries and officers can be personally liable for fines and imprisonment if a company is found guilty of corporate manslaughter or causing serious injury. Thirdly, it increases existing penalties under the Occupational Health and Safety Act by an average of 278 per cent.

An adequate summary of my contribution this evening can be found in the policy paper of VECCI to which I referred earlier, and I quote:

> Business is committed to improving the methods that lead to a reduction in workplace deaths and injuries. This punitive direction and the rush to be the 'toughest' jurisdiction in the world demands careful analysis and consideration of the impact on public policy. The Victorian business community do not want to be the test case if the rest of the world learns from our errors while Victoria incurs the suffering.

I oppose the bill.

Debate adjourned on motion of Ms DAVIES (Gippsland West).

Debate adjourned until later this day.

BUILDING (FURTHER AMENDMENT) BILL

Second reading

Ms DELAHUNTY (Minister for Planning) — By leave, I move:

(1) That the proceedings of the Legislative Assembly immediately following the calling of the order of the day for the second reading of the Building (Further Amendment) Bill up to the completion of the second-reading speech and subsequent adjournment of debate be expunged from the *Hansard* record.

(2) That so much of standing orders be suspended so as to allow the motion for the second reading of the Building (Further Amendment) Bill and for the adjournment of the debate on the bill to be moved again.

I appreciate the indulgence of the house. The department delivered — —

Mr Leigh interjected.

The ACTING SPEAKER (Mrs Peulich) — Order! I ask the honourable member for Mordialloc to keep it down.

Ms DELAHUNTY — The department delivered the incorrect second-reading speech to the house today. It has the same title. It is a corollary bill to implement the recommendations of the Auditor-General's report on the building industry and I appreciate the consideration of the house. The intent of the — —

Mr Leigh interjected.

The ACTING SPEAKER (Mrs Peulich) — Order! The honourable member for Mordialloc! To ensure there is not a mistake I ask honourable members to give the minister a chance to get it right.

Ms DELAHUNTY — The issues have been raised by the Auditor-General's report into the building industry. These are two bills with the same name. I appreciate the consideration of the house now that the department has sent the correct speech.

Mr BAILLIEU (Hawthorn) — This is an extraordinary moment for this house. This house deserves to know why debate on what the government regards as its most important bill has been adjourned. The people of Victoria deserve to know as well. This interruption to the business is to correct a serious error made by the Minister for Planning, a minister in this government. It was a serious error in that the minister has read to this house in its entirety a second-reading speech which did not relate to the bill. No-one in this house can recall such an event ever happening in this chamber before.

Honourable members interjecting.

The ACTING SPEAKER (Mrs Peulich) — Order! I ask honourable members to keep their voices down.

Mr BAILLIEU — This is an extraordinary event. This is a totally artificial interruption to the business of the house, to the government's most important legislation — self-declared — in order to cover up for a minister who has stuffed up. The extraordinary thing is that when the government came to correct its mistake, on whom did it rely? To whom did it turn? It turned to the honourable member for Gippsland West to adjourn debate on the most important legislation before this house. When it was time for the motion for the adjournment of the debate, the government turned to the government Independent, the honourable member

for Gippsland West. It was so embarrassed that it was not prepared to do it itself.

The house deserves to know the details; the people of Victoria deserve to know the details. The Minister for Planning is so out of touch with her own portfolio that she failed to even recognise that she was reading the wrong speech. Not only that, she failed to recognise that the speech she was reading actually did not relate to the bill.

The bill circulated this afternoon was the Building (Further Amendment) Bill 2002. Its contents include in part 1 — and obviously I do not wish to debate the bill now — reference to responsibility for the issue of occupancy permits, temporary structure permits, emergency orders and building notices, and other changes. That was the circulated bill. I repeat, the bill was titled the Building (Further Amendment) Bill.

Ms Delahunty — The same title.

Mr BAILLIEU — The minister says again, 'The same title'. Moments ago the minister told us that the second-reading speech had the same title. Presumably this was the cause of her confusion.

Mr Maxfield — You sound like Mr Bean but you are making less sense!

The ACTING SPEAKER (Mrs Peulich) — Order! I ask the honourable member for Hawthorn to speak through the Chair and honourable members to generally lower their voices, including the honourable member for Narracan.

Mr BAILLIEU — The palm trees are emptying this evening on the government!

The minister told us that the title of the second-reading speech was the same as that of the bill. The bill title is the Building (Further Amendment) Bill. The second-reading speech title is the Building (Amendment) Bill. Close, but not the same title. No doubt that is sufficient reason for this minister to totally fail to recognise it. The fascinating thing is, where did this mysterious second-reading speech come from? Did it drop out of the palm trees, like the honourable member for Narracan?

Mr Maxfield — On a point of order, Acting Speaker — —

Honourable members interjecting.

The ACTING SPEAKER (Mrs Peulich) — Order! Before I call on the honourable member for Narracan on his point of order I remind the house that it is disorderly to clap, and also that generally the level of interjections in the house is disorderly. It is very difficult to hear the honourable member for Hawthorn. I call on the honourable member for Narracan and his point of order.

Mr Maxfield — On a point of order, Acting Speaker, the honourable member is misleading the house.

The ACTING SPEAKER (Mrs Peulich) — Order! Under standing order 108 it is unparliamentary to allege that an honourable member is misleading the house — that can only be done by means of a censure motion — so I ask the honourable member not to go down that track.

Mr Maxfield — I was elected by the majority of voters in Narracan who rejected — —

Honourable members interjecting.

The ACTING SPEAKER (Mrs Peulich) — Order! There is no point of order. I remind the honourable member for Narracan that the rules in this house apply to him as well as other honourable members, and he is persistently and perpetually breaching them.

Mr BAILLIEU — As I was saying, the circulated bill was the Building (Further Amendment) Bill, the second-reading speech was the Building (Amendment) Bill — different titles. So where did this second-reading speech come from? One might have thought maybe it is possible that the minister picked up the wrong speech; maybe she picked up the second-reading speech that was introduced to this house on 27 September 2001 called the Building (Amendment) Bill. Interestingly, the second-reading speech that the minister read is not the same as the second-reading speech for the Building (Amendment) Bill of September last year. Again, the unknown, mysterious second-reading speech. Yes, the second-reading speech that the minister read has some content similar to that of the second-reading speech made in September of last year. A few paragraphs are the same. One of those paragraphs reads:

> Changing the name of the Building Control Commission to the Building Commission in order to better reflect its role of leadership and regulation rather than control of the building industry.

That is the first dot point from the second-reading speech read by the minister this afternoon. Why is that significant? Because that is the same paragraph that occurs in the second-reading speech of September of last year! One of the principal bodies for which the

minister is responsible is the Building Commission. It is extraordinary that the minister could read that paragraph into *Hansard* in this house and not recognise that the body for which she is responsible, of which this house changed the name only in September last year, could still be called the Building Control Commission and that we were moving another piece of legislation to again change its name, which we had already done. An extraordinary proposition!

Other aspects of the second-reading speech that the minister read make similar inane errors in the sense that if this minister knew almost anything that was going on in her portfolio she would have recognised that this speech was inappropriate and was the wrong second-reading speech. I invite the house to consider the fact that I sat here this afternoon to take the adjournment of the second-reading speech and shortly after the minister began speaking I said to her across the table, 'Minister, are you sure you are reading the right speech?'. To be fair to the minister, she nodded, she acknowledged what I had said and said yes, she was reading the right speech. In good faith I let her read on. I may have been wrong but it seemed odd to me because the contents seemed familiar. So the minister read on.

Later on in the second-reading speech I again said to her, 'Minister, are you sure this is the right speech? I think you are reading the wrong speech'. I was politely giving her the opportunity to stop and perhaps, before we went any further, correct the error and substitute the correct speech. I gave her the benefit of the doubt and thought, 'Well, maybe she just picked up the wrong document'. The fact that it had been circulated to the house, was in the papers room and had been circulated to the public already was beside the point.

Then I invited the minister to check that she was reading the correct second-reading speech. Unfortunately, the minister insisted she was reading the correct speech. In fact, the minister said to me that it must be the right speech because we were getting to the audit part of the speech. Just before we started this debate the minister said the same thing to me: she was confused because she thought she was going to get to the Auditor-General part of the bill. There is not any Auditor-General part of the bill. There is not an audit part of the bill. So the confusion persists.

As I said, this is an extraordinary event. As a consequence of this error *Hansard* has to have material expunged from the record of proceedings in this house. We have to have this correction. We have had to interrupt the business of the house. The honourable member for Gippsland West has done the government's bidding in order to save it from the embarrassment of adjourning debate on its most important bill. That will come as a shock to the people of Victoria. The Minister for Transport arranged it shortly before we commenced this debate.

After the minister finished her second-reading speech, in moving for the adjournment of the debate I think I said to the house that I thought the speech bore a remarkable similarity to previous second-reading speeches, and thereafter I moved the motion for the adjournment of the debate.

I thereafter consulted with the clerks. They made the very correct point that the second-reading speech of any bill is a legal document, to which lawyers and the courts refer in the discussion of any legal action which ensues in later years. Therefore, to have a second-reading speech on the *Hansard* record which is wrong is not only an embarrassment but a legal minefield. The clerks' advice was that it should be expunged from the record so that there will be only one second-reading speech, which no doubt we will be hearing in the next few minutes. But to do so we have had to have this interruption. We have had to change the business and we have had to allow the motion, as we have done. A couple of questions come to mind. The minister — —

Honourable members interjecting.

Mr BAILLIEU — Grasping for substance, the Minister for Planning asks about my tie!

Mr Phillips — Tell us about it, Ted, because it is an awful tie.

Mr BAILLIEU — It is a tri-nations competition tie — the Australian Rugby Union tie.

Honourable members interjecting.

The SPEAKER — Order! The honourable for Tullamarine is being disorderly and is not sitting in her place.

Mr BAILLIEU — By all means, I invite the minister to mock the Australian Rugby Union test team!

Two things come to mind. It is the obligation of a minister to sign off on a second-reading speech. How did it happen? How did the minister sign off on a second-reading speech like this? We have just heard that it was the department's fault! We will hear a bit more about that, I suspect. Who is going to take the fall for this minister? Who is going to take the hit — again?

A public servant will no doubt take the hit for a minister who did not recognise the content of her own bill.

Another thought comes to mind: if I had not raised the subject with the minister during her second-reading speech and afterwards and with the clerks, this second-reading speech would still be on the *Hansard* record tomorrow, the day after and for weeks ahead. There would not have been any move to correct the record and the government's embarrassment would have gone on.

The opposition has cooperated with the government and has allowed it to interrupt business and to have leave to move this motion. But the reality is that this is a very sad reflection on a minister and a government. How could this happen? Perhaps we could understand if it were a bill coming from one house to the other and the minister was not responsible for the bill but had made the second-reading speech on behalf of another minister. That is not the case. This is the minister's own second-reading speech which this minister signed off on. It should not have happened.

Where did it come from? No-one knows — not even the honourable member for Narracan knows. Who was responsible? Only one person was responsible: the Minister for Planning.

Honourable members interjecting.

The SPEAKER — Order! I ask the honourable member for Doncaster to cease interjecting in that vein.

Mr BAILLIEU — This minister is personally responsible for her second-reading speeches. She has to wear the hit. The reality is that this is a severe embarrassment for a minister who has already on many occasions demonstrated that she is not across her portfolio. Unfortunately the autocue was out of control. She is still not familiar with the bill. She repeats the error. Just before I got up to speak she indicated to me that she is still not familiar with the content of the bill. That is a great shame, particularly for those in the planning industry in Victoria because they know they have a minister who is not in touch with her portfolio.

There could be no more poignant symbol of the minister being out of touch with her portfolio than for her to stand in this house and knowingly, despite warnings and an alert from an opposition member trying to cooperate, read into *Hansard* a second-reading speech which bore no resemblance to the content of the bill she had introduced into the house, bore no material resemblance to any other second-reading speech, and had a different title. This stands as a symbol of a minister out of touch with her portfolio and a government embarrassed by ministers all over the place who suffer exactly the same deficiency.

Mr BATCHELOR (Minister for Transport) — Tonight we are seeing an honest attempt to correct the parliamentary record and procedures, and we see from the opposition a sleazy and dirty attempt by a leadership aspirant in the Liberal Party. What we will see tonight is a succession of people who want to be leaders of the Liberal Party, led first and foremost by the honourable member for Hawthorn. What happened earlier on today is that the Minister for Planning, on receipt of a second-reading speech from the department — —

Honourable members interjecting.

The SPEAKER — Order! I ask the house to quieten down! The Chair is having difficulty in hearing the minister.

Mr BATCHELOR — On receipt of a second-reading speech from the department — —

Honourable members interjecting.

Mr Richardson — On a point of order, Mr Speaker, I draw your attention to the disrespectful delight being shown by the members of the government to the discomfort of the minister, and I think you should rebuke them for it!

The SPEAKER — Order! That is clearly not a point of order.

Mr BATCHELOR — On receipt from the department of a second-reading speech that was sent to the Parliament today to be read for item no. 3, orders of the day, Building (Further Amendment) Bill, the Minister for Planning in responding to the call from the Chair at that time was provided with a second-reading speech entitled 'Building (Further — —

Honourable members interjecting.

Mr BATCHELOR — I am sorry! I made the same mistake. It shows how easy it is!

The Minister for Planning read out a second-reading speech that related to the Building (Amendment) Bill. There was a one-word discrepancy between the titles, and the bill provided to the minister by the department was for a different, earlier bill on a similar — —

Mr Perton — Come on!

Mr BATCHELOR — The minister delivered that second-reading speech and she understood at its conclusion that it was not the correct one and she has sought since that time to have the record corrected, and we are doing so now. There is no ambiguity: a mistake was made by the department, and the minister, in reading out the second-reading speech that was provided to her by the Whip through the normal and traditional processes, provided it to the house. Second-reading speeches are important because they are documents to which the courts refer. It is for that reason that we are going through this difficult process to make sure that the record is correct.

We have just seen the honourable member for Hawthorn, an aspirant for the leadership of the Liberal Party, come in and make his job application when the government is simply trying to provide to the community and to future legal processes certainty of outcome and certainty of the deliberations of this Parliament. We are doing that tonight.

Talk about making a mountain out of a molehill! That is exactly what is happening. The government is attempting to place in context the correct procedures and we will do that with tonight's proceedings. I have not seen the opposition in this chamber so animated and so enlivened, and it just shows you what misplaced priorities it has. Opposition members are being led in their attack by the honourable member for Hawthorn, a member of Parliament who does not know whether he is coming or going. On the one hand, he is a member of the Savage Club and on the other he is a member of Friends of the Zoo!

Honourable members interjecting.

Mr BATCHELOR — There are quite a few on your side who know what is coming!

Mr Perton — On a point of order, Mr Speaker, this motion is designed to expunge the public record of this Parliament and to excuse a minister for incompetence. While both of the lead speakers — namely, the minister and the shadow minister — have a wide range, the Leader of the House is confined to providing an explanation for incompetence not by blaming the department, but by giving an explanation of incompetence and not using this debate as an opportunity to attack the opposition. He is confined to providing an explanation, and I ask you to bring him back to order.

The SPEAKER — Order! Essentially what is before the Chair is a procedural motion. The Minister for Transport shall confine his remarks to the constraints that are imposed by the procedural motion before the Chair.

Mr BATCHELOR — We in the government are explaining to the house tonight that the department provided the inappropriate and wrong second-reading speech. Unfortunately the honourable member for Hawthorn has never had the opportunity, indeed the privilege, of being a minister — I doubt that he will — and if the honourable member for Hawthorn understood that he would realise that ministers are provided with second-reading speeches not of their own making but because they are legally binding documents.

The honourable member for Hawthorn in his speech exposed himself as representing Raiders of the Lost Ark — the Liberal Party in Victoria. And this typifies the attitude of the Liberal Party tonight. Being a member of both the Savage Club and Friends of the Zoo — —

Mr Perton — On a point of order, Mr Speaker, we are back to the pattern of question time. You have already drawn the minister back to the subject of the debate; he is now defying your ruling. I ask you to either sit him down or suspend him.

The SPEAKER — Order! I uphold the point of order and I ask the minister to confine his remarks to the motion before the Chair.

Mr BATCHELOR — Tonight the Liberal Party wants to create a mountain out of a molehill — it wants to create an incident where there is not one. A simple mistake was made by the department — —

Mr Perton interjected.

Mr BATCHELOR — As a minister in the Department of Infrastructure it is my intention, as with the Minister for Planning, to take the matter up with the department to try to find out why this has happened. But if the honourable member for Hawthorn chooses to make his pitch for the leadership here tonight, he is clearly mistaken.

Mr Perton — On a further point of order, Mr Speaker, it ought to be 'Three strikes and you're out!'. This is the third attempt by the minister to defy your earlier ruling, and I ask you to bring him back to the subject of debate. I suggest, again, you either not hear him any further or take other action.

The SPEAKER — Order! On this occasion I do not uphold the further point of order raised by the honourable member for Doncaster. The comment that

the minister was making was about his responsibility for the Department of Infrastructure.

Mr BATCHELOR — The honourable member for Doncaster is well known within the Department of Infrastructure as a misogynist. I cannot help his reputation in the department. He does not like — —

The SPEAKER — Order! I will not permit the Minister for Transport to go down that track. I ask him to confine his remarks to the motion before the Chair.

Mr BATCHELOR — The Parliament is a place that is made up of human beings. We are provided with assistance — —

Mr McArthur interjected.

Mr BATCHELOR — The honourable member for Monbulk says, 'So is the department'. That is right. The department, as is the Parliament, is made up of human beings, and in this case the department made a mistake. We are not living in Taliban-controlled Afghanistan where we cut off the hands of those who put forward the wrong second-reading speech. We are not living in that sort of environment. We are living in an open and democratic society. We are all servants of the Parliament.

The comments that are being made tonight are nothing less than an attempt by a bunch of bullyboys to humiliate a member of the government. But all they are doing is humiliating themselves, because they cannot conceal their arrogance, their contempt, their superiority and their self-seeking privilege. Everybody else in the world other than themselves they regard with contempt, and that attitude has oozed and permeated tonight. It has spread all round the chamber tonight. We have seen the despicable behaviour of the honourable member for Hawthorn: when the government attempts to correct a genuine mistake, he seeks to make political mileage out of it.

It might be the benchmark that is used within the Liberal Party to try to enhance one's own reputation, but it is not acceptable here in the Parliament. A mistake was made by the department and the minister had to correct it, and I am happy to support the minister in doing that. What do the Liberal opposition members want? They would be happier to have this mistake embedded in the legislative record, to create uncertainty and difficulties within the judicial process and to attempt to bring the Parliament into disrepute.

Mr Perton — You were drunk!

The SPEAKER — Order! I ask the honourable member for Doncaster to cease interjecting forthwith.

Mr BATCHELOR — Members of the Liberal Party have tonight demonstrated their lack of bona fides, their lack of understanding and their preparedness to entrench a problem in the legislative and subsequent judicial process in order to create difficulties not only for the community at large but for the building industry in particular.

We can see by the Liberal Party's attitude and its conduct in this chamber tonight that its members do not care about the importance of the building industry in providing jobs, investment and certainty into the future. Notwithstanding the negative role of the Liberal Party tonight, this government will put the corrective process in place to ensure that the laws and the procedures that the opposition has agreed to will be moved forward.

This is a disgraceful and despicable attempt by the honourable member for Hawthorn to try and promote himself before the Liberal Party because of his — —

Mr Perton — On a point of order Mr Speaker, you have ruled twice on the minister's not being relevant to the debate. This is the third time he has tried to violate your earlier ruling, and I ask you to either bring him back to order or sit him down.

The SPEAKER — Order! I was listening carefully to the Minister for Transport, and I was and am of the opinion that he was keeping his remarks within the confines of the motion. It seems to me that the honourable member for Doncaster, on hearing the Minister for Transport mention the honourable member for Hawthorn, immediately takes a point of order. The Chair needs to hear more than that before it can uphold his point of order.

Mr BATCHELOR — I understand Liberal members trying to silence my explanation of what has happened. It typifies their reaction: they do not want the truth to come out. So while we can understand the inherent contradictions that exist within the Liberal Party and within the honourable member for Hawthorn — the problem of being a friend of the animals and eating the animals at the same time — it is typical — —

The SPEAKER — Order! The Minister Transport shall confine his remarks to the motion. The Chair is having some difficulty with the tack that he is now taking.

Mr BATCHELOR — It is because the attitude of the honourable member for Hawthorn is one of cant

and hypocrisy. We think the honourable member's approach is typical of that of the Liberal Party in this chamber, in that it has nothing to do with trying to produce a good outcome and everything to do with trying to frustrate this chamber and the procedures of this Parliament.

We in the government support the bill before you, Sir, and we support the attempt by the Minister for Planning to put on the record the correct second-reading speech. We reject absolutely the puerile attempts made by members of the Liberal Party to try and thwart the legislative and judicial processes of this state from hereon in by trying to prevent this correction taking place.

Mr McARTHUR (Monbulk) — This appears to be the story of the prompter and the printer. First up, the government is trying to say that the prompter got it wrong, that the person who delivered the speech made a mistake and that Mary was only the script reader. Secondly, the printer is trying to change absolutely everything.

The SPEAKER — Order! The honourable member shall refer to members by their proper names.

Mr McARTHUR — The minister read the wrong script, and now we have the printer trying to explain that it was all somebody else's fault.

Let's look at what happened. This mistake, which was made by the Minister for Planning, was drawn to the attention of Parliament by none other than the honourable member for Hawthorn. The Minister for Transport is saying that the Liberal Party is trying to damage the government's legislative program and trying to prevent the proper record being put on public display.

Nothing could be further from the truth, for if this issue had not been raised by the honourable member for Hawthorn then the wrong second-reading speech would have gone onto the record, because the minister was totally unaware of it! She was so unaware of it that when it was brought to her attention three times she declared, 'No, I have got the right speech'. So if this action had not been taken by the honourable member for Hawthorn, the incorrect speech would have gone into *Hansard* and it would have been part of the public record tomorrow.

Once this was drawn to the Labor Party's attention and we were subsequently approached by the Minister for Transport about the ways and means of sorting out the minister's foul-up, a range of options was canvassed. The one that was chosen by agreement, as the Minister for Transport said earlier, between the minister and me is the one that we are now proceeding with. What we are doing, by leave — I repeat and emphasise, by leave — is changing it, because if we had not and if we had followed the normal processes of this place, this matter would have been dealt with tomorrow. The minister would then have had to give notice of this motion, and it would have been dealt with in the ordinary course of events tomorrow. But because we are keen to assist the government and to ensure that there is not a confusing duplication of second-reading speeches on the record, we are doing this tonight by leave.

It would have taken only one member of this place to say, 'Leave refused', and this would have had to be dealt with tomorrow. The result would have been two second-reading speeches on this bill on the public record, both of which could have been referred to, as the honourable member for Hawthorn pointed out, by courts or lawyers at a future date in relation to disputes on the bill's contents.

We have a two-part procedural motion, which is the other thing that surprises me. The first is that part of the public record — a section of *Hansard* — be expunged, deleted and wiped. The second is that we have to suspend the rules and operating instructions of this place — the standing orders — to allow this incompetent minister to read the correct speech.

I refer to a standing order which you, Mr Speaker, know well. It is standing order 64 — the same-question rule — which states that a question having once been put in this Parliament cannot be put again before the next Parliament. So in this procedural motion we are suspending standing order 64 to allow the minister to do tonight exactly what she did earlier today — that is, to stand up and say, 'I move that this bill be now read a second time'. Ordinarily she could not do it, but she is doing it with our grace and favour — and she should have the grace to admit that, as should the Minister for Transport.

The opposition is assisting the government to correct the minister's mistake — and it is solely the minister's mistake. She may try, assisted by the Minister for Transport, to blame the department and say, 'They gave me the wrong script', but it is the no. 1 responsibility of a minister to take a bill to cabinet to have it approved at cabinet, and included in that bill-at-cabinet process — it has been so for many years, although this government may have dropped it — is the delivery of the second-reading speech to cabinet at the same time as the bill and the preparedness to have the second-reading speech discussed.

That process presumes that the minister taking that bill to cabinet will have read the second-reading speech before taking it to cabinet and that the minister may even by some chance have read the bill. If that is the case and if subsequently the wrong speech is delivered somewhere, the minister should at least recognise it very early on.

During the course of delivering the second-reading speech the minister was reminded three times that it was probably the wrong speech, but still she did not recognise it and did not admit it. She said, 'No, it's the right one and I want to continue'. We now have this extraordinary argument from the Minister for Transport and the Minister for Planning, who are saying, 'Look, there's only a one-word difference in the title'. There might be a one-word difference in the title, but there is a 1000-word difference in the text! There is a massive difference in the text.

It is not unusual for bills to be brought in here with a one-word difference in the title. Take for example the Building Bill, the Building (Amendment) Bill, and the Building (Further Amendment) Bill, and the Water Bill, the Water (Amendment) Bill and the Water (Further Amendment) Bill. It is an ordinary, regular and much-repeated process in which bill titles have one word different from a previous bill, and it is the minister's responsibility to recognise that.

No public servant is at fault here. One minister, and only one, made the mistake. As a result the business of the Parliament has to be interrupted; debate on a bill which the government regards as the most important bill it is presenting this sitting has to be interrupted; and debate on a bill in which many members of the public on either side of the fence have a vital interest has to be interrupted. Members of the public may well have come to Parliament expecting to hear debate on the Crimes (Workplace Deaths and Serious Injuries) Bill and instead they are witnessing a procedural change to allow a minister to correct a fundamental error in the text that anyone would expect a grade 5 student to recognise very early on.

It is a sad circumstance that we have to do it. Nevertheless, it is being done with the support of the Liberal Party — not against the wishes of the Liberal Party, as the Minister for Transport has said. The Liberal Party has agreed to this process. It has given leave for this process to occur, and it agrees that there should not be two second-reading speeches on the public record.

The opposition does not want the courts to be confused when determining any future dispute on the interpretation of the legislation, so it is cooperating in assisting the government in this process. It does, however, consider it a sad thing that when the opposition assists the government to get it right after it has made such an elementary mistake the government seeks to blame the public sector and the department.

We have the extraordinary spectacle of the two most senior ministers in the Department of Infrastructure saying, 'It is my department that got it wrong — blame the department'. They have lost faith in the people who support them, who provide them with advice and who give them the wherewithal to carry out their tasks. It is an extraordinary thing to see in this place two ministers from one department attacking their own department in one debate. One could well understand it if in the future the members of that department were somewhat reluctant to assist their ministers. I expect that because they are professionals they will not do that. However, it would be a totally understandable and very human reaction.

This is a sad situation. It is caused by a simple mistake which the minister should have recognised and corrected earlier and to which the minister should have had the grace to admit without blaming her department. All of us are under pressure in this place from time to time and all of us get the chance to correct the record from time to time if we make a mistake, but very few people have made this level of mistake in the past. I have checked with longstanding members who have memories of this place going back 25 and 30 years and they tell me that this has not happened in this place in the past 25 years. It has probably not happened in the past 50 years, because if it had the people who came in 25 years ago would very likely have heard about it in corridor discussions of the major events and stuff-ups that happened in this place before their time.

This is likely to be an unprecedented event and it has disrupted the ordinary and regular business of the house and turned it on its head because of the simple and silly mistake of one person who is not responsible enough to admit that she has made the mistake, does not take responsibility for carrying out her role in a professional manner, is prepared to simply read the script that is put in front of her regardless of whether it is the correct script, and then seeks to blame her underlings when an error is made.

That is a sad thing for the minister and it is a sad thing for this Parliament. Nevertheless, this matter needs to be dealt with and the Liberal opposition will not be opposing it.

Ms ASHER (Brighton) — I will take up the issue of misogyny and bullyboy tactics on my side of politics that has been raised by the Minister for Transport, and I refute that allegation completely. Incompetence knows no gender, and we are dealing here with an incompetent minister.

I will briefly indicate what the cabinet process is. When a bill goes to cabinet the responsible minister signs off on the second-reading speech. This minister has signed off on a second-reading speech and then when it came to Parliament has not recognised that it was a different speech. I was listening for the words from the minister — and the Liberal Party would have accepted them — 'I made a mistake'. The department did not make a mistake; the minister made a mistake. The minister did not recognise that a speech that was thrust in front of her was not the correct speech — a speech she was supposed to have signed off on and read in its entirety. She then came into Parliament and said, 'It's my department's fault that I made this mistake'.

Honourable members interjecting.

Ms ASHER — I am keeping to an agreement to speak for 2 minutes and I hope the Labor Party honours this agreement. This issue has absolutely nothing to do with gender. It has everything to do with incompetence.

Motion agreed to.

Ms DELAHUNTY (Minister for Planning) — I thank the house for its consideration; I am sure we have all enjoyed our sport. With pleasure and humility, I move:

That this bill be now read a second time.

The main purpose of this bill is to amend the Building Act 1993 to transfer the responsibility for the issue of occupancy permits for places of public entertainment and temporary structures from the Building Commission to building surveyors; to provide for temporary structures permits to replace occupancy permits relating to temporary structures; to enable emergency orders, and building notices and building orders to be directed at builders in appropriate cases; and to make other improvements to the operation of the act.

The government's 1999 election policies were based on the New Solutions platform. Labor undertook to govern having regard to the beliefs and values held by Victorians, which include protection and fairness.

The SPEAKER — Order! The time being 10.00 p.m., I am required to interrupt the business of the house

Sitting continued on motion of Mr BATCHELOR (Minister for Transport).

Ms DELAHUNTY (Minister for Planning) — As I was saying, the proposed amendments will facilitate this undertaking by ensuring that building owners will have greater fairness under the building system.

The Auditor-General conducted a performance audit of the regulatory system under the Building Act 1993, and in his report of May 2000 entitled *Building Control in Victoria — Setting Sound Foundations* the auditor made recommendations for legislative and procedural changes to the existing building control system.

The conclusions reached by the Auditor-General in the report relating to the role of the commission and POPEs were that:

the commission should not be both a building surveyor and a regulator under the act;

the commission should have a monitoring role for POPEs, and this requires legislative support;

the commission should expand its collection of information on all POPE venues, and this requires legislative amendment.

The auditor's report also identified a conflict of interest for the role of the commission as a building surveyor under these provisions and as a regulator of the act overall.

The bill will address the issues raised by the Auditor-General. The bill, by transferring the responsibility to issue occupancy permits for places of public entertainment from the commission to building surveyors, will improve the position of the Building Commission by allowing it to better concentrate on its role as industry regulator.

The Auditor-General also commented on the close connection between builders and building surveyors. The auditor recommended that the appointment of a building surveyor was to be that of the owner only and that a notice of role be given to the owner on appointment. In the interests of providing greater consumer protection the bill will introduce a bar for private building surveyors accepting an appointment by a domestic builder. This will ensure that there is greater understanding in the building industry by practitioners

as to the necessity to keep the building owner as the ultimate client and consumer of building services.

The bill introduces a power for building notices and building orders to be directed at builders. The industry operatives responsible for issuing building notices and building orders are the building surveyors. Previously any notice and order could only be directed at the owner. This meant that in cases where the builder carried out defective building work the owner was the person at risk of being issued with a building notice. This was obviously unfair for the building owner and allowed the builder to avoid being accountable for the defective building work. The government has recognised the need to provide greater protection for owners under the building control system. The bill will rectify the shortfall of the current system and highlights the government's strong emphasis on protection and fairness for all Victorians.

The bill contains amendments that will improve the operation of the Building Act while also protecting the consumers of building services in the legislative system. This will be achieved by including a new obligation for private building surveyors to provide owners with a notice which sets out the responsibilities and obligations of the building surveyor to the owner. The bill therefore raises the profile of the building surveyor in the community and will assist to clearly establish that the owner and the community are the priority in the building system.

These amendments will improve the operation of the Building Act and benefit both consumers and building practitioners.

I commend the bill to the house.

Debate adjourned on motion of Mr BAILLIEU (Hawthorn).

Debate adjourned until Tuesday, 28 May.

CRIMES (WORKPLACE DEATHS AND SERIOUS INJURIES) BILL

Second reading

Debate resumed from earlier this day; motion of Mr HULLS (Attorney-General).

Ms DAVIES (Gippsland West) — The Crimes (Workplace Deaths and Serious Injuries) Bill is one of the more difficult and contentious bills I have had to deal with since I have been in this Parliament. It has generated considerable community passion and considerable political rhetoric, with both sides digging themselves into their respective ditches and refusing to deal in the specifics.

The primary value that I have attempted to adhere to since I have been a member of this Parliament is that of bringing people together. I try not to ignore any side of the argument and keep looking for the middle ground. Despite my reputation I do not enjoy the adversarial approach very much, and I prefer a negotiated outcome where possible. I also commit myself to watching for actual outcomes as legislation is enacted rather than just looking at the ideology. That has been difficult to achieve with this bill.

I have spent time with umbrella groups on both sides of the divide, trying to work through the issues and rejecting some of the more hysterical sky-is-falling type of arguments.

I note that as set out in clause 1 the purposes of the bill are:

> (a) to create new criminal offences of corporate manslaughter and negligently causing serious injury by a body corporate …
>
> (b) to impose criminal liability on senior officers of a body corporate in certain circumstances; and
>
> (c) to increase penalties in health and safety legislation …

Honourable members know that under common law a company can already be found guilty of manslaughter or of negligently causing serious injury — but only if there is one person who can be identified as being the directing mind and will of the corporation. It means that small family companies or businesses can be found guilty under the current law but that it is almost impossible with large companies, where you cannot identify that directing mind and will.

The proposed law is the same as the present law in a number of ways: the company must actually owe a duty of care to the person who has been injured or killed; the company must fail to act as a reasonable company would have acted; and the company must be actually grossly negligent.

I read again from proposed new section 14B of the bill to make sure honourable members are fully aware of the degree of negligence that is required for there to be any chance of prosecution:

> (1) … the conduct of a body corporate is negligent if it involves —
>
> (a) such a great falling short of the standard of care that a reasonable body corporate would exercise in the circumstances; and

(b) such a high risk of death or really serious injury —

that the conduct merits criminal punishment …

That is 'serious negligence' fairly well defined. I ask the house to note that I have circulated an amendment that tightens up the definition of 'serious injury'. The amendment conforms to the commonwealth's model criminal code definition, and I hope it will address some of the concerns that were raised with me. It tightens up the definition of 'serious injury' such that it must be an injury or accumulation of injuries that endangers or is likely to endanger a person's life, or is or is likely to be significant and longstanding. I hope it also helps to address the concern the industry groups have raised — namely, that they are hoping there will be a national standard rather than specific statewide standards — and that a commonwealth model will encourage other states to also adopt that same definition and that same model.

The main differences between the proposed law and the current law are that the conduct of an employee, agent or senior officer doing their job can be aggregated and attributed to the company; that all the company's conduct is to be considered in determining this gross negligence; and where the company has committed an offence the senior officer of the company may also be found guilty. I register and note that the industry groups have expressed a great deal of concern about that aspect of the bill.

The bill contains four pretty intense steps which have to be proved beyond a reasonable doubt before a senior officer of a body corporate could be found guilty of gross criminal negligence. Firstly, it has to be proved the body corporate has committed the offence. Secondly, it has to be proved that the senior officer of that body was organisationally responsible for the conduct and contributed to the commission of the offence — and my second amendment increases the level of involvement from just contributing materially to the offence to contributing substantially to the offence, and I hope that helps address some of the concerns expressed by the industry groups.

It also must be proved that this senior officer knew, as a consequence of his or her conduct, that there was a substantial risk of death or really serious injury, and that it was unjustifiable to allow that substantial risk to continue. That is a very high bar before there is any possibility of anybody being found guilty of serious — —

Mr Perton — What will you do if they do not accept your amendments?

Ms DAVIES — I respond to the honourable member for Doncaster's interjection by saying that the government has accepted my amendments. It was like getting blood from a stone but we got there in the end.

I also note that there has been a lot of discussion in the house about the bill containing very severe penalties and taking a punitive approach. Proposed section 14D inserted by clause 3 gives the court the option of a more creative version of an alternative sort of a penalty which can be imposed on a corporation and which is something like the old public shaming. I suppose it is an innovative version of public shaming that could be quite effective. Rather than a corporation paying a fine or somebody going to jail, it may have to publicise its offence and the outcomes of its offence, which could be somebody's injuries or death. It may have to distribute notices to shareholders, and it may have to carry out a project for the public benefit. They are innovative measures and are worthy of consideration.

The bill also raises penalties under a range of occupational health and safety legislation measures. I have noted the concerns expressed by the industry umbrella groups that the approach to workplace safety needs to be collaborative and not combative, and that we should provide incentives as well as the stick. I completely agree with those claims by industry groups. The Workcover review which is being undertaken at the moment is aiming to put more weight on the experience of a company when determining Workcover premiums. I can think of no greater incentive to companies to closely follow acceptable workplace practices than to offer that financial incentive. I can only strongly suggest to the government that it should make that a very clear priority. A good work safety record in a particular workplace, particularly in a type of industry that has been traditionally hazardous, must be rewarded financially with lower Workcover premiums.

Another concern raised with me by the industry groups related to the open-ended nature and uncertainty around what constitutes a safe workplace. I have made a concentrated effort to deal with that issue in my second amendment, which reads:

For the purposes of sections 13 and 14 —

that is, the workplace deaths or injuries —

if the conduct of a body corporate complies with the Occupational Health and Safety Act 1985, regulations made under that Act and any relevant code of practice approved under that Act, it must be presumed, in the absence of evidence to the contrary, that the conduct of the body corporate is not negligent.

That means that the desire to legally protect oneself, as companies will want to do if this sort of legislation is brought in, is best served by complying with occupational health and safety requirements. I believe that is a serious attempt to address concerns that have been raised with me by both the Victorian Automobile Chamber of Commerce and the Victorian Employers Chamber of Commerce and Industry about the legislation somehow shifting the focus from prevention to self-preservation. With this amendment, self-preservation is best served by very close adherence to occupational health and safety regulations and laws.

Another concern raised with me was about the impact of penalties on the economic viability of companies and therefore their opportunities to continue employing people and producing goods that are needed. A further amendment that I would ask the house to consider will require that the court take into consideration the size of a body corporate when determining any fines. Again that may be a valuable amendment to help address some of those concerns raised with me.

During her contribution to the debate I heard the honourable member for Brighton read from a list of recent workplace deaths. She referred to some very tragic farm deaths. I am perfectly well aware that there are a disproportionate number of farm deaths in the total workplace deaths that still occur. It was somewhat deceptive of the honourable member for Brighton to read out the list of those deaths in relation to this bill. None of the deaths she read out would be considered industrial manslaughter under this legislation, as the honourable member and the Victorian Farmers Federation well know.

Family businesses now can be prosecuted successfully under common law if that is appropriate and if a criminal offence has been committed. This legislation attempts to bring into the view of the law those who cannot be held accountable at the moment.

I know that the amendments I have successfully negotiated with the government are not enough to meet all the concerns that have been raised, but I believe they go some of the way. I ask business groups to leave behind their current trench and have a look at what we have achieved. The government has agreed to support these amendments and I, in return, will support this bill as amended. I will also support the government's tabled amendments, which will bring the public sector under the view of this bill. That is an entirely appropriate amendment.

As this legislation moves between the lower and upper houses, I urge all sides of the house and parties outside this Parliament who have an interest in this bill to take the time to talk again. At the moment, the parties' stance on this bill seems to depend on who you want to describe as the weaker member of society. The opposition seems to define the employers as being the weak victims of this legislation, whereas the government defines the working person as the victim. I can see potential in both of those points of view, but overall there is no other way that I can define the real victims as any other than the people who die, and they are the employees. Perhaps even worse and definitely in much greater numbers are those people who are still being injured, sometimes accidentally, but occasionally and horrifically through other people's gross criminal negligence.

I do not like the absence of a negotiated outcome on this bill, but I believe it is very important to continue the dialogue and I am hoping that my contribution in obtaining these amendments and continuing to discuss the bill enables all parties to continue that dialogue. I believe that education, encouragement and, specifically for most companies, financial incentives, must continue. But in the end sometimes a bit of stick just helps.

The strongest argument for this legislation was given to me by an industry group. The group's representative said to me, and I am paraphrasing rather than quoting, that since this legislation has been mooted by this government employers have been making huge efforts to improve their focus on occupational health and safety in the workplace. For me that was a very strong argument for the bill. Sometimes we just need a bit of extra to help people focus on the basic issues. I hope that everybody concerned with this legislation will open their minds to the need to get out of their trenches and keep working on what I hope will ultimately be a negotiated outcome.

Mr McARTHUR (Monbulk) — Firstly, I want to dispute a statement by the honourable member for Gippsland West in relation to farm deaths last year. If I heard the honourable member correctly, she said that in none of those cases could the farm families have been prosecuted if the provisions of this bill had been in operation. I do not think that is right. On the advice that I have at least two of those cases were definitely incorporated and several more may well have had the involvement of incorporated trusts, in which case this law would have come into play if it had been in place at the time. I will come back to that in more detail later.

I support unconditionally the notion of improved safety in the workplace and the argument that we need to take whatever effective steps are available to us to achieve

this. We should adopt a cooperative and proactive regime to improve safety in industrial workplaces, and particularly in relation to agricultural workplaces which form part of my portfolio, because there are an inordinately high number of deaths in that area. I will deal with that issue later.

I will not be supporting this legislation, however, because I do not think it does any of those things. I draw the attention of honourable members to clause 1, which outlines the purposes of the bill. There is nothing in the purposes of this bill which is aimed at improving workplace safety. It is all about punishment. Clause 1 reads:

> 1. Purposes
>
> The purposes of this Act are —
>
> (a) to create new criminal offences of corporate manslaughter and negligently causing serious injury by a body corporate in certain circumstances; and
>
> (b) to impose criminal liability on senior officers of a body corporate in certain circumstances; and
>
> (c) to increase penalties in health and safety legislation; and
>
> (d) to make other miscellaneous amendments to health and safety legislation.

There is not one word about improving workplace health or safety. It is all about increasing punishments, increasing penalties and taking the big stick to people in relation to industrial accidents.

I want to deal with this from two angles. The first is in relation to my shadow portfolio responsibilities, particularly in agriculture. I think this is very pertinent because, as has been pointed out by a number of commentators in the public arena and other speakers in this place, agriculture has an inordinately high number of workplace accidents and deaths. Last year there were 13 fatalities on farms, but I think that figure in itself is misleading; I do not think it is accurate to say that all of those were workplace related. I think it is quite arguable that some of them were in fact recreational, but they occurred on farms so they are measured. Nevertheless we should do what we can to reduce that number.

The other point I make about those is that of the 13 fatalities, 7 were people 60 years of age or over. That is a reflection of the age of our farming community. I left farming when I was 40, and I was a very young farmer in my area. Most of my neighbours were far older than me, and some were 30 or 40 years older. It is a sad reflection on the economic viability of agriculture over the past 30 to 40 years that it is not a particularly attractive occupation for many young people and there are better opportunities, more money and brighter lights in regional and metropolitan cities. We have seen a rapidly increasing age in the farming work force in recent decades.

I suggest one of the things we need to take into account in this regard is that because farmers of that age — in this case they were 60, 65, 78, 86, 60 and 77 — are often frail, their reflexes are slower, their awareness is lower and their faculties of hearing and sight have diminished they are more likely to suffer accidents in the course of their work, even though they may have been doing this work for decades.

I use my own father as an example. My father grew up on the land, and except for his war service he spent virtually his whole life of the land. But when he was 75 and getting on towards 80 he made elementary mistakes around the place, not because he did not know but just because he did not react as well, see as well or hear as well as before. He is fortunate in that he did not die as a result of any of those accidents, but he certainly severely injured himself in a couple of cases. That must be taken into account when considering the impact of accidents in agriculture.

Secondly, we need to look at how this law, if it were to come into place, would apply. It is a truism to say that when lawyers have a law at their disposal they look at the easiest target first in order to try the law on. Whether you are a plaintiff lawyer or a prosecutor, you look at your best chance of winning before you take a case. I put it to members of the house that the national and multinational corporations — the major employers in Australia — will have very good defences against a law such as this. They will have corporate lawyers, consultant lawyers and workplace management programs which will protect the directors and senior officers from penalties imposed under this legislation.

The people who will not have that sort of sophisticated defence mechanism are the small and medium enterprises that employ between 1 and 20 people, because they simply cannot afford that. The people most at risk from a prosecution under this law are employers who are incorporated, perhaps who employ themselves. Let me give the house a couple of examples. There were a couple of examples in those 13 deaths on farms of incorporated family businesses that employed the owners of the business. It is entirely likely, in fact I would think highly probable, that the earlier prosecutions that are likely to be taken to court if this bill becomes law will be in those sorts of areas — the case where a family farm is run by Joe and Mary Bloggs Pty Ltd and has four directors. It might be mum, dad and a couple of sons, or a son and a

daughter-in-law, or a couple of the daughters. Whatever it happens to be, some will be of the next generation and all will be directors and employed by the company.

All of them will know that not all of their equipment is absolutely up to the top-notch safety standard, because that is the way farms operate — it simply does not happen in every case on a farm. The tractor's brakes are a bit wonky; the power take-off shaft safety covers have cracks in them or they are non-existent; the safety guard on the auger has been removed for whatever reason — perhaps for repair — and has not been put back on; or some belt pulleys are not covered. Those sorts of things are day-to-day occurrences on farms; we should fix them, but they happen now.

Imagine the circumstance where all of the four or five who are owners, directors and employees of this family firm may have used certain equipment from time to time and one is tragically killed or seriously injured in an accident there. The prosecutors look at the brief and say, 'Yes, all of the directors were aware of the substandard equipment or equipment that was not up to roadworthy standard'. It would be easy to imagine a scenario where that was a soft target for lawyers, and that would establish precedents for further successful prosecutions down the track. This family would then have to go through the tragedy of, firstly, the serious accident or perhaps the bereavement, and secondly, facing the appalling prospect of a prosecution after having lost or had seriously injured a member of their family.

I would support the government if it were looking at improving workplace safety on those farms, but I do not think it is sensible to say to the farmer who may have lost a son, daughter, wife or husband, 'You will also be subject to a criminal prosecution for manslaughter, or for committing serious injury because you are incorporated, whereas your next-door neighbour operates as a partnership and that would not happen there'. The legislation is discriminatory. It is likely to impinge on those who can least defend themselves against it, and it will have no real impact on workplace safety on the farms. What it will do is stop farmers employing people and stop them incorporating. They will go into things like trusts in order to avoid criminal liability. It will create artificial attempts to avoid the matter.

The Victorian Farmers Federation states in a letter:

> If legislated, the proposal would force many rural Victorians to seek employment in major metropolitan regions because employment opportunities would be reduced. The loss of population to the major cities would have a disastrous impact on many smaller rural communities.
>
> The VFF believes that the proposals fail to provide a solution to workplace deaths and will have a negative impact on the management of health and safety at the workplace. The provisions offer no encouragement for employers to improve occupational, health and safety policies or practices.
>
> The VFF believes workplace deaths and injuries can be best prevented through education and training of employers on workplace safety.

Hear, hear! I agree.

> The VFF requests Liberal Party members to oppose the Crimes (Workplace Deaths and Serious Injuries) Bill in the Parliament. The bill is a bad law and should be opposed as a package, it would not be appropriate to seek amendments to minimise the impact of the bills provisions, nor to address specific failings.

The letter is signed by Peter Walsh, president of the Victorian Farmers Federation, and is dated 22 April this year.

The other issue in relation to agriculture is that there are many contractors on farms, and many of them appear on farms for a very short period of time. There are agricultural lime spreaders, fertiliser spreaders, boom spray contractors, crop dusters, fencing contractors and shearing contractors. There are dozens of different types of agriculture contractors. As I understand it this bill would impose a duty on an incorporated farmer or a farmer who had an incorporated trust to be responsible for the work safety records of the contractors who worked on their farms. As I understand it, the situation could arise where if shearers were killed in a road accident after hooning around or something like that while driving to or from work, that could negatively affect the farmer, who could be exposed to prosecution under this bill. I am happy for the government to clarify that, but that is the way I read the bill, and that is certainly the advice I have had.

I wrote widely about the bill to people in my electorate, but none of them has written to me to support the legislation. I had letters opposing it from AA Recycling, Bruce Wright and David Nutter Ford. The Shire of Yarra Ranges thought it would not work, as did Silvandale Transport and organisations like the Victorian Automobile Chamber of Commerce and the Victorian Congress of Employer Associations. Of course I had one letter from the Victorian Trades Hall Council. I believe it was the only letter I received in support of the legislation, and I think that shows where it gets its horsepower.

The bill is entirely union sponsored. The government has introduced it as a result of a promise to its union friends, but I do not think it will do anything to improve workplace safety across Victoria. I certainly think it

will diminish workplace safety and economic opportunities in country Victoria. On that basis, I will be opposing it.

Mr LANGUILLER (Sunshine) — On 12 November 1998 two 18-year-olds — Anthony Carrick and his mate — started work. It was Anthony's first day at work, and it killed him. The boys were dropped off at Drybulk Pty Ltd in Footscray by a labour hire company, with no training or safety equipment. They were told to sweep the floor in front of several 5.5 tonne cement walls. The unrestrained slabs had been known to shift and wobble through the vibration of nearby traffic on Coode Road. The slabs were in place to protect the shed walls. One fell: Anthony was killed and his mate received serious crushing injuries to his back, pelvis and legs.

Drybulk was fined $50 000, but the company was liquidated and as yet the fine is unpaid. Similarly, separate court orders for loss, pain and suffering that were awarded to Anthony's family and his surviving mate remain unpaid. The company has not been charged with common-law manslaughter; and the company which owned Drybulk now operates from the same premises.

This is one of the reasons why I support the bill. Manslaughter is manslaughter wherever it may happen — in the community, in the suburbs or in the workplace. I support the legislation because it is the right thing to do and because it is the Labor thing to do. I support it precisely because only the Australian Labor Party can bring this legislation into this chamber. I support it because the opposition would not have the vision, the courage or the decency to bring legislation of its kind into this place. I support it because it is the right thing to do by workers. I support it because it is the right thing to do by the right employers, the majority of whom would not commit gross negligence or allow serious injuries to occur in the workplace. In fact we are only referring to the minority.

The opposition should be ashamed for coming into this chamber and misleading members of the public by telling them that it applies to each and every case out there in the community. It certainly does not! It only applies to those who are negligent and commit gross negligence and have to go through the courts, come before their peers and a jury and have to have cases proved against them beyond reasonable doubt. It is absolutely hypocritical for the opposition to come into this place and talk about farmers and a whole range of cases for which we feel sympathy, but this bill does not apply to them — and the opposition knows it. They are misleading this chamber.

This bill is about right to life in the workplace. This bill is about being able to say to families that they can send their relatives, husbands, wives and children to the workplace in the expectation that they will be returned home safely and alive. This is the right bill to bring into this chamber. I am not surprised, because if you go back to the history of workers compensation in this state you would find that it is the same opposition, the same Liberal and National parties, that time and again opposed legislation that was brought into the Parliament to ensure that workers were properly and adequately protected.

It is not surprising that those parties opposed us when we argued that there were repetitive strain injuries in the workplace or when back injuries were taking place. It is the same opposition that comes into this place and tells us that this legislation will affect companies, talking purely about money and not about lives.

I am restrained by time. There are many arguments that all of us would like to put on the record, but in order to ensure that every colleague in this place has the opportunity to put their position I conclude by saying that I wish the bill a speedy passage. It is the Labor thing to do in the state, and we are proud of that. The opposition should be ashamed of itself for the hypocritical and misleading arguments it has brought into the chamber.

Ms McCALL (Frankston) — It is always a pleasure to follow the honourable member for Sunshine, who is a member of the Law Reform Committee.

Why is the opposition opposing this bill? Let me trace it through my own work history. By training I am a personnel manager, which means I have been responsible for occupational health and safety and industrial relations. I have also run a small business. I oppose this legislation because the whole of my training and work experience dictates that the very best way to change behaviour is by education and training and not necessarily by legislation or punitive measures. Nobody in this chamber has anything but sympathy and compassion for the families of those who have been killed at work. Nobody would deny that those are tragedies and that we should endeavour to do everything within our power to ensure that no-one else goes to work and does not return.

However, I have a real problem with introducing a piece of legislation that punishes an employer. Based on my industrial relations training and my work in occupational health and safety and personnel management, I believe that the best form of resolving these issues is not by waving a heavy stick at people

and threatening corporations with massive fines or threatening individuals with jail but by education and by communication.

I have to say that I support the issues raised by many industry groups, which have traced over the last 10 or 15 years those times when they have built up a much better level of communication with their work force, particularly small businesses, and I will relate this in specific terms to small business and to the small businesses in my electorate.

One of the problems is that we are now going to return to a combative environment of us and them, whereas we have all worked very hard in the field of personnel and human resources to break down precisely that — to talk to members of staff and train for it. What would be worse would be a perception that we would be back to the old pyramidal days of commitment and responsibility, where the boss is some sort of villain stuck at the top in their ivory tower with a great view and a polished desk and the poor old workers are stuck at the bottom. The reality is that we have moved a long way from that.

When I first trained those were the sorts of pyramidal structures we were dealing with in organisations. I am delighted to say that times have changed: organisations have become much flatter in their structure, communications have become much better and companies have become more responsible. Putting this sort of legislation in place probably will not catch the rogue or killer companies, or whatever it was that the Attorney-General referred to, anyway. If they are that bad they will probably be so smart they will make sure they do not get caught.

One of the things that worries me is that by introducing a piece of legislation like this you create an environment in which those who are genuinely trying to do the right thing then live under the cloud of thinking that whatever they do is going to be wrong. I am very conscious of the lateness of the hour and the numbers of honourable members who want to speak on this bill, but I refer particularly to my electorate. I wrote to small businesses and to medium businesses in my electorate and asked them for their views. I sent them copies of the second-reading speech and examples of where they may or may not be caught under this legislation. Pretty well every single company that responded to me said, 'We do not need this to tell us how to produce a safe work environment'.

In particular, in answer to the question, 'Will it affect whether you employ staff or run a business?', some of the small businesses made observations like, 'We will probably close down after 50 years of work and retire'. To the question, 'Are you in favour of this law?', they said, 'No, it is unreasonable and unnecessary', 'No, it will put the union in the driver's seat by enabling it to use health and safety concerns as a lever for other issues', 'Totally unfair and unnecessary', 'It's harsh and punitive', 'Not in favour of the extreme nature of the laws', 'What's happened to the personnel and to the responsibility of individuals?', 'Regardless of what legislation says, the government and law firms want someone to blame', and 'A vary narrow-minded view'. I have no difficulty whatsoever opposing this legislation.

Mr MAXFIELD (Narracan) — I rise this evening to talk on the Crimes (Workplace Deaths and Serious Injuries) Bill. This is probably the saddest circumstance that I am going to experience in this term of the Parliament because what we have seen here this evening is sad and tragic.

On the other side of the house we have seen members of Parliament — who a lot of people in the community regard with a certain amount of respect — argue for the right of rogue employers to kill and maim their employees and be able to get off basically scot-free. How could somebody with any semblance of conscience or decency in them actually oppose this bill? I am being quite strong on this issue, because this is one of the most inherently decent and fair bills that has ever come before the Parliament.

What does the *Weekly Times* say on this bill? As a country member I regularly read that paper. On the editorial page an article by Peter Hunt argues:

> The VFF is failing its members in its stance on proposed workplace safety legislation …

He says further:

> Why should they be able to hide behind the protective wall of the corporation, while the vast majority of farmers, as small business operators, have to take responsibility for their actions?
>
> If 98 per cent of Australia's 111 000 farm enterprises are unaffected by this legislation, then why should the VFF executive be so passionate about protecting so few?

He means that 98 per cent of current farmers can currently go to jail if they negligently kill their employees. Honourable members opposite, some of whom are members of the Victorian Farmers Federation, say that the top 2 per cent, who are members of corporations, should be exempt from the laws that 98 per cent of farmers currently work under. We are not talking about some bizarre or terrible legislation that will close businesses down. If any

business closes down because of legislation, then it should not be in business in the first place because the reality is as we have seen in the article in the *Weekly Times*, which is a conservative publication and certainly not one that trumpets Labor policy from time to time. What it has said is quite clear, and what it says about small farmers also affects small business.

The fact is that if you run a small business directly employing an employee you are currently subject to the law and you could go to jail if you kill your employee. It is only when you can hide behind a corporate body and deflect the blame that you become exempt. The opposition is saying that it believes that under current legislation people who run small business — little businesses — should be going to jail, but if they get larger they should have the right to hide behind their corporation.

Why should people in big business have the right to kill and maim and those running a small business not have that same right? What a hypocritical approach! If the opposition considers this legislation is so bad for corporations, why does it not propose the same thing for the 98 per cent of farmers and other small businesses?

What opposition members are saying can only be described as a complete and utter joke, and it is tragic that I have to stand here and argue this point — absolutely tragic! If honourable members opposite had any decency at all they would accept that if it is all right for 98 per cent of farmers, then the top 2 per cent should not be exempt. Why is it that if you are wealthy enough and own a corporation and can deflect the blame you want to be able to get away scot-free? I find that absolutely amazing. I wonder whether those people on the other side of the house taking that position will sleep tonight knowing how despicable their actions are.

I am very proud to stand up as part of a government that looks after the workers in this state in a way in which we can be very proud.

Mr McINTOSH (Kew) — The only tragedy is following the honourable member for Narracan, who clearly has no idea about the substance of the bill or what it does!

Nobody on this side of the house is saying that there should be deaths in the workplace. No death in the workplace is acceptable. Nobody should die at work — that is accepted by everybody in this house. One death in the workplace is one death too many. However, the most important thing is that everybody has to understand what the legislation is about. It is not the silver bullet; it is not the solution; it is not even part of the solution. In fact, in many ways, the legislation will make the workplace far worse.

This state has had a strong tradition of addressing occupational health and safety in the workplace. I remember as a school student going to the ICI fertiliser factory in Yarraville. I had a summer job in a laboratory there. Occupational health and safety was being talked about as an issue then and there were signs throughout the workplace. There was cooperation between unions, employers and employees, and that cooperation now flows through our workplaces. No-one is saying that the number of deaths — 29 last year — is acceptable. But the long-term trend is downwards, and that has come about by way of cooperation, which should be enhanced. I fear this legislation is setting the clock back. It will create a lawyers field day. It will create an incentive for large corporations and public corporations to pursue an agenda to prevent a proper investigation of those deaths that have taken place.

The most important thing about the debate is — and it is something the government does not understand — that nobody suggests that one person should be entitled through negligence or otherwise to kill another human being. Sure, we need strong laws that deal with the sorts of people who fall below a minimum standard, and no-one says that minimum standard should not be prescribed. What I find absolutely reprehensible is that there are so many exceptions to the law that should have general applicability throughout the state. Why should the law that prescribes a particular standard that says, 'Thou shalt not cause the death of another person either by way of your own negligence or by the negligence of an agent' — and that in itself would be bad — be limited to the senior officers of the corporation? Why should it not include every person in the corporation?

The most important aspect of the bill is that it deals with a limited class of person. If you happen to be a volunteer director you are exempt from the provisions of the bill. Why does it have to be a paid senior officer of a corporation? What is the logical difference between a volunteer director and another director? The only explanation I can think of is that it is a sop to volunteers following last year's International Year of Volunteers.

The other thing I cannot understand is that if you prescribe a minimum standard that everyone should achieve why should you limit it just to workers? What about customers? What about passengers? What about other people who might be put in jeopardy by somebody falling below a minimum standard? This has

nothing to do with prescribing a minimum standard by which we will assess whether somebody is guilty or not. This is about punishing a particular class — not because you want to do anything about it but because you want to pass a piece of legislation that says that somebody in a suit could be liable for industrial manslaughter — not manslaughter generally, not murder generally, but a particular class. The government has limited the class of people eligible to be prosecuted and the class of victims. That is what is reprehensible about the legislation.

The government is more interested in punishing a particular class than in preventing deaths. I have heard impassioned speeches on both sides. Nobody condones death in the workplace. Nobody condones what happened to Mr Carrick and others. It is most important to pursue that with some degree of vigour. But this is not going to be the solution to the problem. Nobody is suggesting as the honourable member for Gisborne — and just mark my word, honourable member for Gisborne, I do not condone that, and if you do this you will set up confrontation that will actually exacerbate the problem.

The ACTING SPEAKER (Mr Nardella) — Order! I suggest to the honourable member for Kew that he not use the word 'you', because that then refers directly to the Speaker. I suggest that he refer to either the government or to honourable members. I have been lenient and I will let him go, but I think he needs to do that.

Mr McINTOSH — This bill may very well make the problem worse because you are pursuing punishment to the exclusion of prevention, and prevention has seen such a dramatic improvement in occupational health and safety over the past few years.

We should be prescribing a minimum standard and a general law. If we do not have a general law in this particular application, if we prescribe a particular class of victim and a particular class of those who can be prosecuted, that is the most terrible thing I can imagine in the way the law is conducted and it is not the rule of law that I was brought up on at university.

Ms DUNCAN (Gisborne) — If gives me great pleasure to speak on the Crimes (Workplace Deaths and Serious Injuries) Bill and to correct a few of the misconceptions presented by the opposition, and by the honourable member for Kew in particular, who knows exactly that what he is saying is incorrect.

If you follow the logic, this idea of cooperation — 'We just want to cooperate and this will take us back to the bad old days' — why do we ever prosecute anybody for anything? Why don't we just say to drunk drivers, 'Hey, guys, it is not a good idea to drink and drive'? We say that, and when they do we throw them in bloody jail! What is the difference? I am not quite sure what their logic is.

This bill is about levelling the playing field. The honourable member for Kew keeps talking about us identifying a class and picking on a class of people. Let me remind the honourable member for Kew that that class is currently exempt because of the structure of the Corporations Law and the way in which corporations are structured. He can sit there and take not one word of this in but I know he is listening. So that is the point.

In previous debates opposition members have argued against DNA testing. Anyone would be happy to be DNA tested because unless they have done something wrong they will have nothing to fear. I would throw the same logic back to the opposition. No employer has anything to fear from this piece of legislation if they have a safe workplace. This piece of legislation changes nothing about the level of workplace safety that they have to provide. The law already sets the minimum standard of care.

I will go on to some of the examples. The Deputy Leader of the Opposition read out a long and tragic list of deaths that have occurred on farms. On a reading of the list my impression would be that none of them would fit the test of gross criminal negligence. To get on a tractor with a wonky wheel is not criminal negligence.

However, I will refer to the article mentioned by a previous speaker about what scenarios would be met under this legislation. Taking the farm scenario, if an employee is killed driving a tractor that a farmer knew had faulty brakes, the farmer could be charged with manslaughter under existing law — I reiterate, under existing law, for the benefit of the honourable member for Kew. But if that same farmer is the director of a company that runs the farm business that person is virtually immune from prosecution. That is what this bill does. Those people who are currently immune from prosecution will now be covered.

I know a lot of people want to speak on this bill so we need to keep it short, but a previous speaker — I think it was the Deputy Leader of the Opposition — accused this government of accusing every employer of being a potential criminal. I would say that is so in the same way that every driver is a potential criminal. If they get in their car and drive according to the law, no drama. If they get in and they are drunk and they are speeding,

then they will have a problem. What is the point of having laws that do not apply to certain groups of people? This bill simply redresses the imbalance.

Let's debunk some myths. The Victorian Employers Chamber of Commerce and Industry suggests that this introduces a whole new regime of obligations. It does no such thing! They are exactly the same, and every member of the opposition knows it. If the current work safety laws, which have been in operation for 15 years, continue to be complied with, no offence will be committed. It is said that this bill unfairly targets corporations. Again, that is not true: it redresses the balance. I commend the bill to the house.

Mr HONEYWOOD (Warrandyte) — In responding to the honourable member for Gisborne, I suggest that the only realm of new obligations we have seen this evening are the obligations that she and other members of the Labor Party have to slavishly follow the dictates of their union masters for preselection purposes. But having said that, I come to this debate having been a former Minister for Tertiary Education and Training and having had the opportunity, whenever it was available to me, to deregister employers and prevent them from ever being able to employ young apprentices again. I genuinely believe that when it comes to the employment of apprentices and trainees there needs to be an absolute zero tolerance of any form of bastardisation, any form of initiation rights, and any form of cruelty and lack of observance of occupational health and safety standards on the part of any employer.

Members on both sides of the house know that there has been some incredibly lax supervision of young people, be it the young apprentice some years ago who was told to hold up a sheet of rock material without being given an idea of the weight of it and upon whom that sheet of rock material fell, subsequently killing him; or be it the employer who turned a blind eye to initiation procedures in the workplace, which involved a supervisor in that place of employment participating in putting lighter fluid under a toilet door, extensively burning the body of a young apprentice. All of those horror stories are part and parcel of the apprenticeship bastardisation that has gone on.

However, I am pleased to say that during my time as minister, employers and employer organisations undertook a policy of zero tolerance when it came to the bastardisation and initiation of apprentices and trainees. They did that as a result of the most incredibly extensive education campaign, be it the printed material that went out, both specific to that issue and general newsletters, or the fact that as a government we produced a letter that was sent to every apprentice, trainee and employer of apprentices and trainees saying that we would not allow this type of situation to occur and that maximum fines and penalties would be pursued within the courts if any evidence of it was brought forward.

These are the types of proactive campaigns that I believe 99.9 per cent of employers in the state of Victoria want to participate in, because they do not appreciate the bad eggs who let young people down. Having said that, I make my contribution to suggest that although the Labor Party in Australia thinks it has a mortgage on compassion and believes it has a mortgage on understanding what goes on in the workplace, unfortunately in following union precepts and union masters it often overlooks the fact that we on this side of the house have also proactively pursued bad employers who have done the wrong thing. There are also bad union organisers, Mr Acting Speaker — and you would be aware of many of them — who have done the wrong thing in the workplace by other union members as well.

Another thing I would like to mention in passing is that the Labor Party is very big on talking up the rhetoric of engagement with Asia and on talking about our future, be it the former Prime Minister Paul Keating or the current Premier. It is all fine rhetoric, but unless you back it up with an understanding of cultural situations abroad, it amounts to nothing. I know for a fact, through my relationship with the Japanese community, that this government is in great danger of scaring away foreign investment in our state's manufacturing industry and in our state's food and technology industry, because it is trying so hard to please the unions, whether it is on this particular piece of legislation, Workcover or any number of other issues. When it comes to negotiating with Asian companies that are interested in investing in Victoria, on the one hand this Labor government is loud and clear about wanting to do business, but on the other hand it is going to ensure that they can be held liable for this type of criminal activity.

If you were a director of a Japanese company sitting in Tokyo, Osaka or Nagoya and contemplating investment in a state of Australia and you heard that a director in another corner of the globe — Victoria — could be held liable for something that happened in a factory in Melbourne, then if you had an opportunity to invest elsewhere you would stop and think twice about whether to bother with Victoria at all. When this government talks up the rhetoric of engaging with Asia it should make very sure that it understands that what it is dealing with here is a time bomb when it comes to genuine investment.

Mr CAMERON (Minister for Workcover) — It is my pleasure to join the debate. You will be aware, Mr Acting Speaker, that when we went to the last election Labor said it would introduce a crime of industrial manslaughter, and you will be aware that when we came to government the opposition said, 'We will keep you honest'. Here is the test: who will be honest tonight? Will these people keep us honest? Will they keep to their word or will they be dishonest?

This legislation does not make changes to the obligations of employers. What it does do is address the issue of penalties and say that this legislation should apply to those employers who breach their obligation to provide a safe workplace and who are grossly negligent. I make that point again: this legislation does not change the obligations of employers at all.

The issue of workplace safety and workplace injuries and deaths has to be tackled in many ways, and we do that through safety campaigns and safety programs; we do that through a cooperative approach; we do that through things like the safety development fund and the small business safety program; we do that by promoting good employers; we do that by ensuring that there is appropriate enforcement and, where necessary, prosecution; we also do that by providing incentives as part of an experience rating scheme, particularly as it applies to larger employers; and we do it through penalties. This legislation is about that iron in the fire: it is about the issue of penalties, and it is also about making sure there is the appropriate crime.

Manslaughter under common law can be manslaughter in private. Many people are killed on the roads as a result of the negligence of others, but only some of those are killed as a result of gross or criminal negligence. Those guilty of culpable driving resulting in death are charged with manslaughter. In the event of gross negligence in the workplace, if the employer is not incorporated the normal laws of manslaughter will apply. When the employer is a very small company and the directing mind and will of the company can be targeted, the common law applies to that person as well. But when the employer is a larger entity the common law does not apply; it does not work. That is not the way the common law was envisaged, but that is the way it has worked out in practice.

Some honourable members take the view that manslaughter is a crime and that it should apply across the great breadth of society, except for larger corporate entities. They believe it should apply to small corporate entities, it should apply to employers who are not incorporated, it should apply in private and it should apply on the roads, but it should not apply to larger corporate entities. That terrible anomaly is being overcome by this legislation, and I urge the opposition to do what it said when we came to government — that is, keep us honest and make sure that we keep our promise to introduce industrial manslaughter.

Mr JASPER (Murray Valley) — I rise to join the debate, having listened with a great deal of interest to the presentations made by members on all sides of the house. I strongly support the comments made by the Leader of the National Party, who provided detailed information on the legislation and its effect on the state of Victoria should it be introduced, in particular its effect on the employees and employers across this state. There was some criticism in some of the information he provided, but there is no doubt that the strength of argument that has been presented to the National Party indicates that this legislation is bad legislation.

I listened to the Minister for Workcover, who has just completed his contribution. He talked particularly about safety campaigns and what has been introduced and undertaken by employers over a number of years in cooperation with government organisations. The facts are that there has been a great reduction in the number of deaths and injuries in the workplace because of programs that have been introduced. Surely that is the right way to go.

I also listened to one or two of the other contributions from government members, who asked, 'Do you support the rights of workers?'. They talked about decency in the workplace and quoted individual cases. My experience in talking to people in my electorate of Murray Valley is that employers are extremely responsible in what they do, how they perform and act within the workplace and how they protect their workers. The program that has been undertaken over many years has been along the right lines. It is supported by the information and statistics that honourable members have before them.

Employment is a huge issue, and the Minister for State and Regional Development has been strong in his comments in the Parliament about employment in Victoria with the economy going forward. He has said that we need to promote employment and extend employment opportunities in the state. I suggest to the house that if this legislation goes through it will be a deterrent to employment and investment in Victoria. The information that has been presented indicates that it would not be an advantage for the state to have this legislation when other methods can be further introduced through the Crimes Act and the Occupational Health and Safety Act to ensure that the

workplace is safe for people working in those organisations.

Like many honourable members I contacted individuals and organisations throughout my electorate seeking their response to the proposed legislation. The representations and letters that I have received have been strongly opposed to the legislation. I have not had any direct response saying that the legislation should be supported and pass through the house.

In looking at the broader responsibilities across Victoria, the National Party has consulted with a large range of organisations seeking their response to the legislation. All have indicated strong opposition to it. An article in the Victorian Automobile Chamber of Commerce publication *Auto Industry Australia*, headed 'The workplace crimes bill — bad and unworkable', states:

> The proposed workplace crimes bill has one major success under its belt: it has succeeded in uniting nearly every employer in the state in opposition to its passage. And while it may be politically convenient for a Labor government to demonise employers, the Bracks government has neither justification nor evidence to support its industrial manslaughter bill.

The executive director of the VACC, David Purchase, said in the article:

> No-one is suggesting we should rest on our laurels or that the government should not be looking at ways to further improve laws relating to our workplaces. Just one workplace death is one death too many. Clearly, employers, employees and the government should continue to strive to eradicate risk but the answer is not in this law.

That is the comment from Mr Purchase, and he provided further details in that article.

The Victorian Employers Chamber of Commerce and Industry provided a very detailed discussion paper on its concerns about the legislation. VECCI said it is about punishment and increased penalties, and about looking at those penalties across companies and senior officers. In a very detailed response it indicated its opposition to this legislation. Under the heading 'Victoria — the testing ground' the discussion paper states:

> As indicated at the outset, the Crimes (Workplace Deaths and Serious Injuries) Bill is a groundbreaking set of proposals, without precedent in Australia or overseas.
>
> That surely has to be something that counts against the legislation proceeding. Under the heading 'Punishment or prevention — the carrot or the stick' the discussion paper says:
>
> The historical approach … by Victoria in occupational health and safety has been based upon risk management, education, improved safety standards, and the simplification of legal requirements, with the overall objective of preventing workplace injuries before they occur. Figures released recently by the Minister for Workcover suggest this approach has produced results, with the numbers of deaths and injuries in Victorian workplaces continuing to decline.

Further information is provided in VECCI's detailed submission. That sums up many of the representations the National Party has received from a range of organisations and individuals right across the electorate of Murray Valley and, indeed, across Victoria.

I indicate again that I have had a look at the effects that the bill would have across the electorate, and I do not believe it would assist us in rural areas. In fact, as I have indicated, there is no support for the legislation within the electorate and, as I see it, across Victoria. Investment is a critical issue, and in that regard I think the bill would certainly have an adverse effect on the economy of Victoria.

The government's objective of making workplaces safer can better be achieved, we believe, by focusing on safety initiatives and education, and by providing rewards for good safety practices rather than frightening those in management positions away from their responsibilities for safety. I support the comments made by the Leader of the National Party, and based on the information we have been able to gain from our investigations, I support our opposition to the legislation.

Mr KOTSIRAS (Bulleen) — It is with pleasure that I speak briefly on the bill, because I know there are a number of speakers on this side who wish to contribute to the debate. I have listened to government members give examples of deaths in the workplace as a reason why we should pass this bill. They say the bill will put an end to injuries and deaths in the workplace. Unfortunately this bill will not stop deaths in the workplace. It is misleading, and from the outset I have to advise that I will be opposing it.

This legislation has been badly drafted by the unions. It proves once again that this government is a mere puppet of the trade union movement. I understand that the government has no option but to support this legislation, even though it knows that it is badly drafted and narrow minded. I tend to agree with the comments made in one of the *Auto Industry Australia* newsletters:

> Because everyone knows that this proposed law is a gift. It is the promised quid pro quo to certain militant unions. And everyone knows that this promise was made at the 'unwinnable' election in return for the political and financial support of such unions.

> Everyone knows that with this legislation, Mr Bracks is paying the piper.
>
> But paying the piper is no excuse for bad law … By the 2000/2001 year, deaths had fallen to 31 — less than a third of the numbers in 1988/89, despite an increase in the Victorian work force of tens of thousands … there has been a concerted campaign to create awareness of workplace safety and concerted efforts by government, by employers, and by employees, to embrace a 'work safe' culture.

Clearly the application of existing sanctions and penalties has played a part in reducing the incidence of workplace deaths. But the greater part has been achieved through cooperation, consultation, education and mutual acceptance of work-safe responsibilities.

Putting all employers in the gun without just cause is bad politics and bad government. Putting paying back political mates above the pursuit of sensible reforms is bad politics and bad government. The proposed legislation is the Bracks government's most conspicuous folly. That it is also based on the politics of pay-back does this government no credit at all. The public will see this legislation for what it is: paying back the union movement.

I have received a large amount of correspondence from within my electorate and across Victoria, the vast majority of which opposes and urges me not to support this legislation.

Currently a corporation can be prosecuted for the crime of manslaughter if the corporation owed a duty of care to an employee and breached that duty of care by acting in a grossly negligent manner toward and thereby causing the death of the employee, so why does this bill need to be passed?

If one looks closely at this bill one notices that it does three main things. It introduces new crimes of corporate manslaughter and causing serious injury, it introduces criminal offences for senior officers of manslaughter and causing serious injury, and it increases existing penalties under the Occupational Health and Safety Act by an average of 250 per cent.

I do not support the bill for a number of reasons. There is no excuse for the average 250 per cent increase in occupational health and safety penalties when deaths and serious injuries are decreasing significantly. There is no evidence that introducing the crime of corporate manslaughter is necessary and it could possibly reduce cooperation in the workplace. This legislation is unfair, counterproductive and contrary to criminal law principles. The criminal offences it introduces for senior officers add nothing to the current crime of manslaughter, and there are too many vague terms, such as 'senior officer', 'serious injury' and 'really serious injury'. The bill also places too much power in the hands of union officials.

I ask the government to look at this legislation. I also call upon government backbenchers, who have shown no spine and courage and who do not stand up to the Attorney-General but allow him to do what he wants, to stand up for all Victorians and not just for their union mates. For those reasons, I will not support the bill.

Mr ASHLEY (Bayswater) — Madam Acting Speaker — —

An honourable member interjected.

Mr ASHLEY — In all conscience I would love to, but I cannot. Legislation, especially when it involves criminal sanctions, should always be entered into very cautiously and prudently — even reluctantly. By that statement I do not excuse or seek to minimise the kinds of gruesome, ghastly and appalling workplace events that have prompted the government to introduce this piece of legislation.

However laudable its objectives, this legislation borders on the reckless and on being recklessly entered into. If the common law provided no means of prosecution on the ground of criminal negligence for the ongoing existence of unsafe work systems, procedures and practices, there would be a case for considering this bill, but demonstrably that is not so.

The bill is defective in a number of dimensions. It will create an invidious situation in which certain persons will definitely no longer be equal before the law. Under the doctrine of 'aggregated responsibility' a senior company representative could be prosecuted and jailed, even if the particular workplace event for which a prosecution was mounted was demonstrably counter to the will and mind of the company and that person.

Another of the quandaries the bill sets up is the certainty that the most unequal before the law are those small business proprietors whose businesses are incorporated and are not partnerships. They will be least able to defend themselves and will be most exposed to investigation and pursuit because of the shorter chain of command. They will not be able to afford the cohorts of lawyers that large multinational companies are able to employ. This lack of equality before the law is stretched by the fact that there are a number of exempt groups including areas of the public sector and some volunteer senior position officers. By implication the bill will inevitably exploit marked distinctions between one industry and another before the law.

Mr Hulls interjected.

Mr ASHLEY — That is one way of putting it, but some industries are inherently safe. The modern industries — the communications industries, the office-based industries — are much safer than many others which, no matter what you do or how much effort you put in, cannot be upgraded to the same degree of safety. People working in heavy engineering, construction, farming and petrochemical industries, though those industries are far less unsafe than they were, are still nowhere near as safe as they would be if they were sitting down behind a desk in an office.

Then there is the issue of what might be called indeterminate death or serious injury — death or serious injury not found out until many years after it was caused. There are many examples of that. Certain proprietors of businesses in my electorate — spray painting businesses, for example — are allowing employees to remain unguarded as they do spray painting. It is going to be years and years before the consequences of that are found out, but the consequences will be two destroyed lungs and no-one prosecuted.

Suicide at the workplace is also an issue. If that is caused by the neglect of the employing company, how is that ever going to be known? What if someone dies of a heart attack which might monumentally be a consequence of the actions of an employer? That can never be prosecuted. The notion of negligence, let alone criminal negligence, should be as far as possible disconnected from workplace legislation and regulation. For all practical purposes the only sustainable means of furthering occupational health and safety regimes is by utilising the concept of no fault.

Across most of the industrial and post-industrial world the concept of no fault underpins workers compensation schemes. William Hard, a pioneer of no-fault systems, said 100 years ago:

> We won't stop to try to divide the blame for accidents between you and your workers. We will assume for practical purposes that you weren't trying to commit murder and that they weren't trying to commit suicide. We will assume that accidents are accidents.

That approach should apply just as firmly to the way governments respond to the context in which workplace deaths and serious injuries take place. The notions of fault and blame are too simplistic to apply forensically and legalistically to many highly complex industrial situations.

On 3 December 1997 I said in this place:

> The notion of fault is too naive and too simplistic to make any sense of and to do justice to complicated layers of interacting workplace events, which despite even best practice in health and safety management sometimes result in accidents. A minute gas leak, a microscopic deterioration in metal quality, a momentary lapse in human concentration, a rare error in experienced judgment; that's all it takes. To lay blame is about as pointless as kicking your car when it breaks down in a traffic jam.

I know most of this does not apply to the kinds of things that have been said in debate on this legislation, but there is still a spill-over and still the possibility of very serious consequences for those unfortunately embroiled in it.

In my conclusion I draw attention to a letter I wrote in February to the president of the Victorian Automobile Chamber of Commerce, to which I have not had a response and about which I am quite angry. I said in that letter that I believe the business sector has an enormous and as yet largely undiscovered role to play in the development of human and social capital.

If the bill does not go ahead, as I trust it will not, it will lay a greater burden on all the peak bodies of our society to ensure that their members behave to standards that are better than some are behaving to now. I call on every peak body to go through their organisations and their members and to cast aside any that constantly fail to come up to standard.

That kind of process will change the mentality of many. It will change it for the better so that it will be more productive and less counterproductive than this legislation would, unfortunately, be inclined to be.

Mr LUPTON (Knox) — I have talked to people in a large number of organisations in my electorate about the bill and asked them what they thought about it. Not one person in a company has come back and said they support it. Not one employer has said it is good legislation. Concern has been expressed right across the board.

The statistics on the number of workplace deaths that have occurred in a little more than the past 10 years show that 102 people died in workplace accidents in 1988–89; last year the number was 31. Business cannot rest on its laurels. Although the number of workplace deaths has been reduced dramatically, business cannot afford to relax its strict rules.

I have gone to too many houses and had too many cups of coffee and pieces of cake with widows who have lost their husbands through workplace accidents. I have been to a house where a day earlier a husband had passed away because of a workplace accident. I have

provided support and assistance at the home before and after the funeral.

In many cases a workplace death has occurred because of the employee's failure to observe the rules and regulations that the employer had introduced. I could talk about people who have died in electrical accidents, where they had work permits to go so far but for one reason or another decided to go beyond the access permit limitations. They have gone into an area that would be considered electrically live, and consequently have been killed or caused their workmates to be killed or seriously injured. That has happened too many times for my liking.

I have sat there and watched people who have been injured through their own negligence suffer slow and painful deaths as a result of electrocution. I understand that death from electrocution is a process of the extremities of the body dying first and the deterioration working backwards on the body depending on the amount of voltage in the electrocution. I have seen people 6, 12 or 18 months after electrocution. Their limbs slowly die — all through no fault of the employer but because the workers have made a mistake and gone outside the rules or been a little careless.

If I understand it correctly, the bill provides that the director of the company would be held liable for the accident. The director may have been 100 kilometres away from the accident and the worker may have decided to ignore the access permits and do something he thought he could get away with. He may have gone to the pub for a drink, thereby ignoring the rules and regulations imposed on him and his workmates.

I remember visiting a 22-year-old widow only three days after her husband was killed. They had been married only six weeks. Her husband had ignored the rules and regulations. That young widow was probably financially secure, but under this legislation somebody could have sued a director sitting in Sydney or Melbourne when they had nothing do with it. It was obvious that the foreman of the gang had been in the pub with the workers. They had all been in it and encouraged each other. Workplace practices have changed over the years. If you go back over the past 10 years you will find that workplace practices have improved.

I believe the concept of the legislation is good and what the government is trying to do is good. However, it has gone too far. You cannot hold directors responsible when employees, such as those in the examples I have quoted, break the rules, forget about the regulations and go about their own business to try to make things easier for the day after tomorrow. I regret that I am unable to support the legislation. Unfortunately there are no firms in my electorate that can support the legislation.

Mr LONEY (Geelong North) — I take the opportunity to contribute to this debate seriously. My perspective on the bill is quite different from other honourable members, as I have lost a close relative to a workplace accident that was entirely avoidable. I have heard nothing from the opposition or the National Party to justify the position of the conservative parties that gross negligence resulting in death in the workplace should not be punishable. That seems to be the position they have taken, which I find surprising and appalling.

People who have the decision-making capacity to ensure a safe workplace and who fail to do so — not simply fail to do so but actually choose not to do so — must be held accountable. I do not believe any argument put by the other side today has gone to that particular point. I take exception to the suggestion, implied or otherwise, that company directors should be able to put the profits of their shareholders before the safety of employees in their workplace. That is an immoral position to take. Having had a close relative killed in a workplace accident I have great difficulty with that point of view.

I heard the Leader of the National Party say that this bill singles out a group of people. I agree with him — a group of people is being singled out by the bill. That group of people consists of those who negligently contribute to or cause a workplace death. People who have contributed to or have negligently caused a workplace death should be subject to some form of punishment and accountability. That is what the bill is about; it is about negligence. It is not about all the other things that have been talked about during the debate on the bill.

There has been a lot of talk about people not being able to mount a defence. I suggest that under this bill they have a very strong defence — that is, that they provide a safe workplace. That is their ultimate defence. The only defence they need to mount under the legislation is that they have taken every reasonable step to provide a safe workplace. It is the failure to do that that is the focus of the bill. Is it negligent of an employer to send an employee out in a truck knowing that the truck's brakes are not in a safe condition and do not work properly, which results in an accident and a person being killed? Should that be punishable? I suggest it should.

I know time is limited, but I have some passion about the bill. It is a fair bill in all respects. I have heard a

little said about the penalties. I point out in relation to penalties that up to and including the recent Longford case there had never been an industrial death case in Victoria where the maximum penalty had been handed down. The reason for that is the same as the reason for the line we have heard from the other side today — that is, they do not believe these can be regarded as real deaths in the same way as other deaths can. Deaths in the workplace are in some way different! I reluctantly stop there, but I say to the Attorney-General that should this bill fail in the Parliament, he should keep bringing it back.

Mr HULLS (Attorney-General) — I thank all honourable members who made contributions to the debate on what is a very important piece of legislation. It is great to introduce legislation that is going to make a difference to the lives of ordinary Victorian workers, and this legislation will. I know honourable members on the other side of the house have made contributions, some half-hearted, some heartfelt, and they have put up a whole range of reasons why they should not support this legislation. Every single one of those reasons is not backed up by the facts and not backed up by the bill.

When this legislation was introduced the government was criticised because it imposed one law for the private sector and another for the public sector. I made it quite clear in the second-reading speech that this legislation would cover all workplaces. It was always the intention to cover every single workplace in Victoria, not just the private sector. In the second-reading speech I said that because of the difficulty in ensuring that the whole of the public sector was covered because of the corporate entities that did not exist in the public sector, the legislation would be sent to the Law Reform Commission. It was always made quite clear that the public sector would be covered, and it is covered. That is what these amendments are all about.

I am then told that people will go to jail simply because of accidents, but that is not what the legislation does. It does not cover accidents; it has nothing to do with accidents. It is about criminal negligence. Let me be clear about this: this is about gross criminal negligence and the causal connection between that negligence and a death or serious injury in the workplace. The reality is that manslaughter is manslaughter is manslaughter, whether it is in the workplace or outside the workplace. You cannot say that it is okay to have laws that send people to jail if they have committed manslaughter — that is, they have committed a criminal act outside the workplace that has resulted in someone's death — but that if it takes place inside the workplace it is not manslaughter. What is it? If someone has been criminally negligent in the workplace and as a result of that criminal negligence a death occurs, what is it if it isn't manslaughter? I have studied law, and it is manslaughter. Dead right it's manslaughter, and it ought to be dealt with accordingly — and that is all this legislation does. It makes it quite clear that manslaughter is manslaughter is manslaughter whether it is in the workplace or outside the workplace. We have to understand that.

Do not be conned by the Victorian Employers Chamber of Commerce and Industry and the Australian Industry Group and others. I have met with them as many times as anyone else has. This legislation has had the gestation period of an elephant. The reality is that they are philosophically opposed to the legislation. It is not as though they are saying, 'Listen Attorney-General, if you actually move these amendments we are prepared to support the bill', or, 'If you get rid of the senior officer offences we are prepared to support it'. They have said that they will not support any amendments because they are just opposed to this legislation.

They have also said that this legislation — and someone on the other side said it — has for the first time galvanised the members and they are getting new members. They have actually had members dropping off. They have run this scare campaign and put out newsletters to their members saying, 'You could go to jail even if you do nothing wrong so you had better join our organisation'. It is absolute nonsense. This is legislation that this government promised when it was in opposition and it is fulfilling that promise. The legislation targets criminal behaviour in the workplace, whether it be a private or a public workplace, resulting in a death or serious injury. It actually targets behaviour so reprehensible that any Victorian would be appalled to see it go unpunished.

As I have said time and again, when Victorian families see their loved ones go off to work they expect them to come home, but if they do not come home and are killed or seriously injured as a result of criminal negligence then Victorians expect the full force of the law to come down on those who are criminally responsible. That is all the legislation does.

It is true there have been some emotive statements in this debate, and indeed some emotive comments in the media. I noticed the other day that the Leader of the Opposition made a great deal of having a garbage bag full of letters opposing the legislation. A garbage bag was the right place for those letters, and that garbage bag would just about fill up half a coffin of one of those workers who has been killed as a result of the gross or criminal negligence of employers.

The legislation targets those corporate cowboys who do not give a damn about workplace health and safety. I made those exact comments in a speech I made at a rally on the front steps of Parliament House — that this legislation targets those corporate cowboys who do not give a damn about workplace health and safety. It is those people who believe they have a licence to kill. A question was asked that same day, 'Will you sack the Attorney-General because he said that employers believe they have a licence to kill?'. That is not what I said, and the Leader of the Opposition should have known better. What I said was that this legislation targets those corporate cowboys who do not give a damn about workplace health and safety. It is those corporate cowboys who believe they have a licence to kill.

The fact is that the legislation takes away that licence. I repeat what I have said: if opposition members do not support the legislation then they are saying that they are prepared to be soft on crime in the workplace, because that is what the legislation targets — criminal behaviour in the workplace that results in serious injury or death.

I am proud to have introduced the legislation, and I know honourable members on this side of the house are proud to support it, because it is legislation that will make a difference to the lives of Victorians who for too long have been subject to unsafe workplace health and safety practices by a small number of corporate cowboys who weigh up the risks.

I have met with some of them. They say, 'If we spend half a million dollars we can improve our workplace health and safety, but if we don't spend that money it can go into our bottom line. Yes, there will be a risk, and there might be one or two deaths'. They weigh up whether they should spend the half a million dollars or take the risk of a death or deaths, and they decide not to spend the money. They are corporate cowboys. As a result they should be scared of the legislation, and we do not back away from it.

Mr Plowman interjected.

Mr HULLS — Why don't you make a contribution, dork!

The ACTING SPEAKER (Ms Barker) — Order! The Attorney-General should refrain from using that language.

Mr HULLS — Those members of a Liberal Party who do not support the legislation are sending a clear message that they are prepared to be soft on crime in the workplace. Within a short period a vote will be taken on the bill. I hope all honourable members will support the legislation, because it is good legislation and it is fair legislation. It is legislation that we committed to in opposition, and we are fulfilling that commitment. Only those who do not care about workplace health and safety have anything to fear from it. The vast majority of employers will have nothing to fear from the legislation because they are fair dinkum about workplace health and safety. The legislation targets those rogue operators who do not care about workplace health and safety. They have something to fear from the legislation — and so they should!

House divided on motion:

Ayes, 44

Allan, Ms
Allen, Ms
Barker, Ms
Batchelor, Mr
Beattie, Ms
Bracks, Mr
Brumby, Mr
Cameron, Mr
Campbell, Ms
Carli, Mr
Davies, Ms
Delahunty, Ms
Duncan, Ms
Garbutt, Ms
Gillett, Ms
Haermeyer, Mr
Hamilton, Mr
Hardman, Mr
Helper, Mr (*Teller*)
Holding, Mr
Howard, Mr
Hulls, Mr
Kosky, Ms
Langdon, Mr (*Teller*)
Languiller, Mr
Leighton, Mr
Lenders, Mr
Lim, Mr
Lindell, Ms
Loney, Mr
Maddigan, Mrs
Maxfield, Mr
Mildenhall, Mr
Nardella, Mr
Overington, Ms
Pandazopoulos, Mr
Pike, Ms
Robinson, Mr
Seitz, Mr
Stensholt, Mr
Thwaites, Mr
Trezise, Mr
Viney, Mr
Wynne, Mr

Noes, 43

Asher, Ms
Ashley, Mr
Baillieu, Mr
Burke, Ms
Clark, Mr
Cooper, Mr
Dean, Dr
Delahunty, Mr
Dixon, Mr
Doyle, Mr
Elliott, Mrs
Fyffe, Mrs
Honeywood, Mr
Ingram, Mr
Jasper, Mr
Kilgour, Mr
Kotsiras, Mr
Leigh, Mr
Lupton, Mr
McArthur, Mr
McCall, Ms
McIntosh, Mr
Maclellan, Mr
Maughan, Mr (*Teller*)
Mulder, Mr
Napthine, Dr
Paterson, Mr
Perton, Mr
Peulich, Mrs
Phillips, Mr
Plowman, Mr
Richardson, Mr
Rowe, Mr
Ryan, Mr
Savage, Mr
Shardey, Mrs
Smith, Mr (*Teller*)
Spry, Mr
Steggall, Mr
Thompson, Mr
Vogels, Mr
Wells, Mr
Wilson, Mr

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr PATERSON (South Barwon) — The Attorney-General had the opportunity to clarify the Law Reform Commission's reliance on the Hampel decision to justify this bill. The Hampel decision clearly indicates that this bill is not necessary, and I invite the Attorney-General to address that decision to justify the requirement for this bill.

Mr MAUGHAN (Rodney) — I will make a few general comments about the bill and why I am certainly opposed to it on behalf of my constituents. The Leader of the National Party has spelt out very clearly the party's opposition to this bill and why it is opposed to it. I say very clearly that as individuals and as a party we are very concerned about death and injury in the workplace, but we believe there is a better way to deal with it

In exactly the same way as we have been able to reduce the road toll by a combination of education and enforcement and, in that case, by better practices on the road, we can improve safety in the workplace with a combination of education and better workplace practices and by utilising the existing legislation to deal with the Rambo people and cowboys the Attorney-General was railing against during this debate. We agree that those people need to be brought to justice, but we believe that the existing legislation is sufficient to do that. We believe the government's objective can better be achieved by focusing on those safety initiatives rather than using this legislation to compel people and bring in these draconian penalties.

I agree with the statement of Justice Cummins that the essence of workplace safety is prevention. I think the debate today has indicated that both sides of the house are concerned about prevention rather than penalties. I am opposed because it is not good law. It is anti-employer, it is a sop to the unions and it is antibusiness, and we are very concerned about the effect it will have on employers. We genuinely believe there is a better way to go, and I reject entirely the notion that the Attorney-General was putting earlier, that we were soft on crime. I am certainly not soft on crime, and I do not believe that any of my colleagues in the National Party are soft on crime. We are all for penalising those who do the wrong thing but we think this is going far too far and that there is a better way of doing it.

I conclude with one quote from the Mining Industry Council, which says:

> We believe … that the government's objective to make workplaces safer can better be achieved by focusing on safety initiatives that educate, encourage and reward good safety practices, rather than frighten those in management positions away from taking responsibility for safety.

This legislation is vigorously opposed by the Victorian Employers Chamber of Commerce and Industry, the Victorian Farmers Federation, the Victorian Automobile Chamber of Commerce and the Victorian Congress of Employer Associations. A large number of individual employers have also written to me personally on this matter. Not a single letter supporting this legislation has come to my office, but I have had at least 100 from various employers who are very concerned about the legislation asking that the National Party oppose it. I express my opposition to the legislation because I believe there is a better way of achieving the same objectives.

Mr INGRAM (Gippsland East) — I have the pleasure to speak on clause 1 of the Crimes (Workplace Deaths and Serious Injuries) Bill. I would like the Attorney-General to explain to the house how many employers out there he would describe as corporate cowboys. I am sure that all employers in my electorate are very concerned about workplace safety and do a very good job of making sure that there is a safe workplace.

An honourable member interjected.

Mr INGRAM — I will not go down the line of naming them.

I have been lobbied hard on this legislation by employers from inside and outside my area. I have also been lobbied by people who support the legislation. I looked seriously at the legislation and what it aims to do and did not take the decision lightly to oppose it. The legislation will have an impact on investment, business and employment — on the certainty and security of those businesses. A lot of employers out there are concerned about the passage of this legislation. I did a fair amount of work to try to convince them, and I think there have been some campaigns — —

Honourable members interjecting.

The CHAIRMAN — Order! If the honourable member for Bennettswood and the honourable member for Richmond want to discuss the bill, I suggest they go somewhere else!

Mr INGRAM — Some mischievous campaigns have been run by employer groups, in particular the Victorian Farmers Federation; there are very few corporate employees in the farming industry. My family are farmers. The bill is really intended for those corporations where it is currently difficult to place a continuing chain of command — basically where a director of a company is the directing mind and will which leads to a serious injury or death in a workplace. Most farmers and small businesses would not be impacted on by this legislation; it is really down to those corporations.

The impact of passing legislation like this would be a problem in my area. In my area at the end of the freeways out in East Gippsland the government has not convinced the employers that this bill is necessary or good legislation. That is why I oppose the bill.

Ms GILLETT (Werribee) — Now that the Crimes (Workplace Deaths and Serious Injuries) Bill is in the committee stage it is my pleasure to make a contribution on the first clause of the bill.

Firstly, I congratulate the parliamentary secretary to the Attorney-General for his enormous physical, emotional and intellectual contribution to ensuring that this bill will at least get through this chamber. I also congratulate the Attorney-General, for whom it has been an absolute exercise of will and effort in making sure that decent, just and fair legislation to deal with crime comes through and is dealt with in this Parliament.

I cannot understand how some honourable members of both parties on the other side — although I have some respect for members of the National Party — do not seem to understand that crime is crime, that manslaughter is manslaughter and that the loss of a loved one — —

An honourable member interjected.

Ms GILLETT — I know interjections are unruly, and I would certainly not take them up, but as a point in debate an accident is not something that is dealt with in this bill. This bill deals with gross negligence. It is not about an accident involving a decent employer and a decent supervisor where absolute care is taken education and training are provided. This bill is not about accidents; it is not about a mistake. The bill is about gross negligence — criminal manslaughter. I cannot for the life of me understand why it is such a complicated issue for those on the other side of the house to comprehend.

It is not complicated; it is simple. It is gross negligence. It is different if you die at work. If it were the same there would not be so many families suffering not just the grief at the loss of a loved one but the grief at the loss of justice — the sense that they cannot get justice. The bill provides for that justice. I congratulate my friend the honourable member for Gippsland West — a good girl from the west. I know it has been difficult for her, because it is a different and much more difficult set of circumstances.

On behalf of my colleagues on this side of the house I can say that we have grown up in families and constituencies where we regularly visit families who have lost people they love at work and have not been able to find closure because they cannot get justice. For those very few crook employers out there — —

Mr Mulder — Name them!

Ms GILLETT — I do not have time. I wish I did. Interjections are unruly and you are a disgrace!

With those few remarks on a simple and just bill, I commend the bill to the house and hope it proceeds safely through its passage in this house and that members in another place can manage to find some relevance by passing a bill that is truly just.

Mr THOMPSON (Sandringham) — The Attorney-General mentioned that he had met with corporate crooks and I wonder if he would be prepared to name the corporate crooks and whether it was at a progressive business function.

Mr LEIGHTON (Preston) — Unlike the social Darwinians opposite — those who long for a return of the days of the master-servant relationship — I am proud to support the legislation. I am one of those members on this side who the Attorney-General said would be proud to support the legislation. As somebody who was a public sector trade union official before entering this place, I welcome the advice of the Attorney-General, reinforced by the amendments he moved, that the provisions apply equally to the Crown.

During my days as a public sector trade union official it was frustrating to me that the Parliament of Victoria would pass legislation that exempted the Crown. I can remember going through some of the asbestos issues in the 1980s. I believe the provisions of the bill should apply to the public sector.

My experience was in the mental health, or psychiatric, area. Some areas can be quite dangerous to work in and managers must accept responsibility. While my

experience was in a clinical setting one of the examples I recall was in a trades area.

Our old mental hospitals were large establishments and those in the country had a lot of acreage and once upon a time included farms. I can remember wandering into a mental hospital one morning with another union official. We joined the gardeners for tea and sat in the gardener's shed with them. As we were drinking our cups of tea the gardeners were sloshing a bucket of fluid. We said, 'What's that?'. They said, 'It's 2,4-D', so they were talking about the same sort of stuff as Agent Orange. We said, 'Don't you know how dangerous that is?'. They proceeded to tell us that they had tried making that point to the hospital manager without success and that he forced them to spray it on the gardens on windy days and it would drift across the hospital grounds and affect the staff and patients.

I and another union official explained to the hospital manager the impact that substance had had when used in Vietnam, but we met with no success in preventing its use at the hospital. However, we came at it laterally and found out that the hospital manager kept his horses on what used to be the hospital farm. We were able to search out literature that canvassed the effect of this spray on horses, and immediately the hospital manager banned any further use of it in the hospital. The point I make is that this particular senior officer valued the health of his horses more than that of his staff and his patients!

It seems to me we are not talking about accidents but we have a very simple proposition — that if a person is grossly negligent and that results in death it ought to be a criminal offence. For that reason I am proud to support the bill.

Mr PLOWMAN (Benambra) — This is bad legislation because the number of workplace deaths in this state was reduced to three last year, which is an enormous reduction. The number of serious accidents has also been reduced, which again is a great result for the workplace injuries problem.

I agree with the honourable member for Werribee, who is just leaving the chamber, that every workplace death is a death that we would love to see not occur. I share her compassion for the families, but this bill is going in the wrong direction. The Attorney-General of this state said on the steps of Parliament that employers have the right to kill. That is exactly what he said: it was on television, and I saw it and recorded it. It is appalling for the senior law officer of this state to make a statement like that on the steps of Parliament.

In his wind-up speech tonight the Attorney-General said that corporate cowboys will weigh up whether it is worth losing a life or two for half a million dollars. Name me one employer who would weigh up whether they would be prepared to risk the life of an employee for the sake of half a million dollars. I deny that anyone could name any employer who would do that.

This legislation is so poor that the Attorney-General should be ashamed of it. It is more divisive than any legislation I have seen in 10 years in this place. Every employer who has come to my office or who has written to me has been appalled by the loss of employment opportunities this legislation would cause in this state. I have had discussions with members of the Victorian Farmers Federation. Only 2 to 3 per cent of farmers are corporate operators, but around 70 per cent of them have family trusts, and all of those would be liable under this legislation. I am sure that is not the intent of the government in introducing the bill, but I am equally sure Victorian farmers will be caught up in this legislation unintentionally or not, and that also means every farmer's wife who happens to be part of that operation. May I say again in closing that this is bad legislation. It is appalling that the Attorney-General approaches it the way he does.

Mr LIM (Clayton) — As I am one of the last speakers on this side of the house, I wish to speak from my heart rather than my head. Much passion and emotion has been expressed in this chamber during this debate. Some views may not necessarily have been truthful and some may have been expressed with conviction, but the bill is still significant. It is about empowerment for people who are not in a position to look after themselves properly because the power that can dictate their terms and conditions of work might lead to their deaths.

We have heard quotes, we have seen the statistics, and we have discussed this in the community for some time. I am amazed about the amount of consultation that took place over two years, so this is not a matter that has been treated lightly.

The Attorney-General we have is probably the best in the land, and his understudy, the parliamentary secretary, has put much work into making this a pretty decent bill so that there will not be unnecessary serious workplace injuries and deaths resulting from the negligence of the employer.

We could be very emotional. We could be dragging ourselves through all of the deaths in the past year, which number something like 31, and our hearts go out to the families that have suffered those losses. Coming

from a Third World country, I know what it is like to witness at first hand the negligence of an employer. We do not want to see this happen in a country like Australia. It is just beyond understanding. In a way I am proud to see the clear division between the two houses. I am very proud to be able to vote on this side with my colleagues, and I am very proud to say that we are moving ahead in the 21st century. The other side of the house stands condemned. It is showing its true colours — what it is and what it represents.

I congratulate the Attorney-General, for whom I have enormous respect, for his passion and conviction in respect of all the bills he introduces and believes in. I also congratulate the parliamentary secretary. I wish the bill a speedy passage.

Mr DELAHUNTY (Wimmera) — We are debating the Crimes (Workplace Deaths and Serious Injuries) Bill. The purpose of the bill is to introduce a new section in the Crimes Act to provide for prosecution of senior management of corporate bodies for not only manslaughter, which we have heard the Attorney-General focus on tonight, but also where serious injury is suffered. I think the Attorney-General has not really focused on what is in his own bill.

As I and many others have said, workplace safety is a vital matter for all of us. This bill does little but give unions a method by which to intimidate employers when it should be encouraging and rewarding employers. If that were done employers would have lower Workcover premiums and, importantly, would employ more people. We are all on about employment, and that is what the focus of this government should be, as it is on this side of the house.

I believe this bill is one-sided because there is no requirement on employees to comply with safety measures. I hear this many, many times from employers in my area, and I represent the largest electorate in the state. They are saying it is getting more and more difficult to employ people because of unfair dismissal laws, red tape and the like. Now we have this other draconian measure coming down on them. It is very hard and makes a bigger demand on employers. It is important that the workplace be a safe place, but there is no requirement on employees to comply when there is a direction given to wear safety harnesses and the like — and this bill does nothing to address that.

The scope of the bill is enormous. It even makes management responsible for the actions of subcontractors to subcontractors. I sent copies of the bill to many organisations in my electorate, and the responses came from motor repairers, service station owners, auto-electrical services, motor traders and non-government organisations. There is one letter I must read into *Hansard*, because I believe it summarises the concern that is raised in my electorate:

> I would like to take this opportunity to thank you for allowing me to comment on the extremely important issue of the Crimes (Workplace Deaths and Serious Injuries) Bill 2001. The right to sue for common-law negligence has been reversed by the current Victorian government, and they are proposing to increase criminal law penalties against the employer through the introduction of Crimes (Workplace Deaths and Serious Injuries) Bill. It is my opinion more consideration is required regarding the implementation of the Crimes (Workplace Deaths and Serious Injuries) Bill 2001, in particular the manslaughter component.
>
> I am in no way against reforms regarding the penalties provided by the courts in relation to occupational health and safety issues. I believe there is a warranted need for 'stiffer' penalties, with such sentencing options in my opinion of value to the occupational health and safety cause. My concern, however, is with corporate manslaughter, in particular the emphasis placed on determining some senior officers guilty of such offence, as volunteer directors and boards of management will have an exemption. There is no mention of any amendments to section 25 of the Occupational Health and Safety Act, and with the introduction of legislation such as this, section 25 is paramount as the behaviour of some individuals could see senior managers facing extremely serious charges. My opinion is that the Crimes (Workplace Deaths and Serious Injuries) Bill should not be adopted in its current format.

Nearly all employers in my area are united in opposition to this bill. It demonises employers, and I hear the Attorney-General screaming across the floor of this Parliament about the employers. I never hear him giving credit to the many employers we have in this state or referring to the importance of employing people.

The evidence does not stack up for the Attorney-General. As we know, in 1988–89 there were 104 deaths; last year that figure was brought down to 31. This is still far too many deaths — in fact, one death is too many. Workplace safety can be achieved through cooperation, education and improved risk management. Workplace safety is a shared obligation.

This bill is one-sided, bad law. In fact, public liability and indemnity insurance premiums will be pushed even higher because of this legislation. As honourable members know, eight major industry associations say the government is wrong. It is a bad law, it is ill-conceived and it is counterproductive. Employers will continue to work with employee unions and the Workcover authority to continue to improve workplace safety. Therefore I oppose this bill.

Mr SEITZ (Keilor) — I rise to support the bill, in particular since I am a trade union member of 46 years standing and have worked in industry, unlike some members of this house, particularly those on the opposition side. I have worked in dangerous positions and I have seen two fellow workers fall to their deaths in workplace accidents. I have witnessed the effects on their families and have lived through the trauma of hearing the screams and seeing the agony caused by accidents on work sites.

If honourable members had lived through such experiences they would be thinking and talking about this bill differently. I was on a building site when somebody slipped and fell down a lift well that had been left unguarded and which had no lights just to cut corners and get the job done more quickly. As a result of that sort of accident a big campaign was mounted to ensure that lift wells on building sites are secure and lit up. On another occasion I was on a building site where there was no safety mesh on the roof and a worker fell through the roof down onto a concrete floor.

They are two experiences that I had which I hope no honourable members ever have to experience in their lifetimes, because it is a horrible feeling not just for the immediate family of the deceased worker but also for the whole work force, particularly for all the people who develop friendships and camaraderie on work sites. In the building industry workers go from one site to another and get to know each other; when all of a sudden one of your fellow workers is missing it is a traumatic experience. The action taken by the minister in introducing this legislation will bring the public to a higher level of understanding of how seriously the government considers the issue of negligence on work sites.

If people comply with the law they have nothing to fear from this legislation. If motorists do not stop at a stop sign at an intersection they will be booked and fined, but if they comply with the law and stop they have nothing to fear from a stop sign. This legislation is no different. All this scaremongering and misleading of the public by opposition members is wrong. What they should be doing is educating employers and, I agree, sometimes the workers. All they have to do is comply with the law and make sure that the proper safety precautions are carried out on every building site. For those reasons I support the bill and commend its speedy passage through the house.

Mr SPRY (Bellarine) — The remarks made by the honourable member for Keilor remind me somewhat of a wolf in sheep's clothing, because there is far more to this legislation than he and his colleagues on that side of the house seem to apprehend. I represent a wide variety of businessmen and women on the Bellarine Peninsula, and it is fair to say with reference to this particular legislation that not one of them has any argument with the objective of pursuing better health and safer workplaces. But they are almost universally deeply concerned about the thrust of this particular legislation, and the comments of previous speakers on this side of the house have been representative of those views.

One representative letter I received on this issue is from Neil Corstorphan, the proprietor of Lupeera Pty Ltd trading as Neil Corstorphan Motors. I will selectively quote for the record one paragraph from what he has to say because he typifies what people in my electorate are thinking.

He says:

> As a business owner and employer, I object to the introduction of the proposed legislation. From my point of view, modifying the Victorian Crimes Act and Occupational Health and Safety Act 1985, will not enhance workplace safety, but rather adversely affect the positive and cooperative approach already adopted by government, employers and employees.

He finishes his letter by stating:

> I strongly reject the crimes bill because the basis for it is flawed. As my local member, I call on you to reject the bill.

Madam Chair, I do so with conviction.

Mr HULLS (Attorney-General) — Contributions have been made to the debate in relation to clause 1, which is the purpose of the bill. Some issues have been raised about whether or not the legislation is necessary. A number of speakers have indicated that because the number of deaths in the workplace has decreased, the legislation is not necessary.

I remind honourable members that there have already been 12 workplace deaths this year, 31 last year and 63 over the last two years. I am sure all honourable members would agree that one death is one death too many. In deciding to either support or not support the bill I hope that all honourable members have met with all relevant employer groups, employers and employees as well. I am sure that they would have been told — just as I have been told and I repeat — that there are corporate cowboys out there who do not care about workplace health and safety and who weigh up whether or not they should be spending money on improving workplace health and safety. In not so doing they decide to take the risk, and that is the reason they are corporate cowboys — and this legislation targets them.

It is absolutely true that the vast majority of employers take workplace health and safety seriously and are not targeted and will not be affected by this legislation. People say that the number of workplace deaths has decreased, so we do not need the legislation. But if the road toll decreases, we do not ease up on road safety. If there are less burglaries in a particular year, we do not simply decriminalise burglary.

It is true that we need education and a cooperative approach, but the government has made it quite clear that you also need to ensure that criminal activity in the workplace is targeted when it occurs.

I am reluctant to point out any individual, but I take issue with the honourable member for Benambra, who said that he has a tape of me saying, 'Employers have a right to kill'.

An honourable member interjected.

Mr HULLS — No, 'Employers have a right to kill'. I will read *Hansard*. I wrote down exactly what he said I said. I can tell you that it is not what I said. I too have a transcript. I also have the actual tape of myself at the rally, so I have no doubt that what he said to this place is not what I said. I repeat that the legislation simply targets those employers who do not give a damn about workplace health and safety.

We must remember lest we forget the sad case of Anthony Carrick, and we know what happened to him. Sadly, on his first day on the job he was killed. It was a tragic situation, and as I recall the company Drybulk pleaded guilty to the negligence that caused his death and from memory, I think it was fined $50 000 but went into liquidation the next day or shortly thereafter and the fine has never been paid. This legislation will stop those companies hiding behind a corporate veil. That is what the senior officer offences are all about.

In summary, the amendments that the government promised we would move are being moved — I am not going to go into each and every one of them; we would be here for a week or so — to ensure the entire public sector is covered. That was sent off to the Law Reform Commission, which came back with a number of options. One is the Crown option, if you like, or the deemed option. I have legal advice on going down the path of the deemed option, where the public sector will be deemed. The Crown and individual business units will be deemed, so it covers the whole public sector.

It also covers ministers. I take the view that ministers ought to be covered. You cannot have one rule for the private sector and the public sector, and have ministers indemnified from criminal activity. Ministers of this government are prepared to have ourselves covered as ministers. If we are criminally negligent, and that criminal negligence results in a death or serious injury in the workplace, we ought to be covered and will be covered under this legislation.

The arguments that have been thrown at us in the past have been, 'You do not want to cover the public sector; you are not fair dinkum; there are going to be exemptions for ministers'. That is not the case. The whole public sector is covered. It is good legislation, it is appropriate legislation, and I urge all honourable members to support it.

Clause agreed to; clause 2 agreed to.

Clause 3

Mr HULLS (Attorney-General) — I move:

1. Clause 3, page 4, lines 18 to 20, omit the definition of "senior officer" and insert —

'**"senior officer"** —

(a) in relation to the Crown (excluding bodies corporate that represent the Crown), means any one or more of the following who has responsibility in relation to the functions or activities of an unincorporated body (other than a body deemed to be a body corporate) that is established by or under an Act and represents the Crown —

(i) a Minister of the Crown;

(ii) an Agency Head within the meaning of the **Public Sector Management and Employment Act 1998**;

(iii) the holder of an office specified in section 16(1) of the **Public Sector Management and Employment Act 1998**;

(iv) a chief executive officer, by whatever name called;

(v) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of those functions or activities of the Crown;

(b) in relation to a body corporate that represents the Crown, means any one or more of the following who has responsibility in relation to the functions or activities of the body corporate —

(i) a Minister of the Crown;

(ii) an Agency Head within the meaning of the **Public Sector Management and Employment Act 1998**;

(iii) the holder of an office specified in section 16(1) of the **Public Sector Management and Employment Act 1998**;

(iv) the holder of an office specified in section 6(1) of the **Parliamentary Officers Act 1975**;

(v) a chief executive officer, by whatever name called;

(vi) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the functions or activities of the body corporate;

(c) in any other case, has the same meaning as "officer" has, in relation to a corporation, in section 9 of the Corporations Act;'.

This amendment and other amendments moved by me will ensure that the entirety of the public sector is covered.

Dr DEAN (Berwick) — We have stated quite clearly why we are opposed to this bill. Those reasons do not have to be restated. If we were in agreement with this bill, this would be a good amendment. But because the bill itself is badly founded, does not do what it should do, is contrary to criminal law principles, is contrary to industrial relations and does not anywhere in its provisions angle itself towards large corporations in any way at all and will probably affect small corporations more, we are against it. It is important that we make that statement. Therefore it is not necessary for us to make a comment on this particular amendment.

Mr RYAN (Leader of the National Party) — From a similar perspective as that just expressed, the National Party does not oppose the amendment, but it does oppose the bill.

Amendment agreed to.

Ms DAVIES (Gippsland West) — I move:

1. Clause 3, page 4, lines 21 and 22, omit all words and expressions on these lines and insert —

'**"serious injury"** means injury within the meaning of section 15 (including the cumulative effect of more than one injury) that —

(a) endangers, or is likely to endanger, a person's life; or

(b) is, or is likely to be, significant and longstanding;'.

This amendment aims to tighten the definition of serious injury to read that serious injury means injury, including the cumulative effect of more than one injury, that endangers or is likely to endanger a person's life, or that is or is likely to be significant and longstanding. This provides an additional hurdle in terms of the level of injury that must be considered. It adopts the commonwealth model criminal code, thereby giving the opportunity to other states to adopt similar wording if, as we would hope, they develop similar legislation.

The aim of this amendment is to address two concerns that have been raised with me by industry: that the definition used in the original legislation was too wide and caused uncertainty; and that industry would seek national consistency in definitions. The adoption of the commonwealth model criminal code allows for the potential development of that consistency between states and the commonwealth.

Amendment agreed to.

Mr HULLS (Attorney-General) — I move:

2. Clause 3, page 6, after line 6 insert —

"(5) For the purposes of this Subdivision —

(a) a body described or specified in column 1 of the Table in Schedule 2 is deemed to be a body corporate that represents the Crown; and

(b) a person described or specified in column 2 of the Table in Schedule 2 in relation to a body corporate described or specified in column 1 is deemed to be an employee of that body corporate; and

(c) if a person is employed by a body corporate described or specified in column 1 of the Table in Schedule 2 but works for another body corporate that represents the Crown, the person is deemed, despite paragraph (b), to be an employee only of the second-mentioned body corporate while working for that body corporate; and

(d) the Crown and every body corporate that represents the Crown is an employer; and

(e) if an unincorporated body (other than a body deemed to be a body corporate) is established by or under an Act and represents the Crown, members of the body and persons who are appointed or employed to work for the body are deemed, despite paragraph (b), to be employees only of the Crown.".

3. Clause 3, page 6, lines 7 to 27, omit all words and expressions on these lines and insert —

"12. Subdivision to bind the Crown and bodies corporate that represent the Crown

(1) This Subdivision binds the Crown.

(2) For the avoidance of doubt, the Crown is a body corporate for the purposes of this Subdivision and is liable to be prosecuted and sentenced for an offence against a provision of this Subdivision.

(3) Subject to sub-section (4), this Subdivision binds any body corporate that represents the Crown if the body corporate is established by or under an Act or is deemed or declared to be a body corporate by or under this or any other Act.

(4) If a person described or specified in column 2 of the Table in Schedule 2 is or is deemed or declared to be a body corporate by or under this or any other Act —

(a) the conduct of the body corporate is deemed to be conduct of the body corporate described or specified in column 1 of that Table in relation to that person; and

(b) employees and agents of the body corporate are deemed to be employees and agents of the body corporate described or specified in column 1 of that Table in relation to that person; and

(c) senior officers of the body corporate are deemed to be senior officers of the body corporate described or specified in column 1 of that Table in relation to that person; and

(d) the body corporate described or specified in column 1 of that Table in relation to that person is liable to be prosecuted and sentenced for an offence against a provision of this Subdivision instead of that person.

(5) For the avoidance of doubt, it is declared that it is the intention of the Parliament that this Subdivision renders a body corporate of a kind referred to in sub-section (3) liable to be prosecuted and sentenced for an offence against a provision of this Subdivision.

(6) Nothing in this section renders the Crown liable to be prosecuted and sentenced for an offence against a provision of this Subdivision where the offence is committed by a body corporate that represents the Crown.

(7) If under the **Public Sector Management and Employment Act 1998** the name of a Department or Administrative Office is changed, any liability for an offence against section 13 or 14 must, from the date when the name is changed, be construed as a liability of the Department or Administrative Office in its new name.

(8) If under the **Public Sector Management and Employment Act 1998** a Department or Administrative Office is abolished on or after the date on which an alleged offence against a provision of this Subdivision is committed, the Department or Administrative Office is deemed to continue to exist for the purposes of prosecution and sentencing.

(9) For the avoidance of doubt, it is declared that the Director of Public Prosecutions may, on behalf of the Crown, prosecute the Crown or a body corporate of a kind referred to in sub-section (3) for an offence against a provision of this Subdivision.

(10) This section does not affect the binding of the Crown by any other provision of this Act.".

4. Clause 3, page 7, lines 26 to 31, omit all words and expressions on these lines and insert —

"(2) For the purposes of sections 13 and 14 —

(a) the conduct of employees, agents and senior officers of a body corporate acting within the actual scope of their employment, other than in the course of judicial or quasi-judicial duties, or within their actual authority, must be attributed to the body corporate, including a body corporate that represents the Crown; and

(b) the conduct of

(i) agents and members of, and persons who are appointed or employed to work for, an unincorporated body (other than a body deemed to be a body corporate) that is established by or under an Act and represents the Crown; or

(ii) senior officers of the Crown —

acting within the actual scope of their employment, or within their actual authority, must be attributed to the Crown.

(3) Only the conduct referred to in sub-section (2)(b) may be attributed to the Crown.".

Amendments agreed to.

Ms DAVIES (Gippsland West) — I move:

2. Clause 3, page 9, after line 30 insert —

"(7) For the purposes of sections 13 and 14, if the conduct of a body corporate complies with the **Occupational Health and Safety Act 1985**, regulations made under that Act and any relevant code of practice approved under that Act, it must be presumed, in the absence of evidence to the contrary, that the conduct of the body corporate is not negligent.".

This amendment says that if the conduct of a body corporate complies with the Occupational Health and Safety Act 1985, regulations made under that act and any relevant code of practice approved under that act, it must be presumed in the absence of evidence to the contrary that the conduct of the body corporate is not negligent. This means that the desire to legally protect yourself as a company is best served by complying with occupational health and safety requirements.

This relates to concerns that were raised by both the Victorian Automobile Chamber of Commerce and the Victorian Employers Chamber of Commerce and Industry about the undesirability of shifting the focus of any legislation from prevention to self-preservation.

I regard this as a significant amendment, and I ask the opposition and business groups to have a serious look at it to make it in a company's best interests to observe health and safety regulations and provide them with an additional certainty that, if they are doing all those things, it will be very difficult, if not impossible, to prove negligence.

Amendment agreed to.

Ms DAVIES (Gippsland West) — I move:

3. Clause 3, page 10, line 14, omit "materially" and insert "substantially".

Again this is just a tightening of the provision to state that an officer's actions have to contribute substantially to the commission of an offence. It makes the hurdle that must be faced higher than it is with the existing word which is that a senior officer must just contribute 'materially' to the offence.

Amendment agreed to.

Ms DAVIES (Gippsland West) — I move:

4. Clause 3, page 11, line 13, omit "materially" and insert "substantially".

This is the same as amendment 3.

Amendment agreed to.

Ms DAVIES (Gippsland West) — I move:

5. Clause 3, page 13, after line 5 insert —

"(2) The court must impose on a body corporate a fine proportional to the size of the body corporate, taking into account —

(a) the number of employees of the body corporate and the entities, within the meaning of the Corporations Act, it controls; and

(b) the number of persons, including independent contractors and outworkers, providing services to, or relating to, the body corporate and the entities it controls; and

(c) if appropriate, the consolidated gross operating revenue for the last preceding financial year of the body corporate and the entities it controls; and

(d) if appropriate, the value of the consolidated gross assets at the end of the last preceding financial year of the body corporate and the entities it controls.

(3) Sub-section (2) is in addition to, and not in derogation of, Division 4 of Part 3 of the **Sentencing Act 1991**.".

This amendment just asks that any court seeking to potentially impose any penalty on a company take into consideration the size of that company and its financial situation.

Amendment agreed to.

Ms DAVIES (Gippsland West) — I move:

6. Clause 3, page 13, line 6, omit "(2)" and insert "(4)".

7. Clause 3, page 13, line 32, omit "(3)" and insert "(5)".

8. Clause 3, page 14, line 6, omit "(4)" and insert "(6)".

9. Clause 3, page 14, line 8, omit "(2)" and insert "(4)".

10. Clause 3, page 14, line 15, omit "(5)" and insert "(7)".

11. Clause 3, page 14, line 16, omit "(2)" and insert "(4)".

12. Clause 3, page 14, line 21, omit "(6)" and insert "(8)".

13. Clause 3, page 14, line 22, omit "(2)" and insert "(4)".

14. Clause 3, page 14, line 25, omit "(7)" and insert "(9)".

15. Clause 3, page 14, line 27, omit "(2)(a)" and insert "(4)(a)".

16. Clause 3, page 15, line 7, omit "(8)" and insert "(10)".

17. Clause 3, page 15, line 8, omit "(7)" and insert "(9)".

18. Clause 3, page 15, line 10, omit "(9)" and insert "(11)".

19. Clause 3, page 15, line 10, omit "(7)" and insert "(9)".

20. Clause 3, page 15, line 15, omit "(10)" and insert "(12)".

21. Clause 3, page 15, line 17, omit "(7)" and insert "(9)".

These are consequential and renumbering amendments.

Amendments agreed to.

Mr HULLS (Attorney-General) — I move:

5. Clause 3, page 15, line 26, before "It is" insert "(1)".

6. Clause 3, page 15, line 30, omit "Victoria.'." and insert "Victoria.".

7. Clause 3, page 15, after line 30 insert —

"(2) If all of the conduct that constitutes an offence against section 13, other than the death, occurred in Victoria, it is immaterial that the death occurred outside Victoria.'.".

Amendments agreed to; amended clause agreed to.

Clause 4

Mr HULLS (Attorney-General) — I move:

8. Clause 4, after line 12 insert —

'(2) In section 336(2) of the **Crimes Act 1958**, for "or an offence specified in section 4, 11 or 14 of this Act" **substitute** ", conspiracy to commit murder, incitement to commit murder or attempting to commit murder".'.

Amendment agreed to; amended clause agreed to; clauses 5 and 6 agreed to.

Clause 7

Mr HULLS (Attorney-General) — I move:

9. Clause 7, line 12, omit "7(1)" and insert "8(1)".

This is just a consequential amendment.

Amendment agreed to.

Ms DAVIES (Gippsland West) — I move:

22. Clause 7, line 21, omit 'committed.".' and insert "committed.".

23. Clause 7, after line 21 insert —

'(5) If a court finds a body corporate guilty of an offence against this Act, the court must impose a penalty proportional to the size of the body corporate, taking into account —

(a) the number of employees of the body corporate and the entities, within the meaning of the Corporations Act, it controls; and

(b) the number of persons, including independent contractors and outworkers, providing services to, or relating to, the body corporate and the entities it controls; and

(c) if appropriate, the consolidated gross operating revenue for the last preceding financial year of the body corporate and the entities it controls; and

(d) if appropriate, the value of the consolidated gross assets at the end of the last preceding financial year of the body corporate and the entities it controls.

(6) Sub-section (5) is in addition to, and not in derogation of, Division 4 of Part 3 of the **Sentencing Act 1991**.".'.

These and the following amendments appearing in my name all insert into different parts of the bill the same wording as appears in amendment 5.

Amendments agreed to; amended clause agreed to; clauses 8 and 9 agreed to.

Clause 10

Ms DAVIES (Gippsland West) — I move:

24. Clause 10, page 21, after line 13 insert —

'(2) In section 26 of the **Equipment (Public Safety) Act 1994**, after sub-section (3) **insert** —

"(4) If a court finds a body corporate guilty of an offence against this Act, the court must impose a penalty proportional to the size of the body corporate, taking into account —

(a) the number of employees of the body corporate and the entities, within the meaning of the Corporations Act, it controls; and

(b) the number of persons, including independent contractors and outworkers, providing services to, or relating to, the body corporate and the entities it controls; and

(c) if appropriate, the consolidated gross operating revenue for the last preceding financial year of the body corporate and the entities it controls; and

(d) if appropriate, the value of the consolidated gross assets at the end of the last preceding financial year of the body corporate and the entities it controls.

(5) Sub-section (4) is in addition to, and not in derogation of, Division 4 of Part 3 of the **Sentencing Act 1991**.".'.

Amendment agreed to; amended clause agreed to; clause 11 agreed to.

Clause 12

Ms DAVIES (Gippsland West) — I move:

25. Clause 12, page 23, after line 26 insert —

'(2) In section 47 of the **Occupational Health and Safety Act 1985**, after sub-section (3) **insert** —

"(4) If a court finds a body corporate guilty of an offence against this Act, the court must impose a penalty proportional to the size of the body corporate, taking into account —

(a) the number of employees of the body corporate and the entities, within the meaning of the Corporations Act, it controls; and

(b) the number of persons, including independent contractors and outworkers, providing services to, or relating to, the body corporate and the entities it controls; and

(c) if appropriate, the consolidated gross operating revenue for the last preceding financial year of the body corporate and the entities it controls; and

(d) if appropriate, the value of the consolidated gross assets at the end of the last preceding financial year of the body corporate and the entities it controls.

(5) Sub-section (4) is in addition to, and not in derogation of, Division 4 of Part 3 of the **Sentencing Act 1991**.".'.

Amendment agreed to; amended clause agreed to; clause 13 agreed to.

Clause 14

Mr HULLS (Attorney-General) — I move:

10. Clause 14, line 20, omit "14" and insert "15".

Amendment agreed to; amended clause agreed to; clause 15 agreed to.

Clause 16

Mr HULLS (Attorney-General) — I move:

11. Clause 16, line 16, omit "16" and insert "17".

Amendment agreed to; amended clause agreed to; clause 17 agreed to.

New clause

Mr HULLS (Attorney-General) — I move:

12. Insert the following new clause to follow clause 5:

'**AA.** ***New Schedule 2 inserted***

After the First Schedule to the **Crimes Act 1958 insert** —

"SCHEDULE 2

Section 11(5)

CORPORATE LIABILITY FOR DEATH OR SERIOUS INJURY — PUBLIC SECTOR

TABLE

Column 1	Column 2
An Agency within the meaning of the **Public Sector Management and Employment Act 1998** (except the Department of Education and Training)	The Agency Head Persons employed by the Agency Head under Part 3 or 9 of the **Public Sector Management and Employment Act 1998**
An office specified in section 16(1) of the **Public Sector Management and Employment Act 1998** (except the office of the Chief Commissioner of Police)	The office holder specified in relation to employees in the office Persons employed in the office specified in section 16(1) of the **Public Sector Management and Employment Act 1998**
Department of Education and Training	The Secretary to the Department Persons employed by the Secretary to the Department under Part 3 or 9 of the **Public Sector Management and Employment Act 1998** Persons employed under section 3 of the **Teaching Service Act 1981** Persons employed under section 5(1) of the **Education Act 1958**
Victoria Police	Persons employed in the office of the Chief Commissioner of Police Members of the police force of Victoria appointed under section 4 or 8 of the **Police Regulation Act 1958** Police recruits appointed under section 8A of the **Police Regulation Act 1958** Police reservists appointed under Part VI of the **Police Regulation Act 1958** Protective services officers appointed under Part VIA of the **Police Regulation Act 1958**

Parliament of Victoria	Members of the Legislative Assembly Members of the Legislative Council Department heads specified in section 6(1) of the **Parliamentary Officers Act 1975** Persons employed in a department specified in section 6(1) of the **Parliamentary Officers Act 1975** under Part 2 of that Act Ministerial officers and Parliamentary advisers employed under Part 8 of the **Public Sector Management and Employment Act 1998**
Supreme Court	The Chief Justice, Judges of Appeal and Judges of the Supreme Court Officers appointed under Division 1 of Part 7 of the **Supreme Court Act 1986** or any corresponding previous enactment
County Court	The Chief Judge and Judges of the County Court Masters of the County Court Officers of the County Court appointed under Division 4 or 5 of Part 1 of the **County Court Act 1958**
Magistrates' Court	The magistrates, principal registrar, registrars and deputy registrars of the Magistrates' Court
Children's Court	The President, magistrates, principal registrar, registrars and deputy registrars of the Children's Court
Victorian Civil and Administrative Tribunal	The President, Vice Presidents, Deputy Presidents, senior members and ordinary members of the Victorian Civil and Administrative Tribunal The principal registrar, chief executive officer, registrars and other staff of the Victorian Civil and Administrative Tribunal

New clause agreed to.

Reported to house with amendments.

Report adopted.

Third reading

House divided on motion:

Ayes, 44

Allan, Ms
Allen, Ms
Barker, Ms
Batchelor, Mr
Beattie, Ms
Bracks, Mr
Brumby, Mr
Cameron, Mr
Campbell, Ms
Carli, Mr
Davies, Ms
Delahunty, Ms
Duncan, Ms
Garbutt, Ms
Gillett, Ms
Haermeyer, Mr
Hamilton, Mr
Hardman, Mr
Helper, Mr (*Teller*)
Holding, Mr
Howard, Mr
Hulls, Mr
Kosky, Ms
Langdon, Mr (*Teller*)
Languiller, Mr
Leighton, Mr
Lenders, Mr
Lim, Mr
Lindell, Ms
Loney, Mr
Maddigan, Mrs
Maxfield, Mr
Mildenhall, Mr
Nardella, Mr
Overington, Ms
Pandazopoulos, Mr
Pike, Ms
Robinson, Mr
Seitz, Mr
Stensholt, Mr
Thwaites, Mr
Trezise, Mr
Viney, Mr
Wynne, Mr

Noes, 43

Asher, Ms
Ashley, Mr
Baillieu, Mr
Burke, Ms
Clark, Mr
Cooper, Mr
Dean, Dr
Delahunty, Mr
Dixon, Mr
Doyle, Mr
Elliott, Mrs
Fyffe, Mrs
Honeywood, Mr
Ingram, Mr
Jasper, Mr
Kilgour, Mr
Kotsiras, Mr
Leigh, Mr
Lupton, Mr
McArthur, Mr
McCall, Ms
McIntosh, Mr
Maclellan, Mr
Maughan, Mr (*Teller*)
Mulder, Mr
Napthine, Dr
Paterson, Mr
Perton, Mr
Peulich, Mrs
Phillips, Mr
Plowman, Mr
Richardson, Mr
Rowe, Mr
Ryan, Mr
Savage, Mr
Shardey, Mrs
Smith, Mr (*Teller*)
Spry, Mr
Steggall, Mr
Thompson, Mr
Vogels, Mr
Wells, Mr
Wilson, Mr

Motion agreed to.

Read third time.

Remaining stages

Passed remaining stages.

AUDIT (FURTHER AMENDMENT) BILL

Council's amendments

Returned from Council with message insisting on some amendments and seeking concurrence with a further Council amendment.

Ordered to be considered next day.

Remaining business postponed on motion of Mr BATCHELOR (Minister for Transport).

ADJOURNMENT

Mr BATCHELOR (Minister for Transport) — I move:

That the house do now adjourn.

Planning: VCAT appeals

Mr SPRY (Bellarine) — In spite of her preoccupation with other matters earlier this evening, I wish to draw the attention of the Minister for Planning to complaints from constituents about leniency displayed by the Victorian Civil and Administrative Tribunal (VCAT) in building disputes. In several recent incidents, despite Labor's false expectations with Rescode, some builders have ignored planning and building permits, either deliberately or otherwise, and when neighbours have complained councils have generally supported the complainant and instructed the builder to comply with the original approved plans.

Quite often the unapproved works are near completion and the cost of alterations to comply with the original plans are significant. When the builder subsequently appeals to VCAT, more often than not VCAT simply rolls over and approves the alteration. This infuriates the neighbours and makes a mockery of the whole process.

I ask the minister to intervene by seeking the cooperation of the Attorney-General in instructing VCAT to observe both the letter and the spirit of the law in dealing with these cases in future. I have the support of local government in my electorate and quote from a response from the acting city development manager of the City of Greater Geelong in relation to this matter:

> I can unequivocally advise that the City of Greater Geelong is supportive of development generally and of the appropriate procedures to ensure that all development which proceeds after a planning permit is in accordance with the agreed planning permit plans and conditions.
>
> The City of Greater Geelong would welcome a clear position from VCAT in respect to these principles.

It is time for the minister to restore harmony to neighbourhoods in relation to what really should be a perfectly straightforward matter. All that is required is a bit of leadership from this admittedly beleaguered minister.

Seniors: services guide

Ms GILLETT (Werribee) — I wish to raise a matter for the Minister for Senior Victorians relating to the recently published *2002 Guide to Services for Senior Victorians*. This is a very useful document that helps to connect and inform our very special senior Victorians. I ask that the minister investigate and advise on the possibility of translating this fantastic document into a range of different languages to assist our more than one in five Victorians who are aged 65 years and over who were born overseas.

Honourable members would know that Werribee is one of Victoria's growth corridors but they may not realise that it is also one of Victoria's most culturally diverse areas. Werribee has constituents representing over 60 different ethnic and cultural groups. Many of these groups contain long-established seniors groups in my community who would benefit enormously from the translation of the seniors guide into their first language. It would also be of assistance to their children and their friends in assisting to inform and care for our senior Victorians, not just in Werribee but in all of Victoria.

Werribee is diverse in its age, cultural and ethnic demographics. It would be very much appreciated if the minister could investigate and advise on the possibility of translating the *2002 Guide to Services for Senior Victorians* so that it is more readily available to people whose first language is not English.

Firearms: licences

Mr KILGOUR (Shepparton) — I wish to raise a matter for the Minister for Police and Emergency Services involving firearms licensing and a situation that badly affects a constituent who has recently come from Tasmania, the Apple Isle, to live in my electorate. This gentleman has gained a position with the City of Greater Shepparton as a ranger and in that capacity he is required to use a firearm at certain times in order to

put down an animal or perform some similar task. He therefore needs a firearms licence.

He lived in Tasmania for some years and had a firearms licence during that period. Whilst living there he was involved in a business partnership that broke up and there was a disagreement which resulted in a restraining order being placed on him, and that expired in November 2000.

His firearms licence was not revoked. He was not a prohibited person in Tasmania, but when he came to apply for a firearms licence in Victoria he was advised that he was a prohibited person under Victorian law, even though he was not under Tasmanian law. He cannot have his prohibited person's status lifted in Tasmania as he does not have a court order against him in Tasmania relating to a firearms licence.

He has been told that he may have to take the issue to the Supreme Court at a cost of about $5000. Will the minister investigate if there is any way that this gentleman, a law-abiding citizen who has been the subject of the difference in laws between states, can have the matter reviewed and the possibility of him receiving a shooters licence? I am certainly happy to provide the minister with full details of the issue, but it seems incredible that a person who had a shooters licence and who is not a prohibited person in Tasmania comes to Victoria and is unable to receive one because of the difference in state laws. Will the minister look into the issue to see what can be done so that the gentleman can take up the employment he has been seeking and for which he needs a licence to carry out his job properly?

Public transport: western suburbs

Mr SEITZ (Keilor) — I raise a matter for the attention of the Minister for Transport regarding the western suburbs, in particular the fast-growing estates of Caroline Springs, Hillside, Taylors Hill, and Delahey. The families in the outlying areas are often at a disadvantage because public transport services have not yet caught up with development as developers move much faster than governments are able to provide services.

Many of these people come from inner urban areas where they had a tram, train and bus service as well as taxis. I ask the minister to ensure that the new growth areas are adequately provided with public transport services, particularly bus services.

I congratulate the minister for completing the electrification of the train service to Sydenham, which is now called the Sydenham rail line. The popularity and use of public transport in that area has proven itself because the designated car park has outgrown its use. The public in that growth corridor has been waiting for many years for a reliable train service to the city. There is evidence that the community will use public transport if it is available, in particular with the Water Gardens railway station on the Sydenham line. It is important that people in those new developing areas have the opportunity to leave their cars at home and commute by bus to that station, which would therefore eliminate the need for extra car parking spaces. It would also make it a lot safer for cars not to create congestion and traffic hazards in the region, which would be a beneficial factor for our community.

I know the minister has already announced an increase in the budget for bus services in the area, but I ask that those bus services be implemented as soon as practicable to provide a service to the Water Gardens station as well as the new station at Keilor Plains which has been developed and which has become popular with the people of the Keilor electorate. Despite what we hear from the opposition and in other places, members of the community will use public transport if the government invests in it and makes it available to them. I ask the minister to take those matters on board.

Motor vehicles: permits

Mr ASHLEY (Bayswater) — The matter I seek to raise tonight relates to the serious, if unintended, and adverse consequences which flow from the issue of unregistered vehicle permits. This is actually a double-barrelled issue, and in the first part it relates to the portfolio of the Minister for Transport.

Unregistered vehicle permits do not seem to be a problem if you look at the basic conditions of use. They are:

1. To take the vehicle from its place of acquisition to the residence or garaged address nominated on the permit of the person who acquired it;

2. To use the vehicle between 7.00 a.m. and 7.00 p.m. to travel to and from a licensed vehicle tester and/or in the course of necessary testing and repairs by a local repairer for the purpose of obtaining an engineer's report or certificate of roadworthiness … issued in Victoria.

The problem in the first instance is that until a licensed vehicle tester has had a chance to assess a vehicle the person who has acquired it does not know whether or not it is safe to use on a highway. The overarching condition on the use of unregistered vehicle permits is that the vehicle must be safe for use on a highway. If the vehicle is not safe to use on a highway or is found not to be so by an intercepting police officer, that police

officer will order the car's removal from the road and impose a $500 fine, and in fact expunge the unregistered vehicle permit, which costs $60.50.

I am asking the minister to investigate whether this process should continue or whether no car should be used at all until a vehicle tester has assessed it, and if necessary that cars be transported to a vehicle tester or the vehicle tester come to the home of the person buying it. There is a hazard here that these conditions do not deal with.

The DEPUTY SPEAKER — Order! I ask the honourable member for Mordialloc to cease reading the book in the chamber.

Kangaroos: control

Mr HARDMAN (Seymour) — I ask the Minister for Environment and Conservation to take action to address the environmental disaster created by the federal government keeping kangaroos confined within the Puckapunyal army base. There has been a massive increase in the kangaroo population because of mismanagement by a federal government department.

As the minister will be aware, a great deal of information — and may I say misinformation — about this issue has been aired on the radio today. It is frustrating that this issue has not been dealt with to date. I have been speaking to the minister, the Department of Natural Resources and Environment (DNRE), the federal member for McEwen and several constituents about this issue over the past few weeks. I am trying to get to the truth of the matter, and getting something done has been extremely frustrating. I am sure that anyone who heard the discussion on 3LO this morning would agree.

As the local member for Seymour I just want this problem fixed. We do not need politics, we want the problem fixed. I am concerned about the safety of the Puckapunyal residents, who feel threatened by the starving kangaroos, which are desperate. I am concerned for the farmers whose sheep and cattle fodder is being decimated by the thousands of kangaroos that have left the confines of the Puckapunyal base and are reported to be now grazing on neighbouring properties.

I am also concerned for the safety of people in vehicles who are being put in danger by the Puckapunyal kangaroos that are escaping to find greener pastures across the road. I am also concerned for the amenity of the Puckapunyal residents, who have to put up with the stench of kangaroos that are dying of starvation and are leaving behind their bodily wastes after grazing on playgrounds and yards overnight.

I have been working hard to raise this urgent matter with the respective departments — the Victorian Department of Natural Resources and Environment and the commonwealth Department of Defence. I wish to see some action for my constituents, whose lives and livelihoods are being so adversely affected by this environmental disaster. I understand this is really a federal issue — a problem created by the federal government — but I ask the minister to do everything possible within the limits of DNRE to address this matter, which is consuming the lives of many people. This is a very serious ongoing issue that is affecting the lives of constituents in my electorate. It has to be fixed now. The federal government has to get in there and assist DNRE to do its job.

I would like to see this action being taken right now in my electorate to actually get something done. The Liberals opposite do not care, just as the Liberals in Canberra do not care. We want some action in Seymour to address this issue.

Schools: ministerial visits

Mrs PEULICH (Bentleigh) — I wish to raise a matter for the attention of the Minister for Education and Training in relation to the nature of ministerial visits to schools. I had an opportunity to have a close look at the nature and format of such a visit last Monday.

Basically, the school received a phone call at 11 o'clock on the previous Friday asking staff to organise a special assembly so that the Minister for Education and Training could come out and make a bit of a song and dance about funding. The whole procedure was interesting. Strict protocols were issued including, for example, that the local member should not be invited and that if by some chance she were to turn up she should not be on the stage. The students were not to receive the minister. The principal was to do that and was to be only 1 foot away from the minister at any time. After 10 phone calls and much toing-and-froing and rescheduling of the minister's arrival, the assembly hall full of students waited 50 minutes for the minister to arrive. It was amazing, and the most amazing thing was the minister's entourage.

With the minister were her driver; three photographers in tow, presumably from the department and *Education News* and so forth, and certainly not any local photographers; the regional director; two department spin doctors; an adviser to the minister; and, of course,

the paid Labor candidate for Bentleigh, who is the senior adviser to the Premier and who obviously is paid to do his campaigning in the seat that he visits from time to time.

I guess the interesting thing was that the minister made a barefaced claim that the school had not received any funding for 15 years or 10 years, or whatever it was. Obviously she received very poor advice, because between 1992 and 1999 the school received in excess of $1 million, and the previous government had committed $1.1 million just before the last election, which had been rolled into the announcement.

The money that the minister announced was certainly welcome — indeed, we would welcome more! I call on the minister to ensure that her advisers give schools appropriate information about protocols; that they adhere to them to ensure minimum disruption to schools; that they make sure she receives accurate briefings; and that she rationalise what is obviously a very expensive entourage, which would probably see a more valuable deployment of resources to school funding. We wish we had more funding! Obviously the minister's contingent is elaborate, extravagant and very much an ego trip for the minister — but certainly not for those who witnessed the event!

Jindara Community Programs

Mr TREZISE (Geelong) — I ask the Minister for Consumer Affairs to take action in relation to Jindara Community Programs, which is a fine community organisation that delivers important services to my electorate and the Greater Geelong region. Because it provides important services such as consumer affairs advice, it is important that the community of Geelong is aware that advice is provided by Jindara. I ask the minister to take steps to ensure that the community of Geelong is aware that Jindara is providing this important service to residents within the Greater Geelong region.

As I said, Jindara is a fine community-based organisation which is focused on delivering important services to the region of Geelong, and I am proud that its head office is based in my electorate of Geelong. Jindara's primary focus is on providing advice to individual families who are financially disadvantaged or who suffer from financial hardship.

Jindara provides tenancy information and advice and assists in resolving disputes between tenants and landlords. It also provides consumer affairs advice and information to both consumers and traders alike. Importantly, Jindara also provides financial counsellors and financial services to assist people who face financial difficulties to work through issues and prepare strategies such as personal budgets.

Jindara Community Programs provides an essential and important service to my community of Geelong, especially to those people who are financially disadvantaged, and therefore I look forward to the minister's actions in this case.

Police: Hamilton station

Dr NAPTHINE (Leader of the Opposition) — I seek the urgent action of the Minister for Police and Emergency Services to fix major problems at the Hamilton police station. The station is a two-storey building. Last week its hot-water boiler system developed significant leaks which flooded the upper mess room. The watch-room below the upper mess room had to be shut down because the ceiling was bulging with the water flooding through the system, and it was at real risk of collapse. Indeed, the watch-room ceiling now has to be held up by temporary supports. With the watch-room out of action because of this dangerous situation the police can no longer hold prisoners in the police cells.

A provisional improvement notice was imposed on the watch-room and the police cells so that any prisoners who were previously in the cells or intended to be held in the cells now have to be transferred to Portland or Warrnambool. The heating system in the police station has had to be turned off as a result of this breakdown and flooding.

At 9 o'clock this morning I was advised that the police officers at Hamilton police station were shivering as the temperature there was only 3 degrees. The Hamilton police do an excellent job. They are a fine group of men and women who look after the interests and safety of the Hamilton community. They deserve better than the treatment they have received from the Bracks Labor government. I have been advised that the Hamilton police have been seeking action for two years to upgrade the heating system at the police station but their requests have fallen on deaf ears.

Now the situation has reached a desperate stage. There is a provisional improvement notice applying to the heating system, to the watch-room and to significant parts of the police station. The police in Hamilton deserve proper conditions, and I urge the minister to take urgent action to make sure the Hamilton police station and its heating system are repaired immediately.

Planning: restrictive covenants

Mr ROBINSON (Mitcham) — I raise a matter concerning covenants for the attention of the Minister for Planning. I seek from the minister her consideration in arranging for the provision of direct advice to property owners who are affected by covenants on their title on how they might deal with them appropriately. The circumstances of this request are quite unusual. The City of Whitehorse last year dealt with a planning permit from a property owner in Blackburn who had a covenant on his title which prohibited quarrying of materials. These covenants were quite popular back in the 1920s when the eastern suburbs in Melbourne, in particular Blackburn and Mitcham, had many quarries. We still have some quarrying activity but it is far less than it once was.

The council investigated and sought legal advice on its position regarding the issuing of a planning permit where a covenant was evident. Although the request from the property owner was only to install a swimming pool, the council at first took quite a technical and, one might say, conservative view as to what it was permitted to grant, given the wording of the covenant. The matter was eventually resolved quite satisfactorily, but the situation had arisen because the Bracks government — very correctly, in my opinion — had the year before amended the planning laws to avoid situations where covenants were being ignored. This was a disgraceful situation that we inherited from the previous Liberal government when covenants had been ignored, and that was most unsatisfactory. However, the Whitehorse situation highlights the need for a raised awareness of covenants and their impact for property owners.

For example, it is possible to amend covenants where the language is outdated. I think this can be done in two or three ways, one of which involves going to the Supreme Court. It is desirable that property owners are aware of effective covenants and their rights if their property is affected by a covenant. The City of Whitehorse has estimated that some 20 000 properties in its municipality would be affected by covenants.

I am seeking the minister's consideration of advice from her department or from other sources to property owners at some opportune time in the future that would allow them to be more aware, if their properties were covered by covenants, of how they might deal with that in the event that they were caught up in situations where planning permits had to be lodged and the council had to consider the wording of those covenants.

Chisholm Institute of TAFE

Mr LEIGH (Mordialloc) — I raise a serious matter about the closure by the Bracks Labor government of a school in the electorate of Carrum. Last week we had the Dingley bypass, this week we have the closure of a school by this now Minister for Education and Training who formerly as an adviser in the Cain–Kirner government was involved in the closure of at least 100 schools.

I understand that it is proposed to close the Bonbeach campus of the Chisholm Institute of TAFE and sell off its site. I refer to comments which appeared in this week's *Leader* newspaper about the Carrum Residents Action Group, saying that public relations and education manager:

> … Anne Martin, said the group's lease expired in 2000.

She is reported to have said —

> We've had negotiations with the ministers, officers and council. We have nothing in writing about the outcome of those meetings and that is a concern.
>
> We've been told that we are going to be able to retain space on the campus but it might be in a slightly different spot.

The article continues:

> But Ms Martin said rumours persisted that the site would be 'sold off, most likely to a property developer'.

The site we are talking about is next door to the Patterson River Country Club. I think there is every prospect of the Bracks Labor government flogging off this school site. The government has mucked around for nearly two years over this issue and we are still no closer to resolving it. It seems to me that these people have rights and some action should be taken.

It is interesting to look at what the Bracks Labor government members said when a school was being closed under the former administration. At the time the now member for Carrum was the employee of the then shadow minister for education, Mr Mal Sandon. On 2 December 1992 he was so outraged about the closure of Aspendale Technical School that following a protest meeting he was reported in the local newspaper as saying:

> The meeting was not about party politics. It was about saving the school.

Worse than that, we heard comments from a gentleman named Kevin Howlett. For the house's information I mention that Mr Howlett is the campaign manager of the honourable member for Carrum. He was doing loop-the-loops in 1992 in opposing the then Kennett

government. About the Aspendale Technical School he said that he was determined to fight the closure.

Where are Mr Howlett and the honourable member for Carrum? They are not around. I notice the honourable member for Carrum just walked out of the house as I commenced this speech.

I ask the minister to take action. Is the minister going to sell the site off for property development, which I believe is what is being undertaken? Is the reason why no-one will tell anybody what is happening because the government is currently negotiating with a number of real estate agents for the sale of this site for a fabulous housing development next door to the golf course? I think that is what is going on in this case.

It is about time we had a little bit of integrity — —

The DEPUTY SPEAKER — Order! The honourable member's time has expired. The honourable member for Sandringham has about 50 seconds.

Bridges: Sandridge

Mr THOMPSON (Sandringham) — I raise a matter with the Minister for Major Projects on behalf of Mr Graham Wearne of Beaumaris. In the event of the Sandridge rail bridge not being demolished, my constituent has raised the possibility of a masterpiece being created on its site that will be the envy of the world for centuries to come.

He proposes there be a raised garden of colour and design spanning the river with a huge fountain as a centrepiece. The fountain could be designed in such a way as to change shape and colour by night, with computerised sound.

The gardens could be elevated from within the bridge so that the floral display could be seen from all angles and rise slightly to mid-river. The central construction could incorporate perfumed plantings in season — —

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

Responses

Ms GARBUTT (Minister for Environment and Conservation) — The honourable member for Seymour raised with me the issue of the excessive number of kangaroos in the Puckapunyal military area. I am told that there are around 100 000 kangaroos at the moment — far too many for the site. The honourable member for Seymour has expressed his concern about this alarming situation and vividly outlined to the house the problems it is causing for the safety of the public, the livelihood of local farmers, the vegetation at Puckapunyal — and there are some very good vegetation areas there — and the welfare of the kangaroos. Many of them are starving and getting caught in the perimeter fences, so it is an unfortunate situation indeed.

Puckapunyal is the responsibility of the Department of Defence. It is that department's responsibility to control the kangaroo numbers. As the honourable member for Seymour outlined, with no action being taken the numbers have built up over a number of years. A steering committee which includes representatives from the Department of Defence and the Department of Natural Resources and Environment (DNRE) has been formed to oversee the management of the kangaroo population.

Before the Department of Defence can cull kangaroos it must apply to DNRE for a permit and must present a kangaroo management plan. My advice is that DNRE is still waiting for the finalised kangaroo management plan from the Department of Defence and an application to control the kangaroos. Once that is received DNRE can expedite the application and provide the necessary approvals.

Recently there has been quite an amazing piece of defence department spin that DNRE has refused to allow a permit. Someone is telling porkies, because that is not the case. I am advised that the Department of Defence has not been refused; it has simply not applied, and you cannot be refused before you apply. DNRE has advised the Department of Defence that a control permit would be granted for 12 months based on the lodgment of a kangaroo management plan. That fact is recorded in the minutes of the steering group meeting of 8 April of this year. DNRE is prepared to issue a permit subject to the finalisation of the kangaroo management plan, and I will ensure that occurs when the Department of Defence has finalised its obligations.

What really amazes me is that the local federal member, Fran Bailey, is also the parliamentary secretary to the Minister for Defence. She should have been across this issue. She should have known what was required within her own portfolio and certainly within her electorate. I am writing to the parliamentary secretary to advise her of the true situation and the real reason for the delay, and to ask her to take action so we can resolve this unfortunate situation.

The DEPUTY SPEAKER — Order! I call on the Minister for Senior Victorians to respond to the honourable member for Geelong in her role as Minister for Consumer Affairs, and to the honourable member for Werribee in her role as Minister for Senior

Victorians; to the honourable member for Bellarine on behalf of the Minister for Planning; to the honourable member for Shepparton on behalf of the Minister for Police and Emergency Services; to the honourable members for Keilor and Bayswater on behalf of the Minister for Transport; to the honourable member for Bentleigh on behalf of the Minister for Education and Training; to the Leader of the Opposition on behalf of the Minister for Police and Emergency Services; to the honourable member for Mitcham on behalf of the Minister for Planning; to the honourable member for Mordialloc on behalf of the Minister for Education and Training; and to the honourable member for Sandringham on behalf of the Minister for Major Projects.

Mr Leigh — On a point of order, Madam Deputy Speaker, on many occasions when you or the Speaker pass these requests on to the minister at the table when other ministers are not around we never get an answer. What happens is that the minister at the table says they will take it to the relevant minister, but no answer is given back to the house or to the member concerned. I wonder if you can take the situation up with the Speaker so that when a question is raised with the minister at the table a process is established to ensure the minister provides the information the honourable member has requested during the adjournment debate. Otherwise it is a pointless exercise talking to a minister who is not present. Perhaps you could take it up with the Speaker and see how this could be resolved.

The DEPUTY SPEAKER — Order! There is no point of order. It is not the role of the Speaker or the Deputy Speaker to direct the government on how to respond during the adjournment debate.

Ms CAMPBELL (Minister for Senior Victorians) — The honourable member for Werribee raised an important issue in relation to the *2002 Guide to Services for Senior Victorians*. That guide has been extremely well received. I am pleased to inform the honourable member for Werribee that I will make sure that the guide to seniors is translated into at least 12 community languages. It is important that the 12 most commonly used community languages — Chinese, Croatian, Dutch, German, Greek, Hungarian, Italian, Macedonian, Maltese, Polish, Russian and Vietnamese — be the first of the community languages to be translated.

I am also pleased that the Bracks government has thoroughly revised and updated the guide in response to strong demand from older people, their families and friends. The cost of translating the guide will be $72 000. I am sure the honourable member for Werribee will be delighted to take that to her community. The Bracks government considers it is really important to provide information in community languages and to make sure that seniors have access to this important guide.

The honourable member for Geelong raised with me the matter of Jindara, an absolutely excellent community organisation which provides consumer affairs advice and is funded by the department of consumer affairs. The honourable member is keen for me to take steps to make the citizens of Geelong and surrounds aware of the assistance available through Jindara should they require assistance or advice on consumer affairs. It is important that there be a public community presence and that the public be aware of consumer affairs protection agencies available to them throughout Victoria.

As the honourable member for Geelong knows — it was raised with him today and also with me as minister — the suggestion has been made that funded organisations such as Jindara put in their titles that they can provide assistance on consumer affairs at a local level. I will take that matter up with Jindara.

The honourable member for Bayswater raised for the Minister for Transport the matter of unregistered vehicle permits.

The honourable member for Keilor raised with the Minister for Transport the matter of the fast developing new-growth western suburbs and the need for public transport. I will convey both matters to the minister.

The honourable member for Bentleigh gave a list of credits to those in attendance at a school in her electorate but failed to ask and be specific on action, but I am sure the Minister for Education — —

Mrs Peulich — On point of order, Madam Deputy Speaker, the custom is for the minister at the table to not respond to the matter but to refer it to the responsible minister. Even if she knows something about it — I doubt that very much — could you make sure that the matter is taken up with the minister appropriately and that this minister does not pretend to know?

The DEPUTY SPEAKER — Order! There is no point of order. The minister will continue.

Ms CAMPBELL — The Minister for Education and Training can read *Hansard* and note the list of credits of those in attendance when she visited the electorate of the honourable member for Bentleigh.

The Leader of the Opposition raised for the Minister for Police and Emergency Services the matter of the

Hamilton police station. I will convey that to the minister.

The honourable member for Mitcham raised a matter with the Minister for Planning regarding covenants and the provision of direct advice to property owners. I will refer that to the Minister for Planning.

I will also refer to the minister an issue raised by the honourable member for Bellarine concerning the Victorian Civil and Administrative Tribunal abiding by the spirit and letter of the law.

The honourable member for Mordialloc raised a matter for the Minister for Education and Training, which I will refer to her.

The honourable member for Sandringham raised for the Minister for Major Projects the matter of the Sandridge Bridge. I will convey that to the minister.

The honourable member for Shepparton raised for the Minister for Police and Emergency Services a matter concerning a constituent of his. Given that the minister is not in the house, I am sure he will respond to the honourable member in writing.

Motion agreed to.

House adjourned 1.40 a.m. (Wednesday)