PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

23 April 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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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, 23 APRIL 2002

Tuesday, 23 April 2002

The SPEAKER (Hon. Alex Andrianopoulos) took the chair at 2.06 p.m. and read the prayer.

ABSENCE OF MINISTER

The SPEAKER — Order! I have been advised that the Minister for Health will be absent from question time today. The Minister for Community Services will answer questions on health matters.

QUESTIONS WITHOUT NOTICE

Land tax: small business

Dr NAPTHINE (Leader of the Opposition) — My question without notice is to the Premier. I refer the Premier to a suburban newsagency that paid $3500 in land tax in 1998 but next week has to pay $23 000 in land tax. Is it a fact that this Victorian family business will receive not 1 cent in tax relief under the proposals the Premier introduced yesterday?

Mr BRACKS (Premier) — I thank the Leader of the Opposition for his question. I am very pleased that the opposition leader has referred to the issue of land tax, because it was an inheritance of this government that the previous government put the threshold down to $85 000 and caught up so many more businesses in land tax.

Honourable members interjecting.

Mr BRACKS — The honourable member for Mordialloc says, 'What are we doing about it?'. What we are doing is raising the threshold. Less people paid land tax under this government than under the previous government. We lifted the land tax threshold initially from $85 000 to $125 000.

In the business statement released yesterday by the Treasurer and I we raised it by a further amount to $150 000, which will take out 21 000 land tax payers from the system.

It is true that periodically there is a revaluation of land, because land values are going up, and that incurs an increased land tax cost. But overall we are collecting less from land tax this year than we did previously, because we have lifted the threshold rate and changed the system that captured so many land tax payers under the previous government.

Fishing: industry sustainability

Mr RYAN (Leader of the National Party) — I refer the Minister for Environment and Conservation to the fact that the government has assured the commercial fishing industry that it will still be able to maintain current catch levels outside the proposed marine parks, and I ask: does the minister stand by that comment given its remarkable similarity to past assurances to the timber industry by the Department of Natural Resources and Environment with regard to sustainable yield volumes?

Ms GARBUTT (Minister for Environment and Conservation) — What a surprise — the National Party does not support marine national parks! It does not support any national park. It does not support the Land Conservation Council or the Environment Conservation Council that followed it. We have had not a single suggestion from the National Party except its own little dodgy process, which set aside 10 years of inquiry by the ECC and the LCC. Now the National Party is looking for any excuse to oppose marine national parks.

The government absolutely stands by the figures that have been put out by the fisheries department and backed up by the Marine and Freshwater Resources Institute, known as MAFRI, one of our notable research institutes across this state, about fish stocks. But we have also put into our proposal some compensation for commercial fisheries, if that will be needed. That is clearly spelt out both in the proposals papers and in the exposure draft.

We in the government know absolutely that marine national parks will not cause overfishing — that is just a nonsense excuse dreamed up by people who have always opposed marine national parks and national parks. We are absolutely committed to marine national parks. We want to see them established, we are determined to bring them in, and we are looking for support on the opposition benches.

Business: government statement

Ms GILLETT (Werribee) — Will the Premier advise the house what initiatives in the government's *Building Tomorrow's Businesses Today* statement will grow businesses and jobs across Victoria and secure Victoria's future as an innovative, competitive and connected economy?

Mr BRACKS (Premier) — I thank the honourable member for Werribee for her commitment to growing jobs and increasing employment in the state. It is a

commitment which the government takes as a very high priority.

I was delighted yesterday to release with the Treasurer our $364 million package of major incentives, which will assist in investment, assist in growth and assist in job growth in this state.

There are two parts to this business package for Victoria. The first part means that the cost of doing business in Victoria has reduced, and reduced significantly. If you were to look at the whole life of the term of office of the government you would see we would have reduced business taxes, payroll tax in particular, by some $1 billion over four years.

What we inherited was a payroll tax rate of 5.75 per cent. Because of the measures we took yesterday — indeed, because of the measures we took last year as well on payroll tax — that rate will go down to 5.25 per cent — the second lowest in the country. Alongside our decision to freeze Workcover premiums as the second lowest in the country, that will make a real difference to business, a real difference to industry and a real difference to job growth in the state.

The second part of the business statement was designed to encourage new manufacturing enterprises to grow and develop in our state. I congratulate the Minister for Manufacturing Industry, who has worked with the manufacturing sector to come up with a set of proposals which will drive export growth and competition and externalise manufacturing in this state. He has done just that, and I congratulate him for it. It has been roundly supported and applauded by the business community and the manufacturing sector, and will lead to job growth and investment in the future.

I am pleased that we have taken leadership in Australia. We are one of the lowest taxing states in Australia in which to do business. We will continue to maintain that position while we improve services in this state and turn around the problems we inherited from the previous government in health, education and public safety.

Land tax: small business

Mr CLARK (Box Hill) — I refer the Premier to the case of an average suburban motel which had a land tax bill of $47 900 in 2000 and which now has a land tax bill of $135 000, an increase of 183 per cent in two years, and I ask: how does the Premier expect this small business to accept such an horrific increase in land tax?

Mr BRACKS (Premier) — I thank the honourable member for Box Hill for his first question in a long time; I am glad to see he is still here. I am not sure exactly what his shadow portfolio is, but it is good to see him here. I point out that in the position he formerly held as parliamentary secretary to the Treasurer of this state he presided over a system which reduced the threshold rate for paying land tax and captured extra land tax payers. So the honourable member for Box Hill — —

Dr Napthine — On a point of order, Mr Speaker, the Premier is debating the question. The honourable member for Box Hill actually removed land tax from the principal place of residence. That is what he did.

The SPEAKER — Order! The latter part of that point of order is not a point of order. I ask the Premier to come back to answering the question.

Mr BRACKS — This government has acted to increase the threshold for paying land tax, which has resulted in 21 000 fewer land tax payers in Victoria. It has increased the threshold from $85 000 to $150 000 now, and there are fewer taxpayers as a result.

What can be assured in Victoria is that there are fewer people paying land tax now than there were some two and a half years ago.

Business: government statement

Mr STENSHOLT (Burwood) — Will the Treasurer inform the house how the $262 million business tax cuts in the government's *Building Tomorrow's Businesses Today* statement will lower business costs and create a more competitive business environment in Victoria?

Mr BRUMBY (Treasurer) — I thank the honourable member for Burwood for his question today and reiterate to the house the substantial tax reform which was announced yesterday by the Premier and me in regard to the Bracks government's business statement. Yesterday we announced significant reductions in payroll tax, bringing forward the cuts that we foreshadowed last year, bringing down the rate to 5.35 per cent, lifting the threshold to $550 000 — the first increase in the payroll tax threshold for a decade. It begs the question: which government had seven years to lift the threshold and never did? The Kennett government!

We have announced a further 0.1 per cent reduction in payroll tax to 5.25 per cent — a full half a percentage point cut in payroll tax, a 9 per cent reduction in payroll tax costs for business.

The government has also, as the Premier said today, increased the land tax threshold for the second time. Last year it increased it from $85 000 to $125 000, taking 46 000 Victorian small businesses and investors out of the tax system; and yesterday we announced a further increase to $150 000 to take a further 21 000 taxpayers out of the system. We are turning around the land tax mess left to us by the former government.

Why are we cutting business taxes? I think the *Herald Sun* got it right today — 'Jobs boost'. That is what it is about; it is about the jobs boost.

This morning the Premier and I were down at Fishermans Bend visiting Hawker De Havilland, a wonderful high-tech aerospace industry employing hundreds of Victorians. The annual savings for that company as a result of the full half a percentage point reduction in payroll tax announced by the Bracks government will be some $300 00 per annum. That means the company can go ahead and generate more jobs. That is what it is about!

The Bracks government has a very impressive record on abolishing taxes. It has cut payroll tax, it has cut land tax and it has abolished duty on non-residential leases. As part of the intergovernmental agreement it has abolished the financial institutions duty, it has abolished duty on quoted marketable securities and it has abolished duty on unquoted marketable securities; and from 1 July 2004 it will also abolish stamp duty on mortgages, the only Australian state to do so.

So there's the record of the Bracks government — cutting payroll tax, cutting land tax and abolishing four other taxes. Here is the record of the former Kennett government — —

The SPEAKER — Order! I ask the Treasurer to cease displaying items in the chamber that are not appropriate.

Mr BRUMBY — This is Dr Napthine's book of tax reform — and there is not much in it!

Dr Napthine — On a point order, Mr Speaker, the Treasurer is not only defying your ruling, he is debating the issue. I ask you, Sir, to bring him back to order.

The SPEAKER — Order! I ask the Treasurer to come back to answering the question.

Mr BRUMBY — It is worth pointing out that in the seven years of the Kennett government when the Leader of the Opposition was a cabinet minister, the total number of taxes abolished — —

Dr Napthine — On a point order, Mr Speaker, I ask you to ask the Treasurer to stop debating and come back to answering the question. He is defying your ruling, Sir, and I ask you to bring him back to order.

The SPEAKER — Order! The Treasurer must relate his comments to the question posed by the honourable member for Burwood. I call on him to do so.

Mr BRUMBY — Sir, I was asked what we were doing to create a more competitive business environment. The fact is that we are doing a lot more than the former government ever did. The total number of taxes the Kennett government abolished in the seven-year period was one. Does the Leader of the Opposition know what was it was worth? I am sure he remembers: it was $1 million. And do you know what we have done? We have cut taxes by $1 billion!

The SPEAKER — Order! I ask the Treasurer to cease debating across the chamber and to address his remarks to the Chair.

Mr BRUMBY — I will do that. But the fact is we have cut taxes by more than $1 billion. We have driven down the cost of doing business in Victoria: the total reduction in business taxes in Victoria exceeds 13 per cent. We are doing it to drive new investment and new job opportunities. Our tax record in cutting and abolishing taxes has taken us from the state with the highest number of business taxes, which we inherited from the Kennett government, to the state with the lowest.

Mr Ryan — On a point of order, Mr Speaker, I refer to the standing orders relating to succinctness. The minister has now been speaking for more than 6 minutes, even allowing for the time for breaks. He is breaching your orders, and I ask you, Sir, to sit him down.

The SPEAKER — Order! I am not prepared to uphold the point of order. There have been a number of interruptions to the Treasurer's response by the taking of points of order. However, I point out to the Treasurer that he is going very close to infringing against sessional order 3, and I ask him to conclude his answer.

Mr BRUMBY — I will conclude. There you go: we have cut payroll tax; we have cut land tax; we have abolished duty on non-residential leases; we have abolished duty on unquoted marketable securities; we have abolished the financial institutions duty; we have abolished duty on quoted marketable securities; and we will be abolishing from 1 July 2004 duty on mortgages.

It is a very impressive record: it is a billion dollars worth of tax cuts. It is about driving investment and driving jobs growth.

Dried fruits: industry assistance

Mr SAVAGE (Mildura) — I remind the Minister for Agriculture of the decimation of the dried fruits industry because of the increase in imports since deregulation in 1997 and the consequent fall in local production from 100 000 tonnes to 25 000 tonnes annually, and I ask the minister what assistance the government can give the industry to ensure its viability to enable processors to achieve production levels of 30 000 to 40 000 tonnes annually.

Mr HAMILTON (Minister for Agriculture) — I thank the honourable member for Mildura for his question and also for the interest he takes in agriculture and agribusiness in the important Sunraysia area of Victoria, which has a great record over many years, especially in the dried fruits area. As the honourable member mentioned in his question, the production of dried fruits in the Sunraysia area of Mildura has dropped from 100 000 tonnes some five years ago to about 25 000 tonnes currently.

It was the intention of this industry to reorganise and restructure which brought about the government's involvement in support of what is going to be a very important development. The dried fruit companies at Mildura and Irymple have joined together to form a new company called Sunbeam Foods. This company looked at the way in which it would do business: it needed to produce some new high-technology equipment for cleaning and grading of the fruit. It needed to look at environmentally responsible effluent disposal systems, and it also needed to look at a wiser and better use of energy, because energy is becoming a far more important part of doing business in country Victoria.

On behalf of this government, which is a great supporter of rural and regional business, I am pleased to announce today a grant of $750 000 to Sunbeam Foods. This is a very significant grant because it will support the dried fruits industry and give it confidence and, most importantly, it will maintain the jobs involved in this industry. There are some 800 to 900 growers supplying fruit, with about 4000 stakeholders involved in the dried fruits industry in total. So in terms of its importance in Mildura, the industry represents a very significant business and is a very good demonstration of this government's support for rural industry.

This grant sits extremely well with the government's agribusiness network commitment in the business statement announced by the Treasurer this week of some $3 million over four years to do exactly what is needed in country Victoria, which is to support agribusiness and make sure that the paddock to the plate — and generally the plate is overseas — is something we are committed to. We will work with agribusiness to ensure that.

Stamp duty: conveyancing

Mrs PEULICH (Bentleigh) — An average family home in East Bentleigh sold last weekend for $360 000. The stamp duty bill was more than $17 000, the highest in Australia. I ask the Premier: why will the Bracks government not reduce stamp duty for Victorian homebuyers?

Mr BRACKS (Premier) — I thank the honourable member for Bentleigh for her question. I reject the claim that we have the highest stamp duty in Australia. We do not! The average stamp duty rates in Victoria are lower than those in New South Wales, and when you take into account the fact that we have a zero rating on stamp duty for bought-off-the-plan apartments in the central business district and other apartment-type facilities, you can see we have a very productive system in this state. The stamp duty rate has not increased one iota under this government. I inform the honourable member for Bentleigh that a buoyant economy and rising house prices have caused those increases.

Business: government statement

Mr HOLDING (Springvale) — Will the Minister for Manufacturing Industry advise the house of the initiatives in the government's *Building Tomorrow's Businesses Today* statement that will stimulate growth in the manufacturing industry and create high-value, high-skilled jobs through a greater focus on export and innovation?

Mr HULLS (Minister for Manufacturing Industry) — What a great day for manufacturing yesterday was! I thank the honourable member for his question, and I inform the house that there are some great initiatives and some great measures contained in this excellent document that will further assist the manufacturing industry in this state.

As you would know, Mr Speaker, manufacturing is absolutely vital to Victoria. Indeed it is our largest provider of full-time jobs and accounts for some 62 per cent of Victoria's exports and more than half of Victoria's business expenditure on research and

development. The Bracks government has recognised the importance of manufacturing. Since the moment we were elected we created a dedicated Minister for Manufacturing Industry, and we also set up a dedicated Office of Manufacturing. Indeed the renewed focus on manufacturing industry has resulted in over $1 billion of new investment in this state every year, which of course is a claim that the previous government could not make. In fact there has been over $3 billion of new investment and the creation of over 7100 new jobs in manufacturing since we were elected.

This document not only continues the excellent work undertaken by the Bracks government in manufacturing but builds on it, particularly in two critical areas — innovation and exports. Those areas are addressed as part of $27 million in new investment in manufacturing initiatives in this state. We are focused on exports, because it is very clear that our exporting companies are outperforming our non-exporters, and the Australian Bureau of Statistics data is very clear on this. Both the average profit levels and the average wage levels of exporting firms far outperform the non-exporting firms.

I suppose it may be unusual for a state government to be focusing on exports. Many would say that traditionally that has been the home turf of the federal government, but over many years we have had federal National Party trade ministers who unfortunately seem to think that exports are only about beef, lamb and wheat and not much else. Anything with more than one syllable like elaborately transformed — —

Dr Napthine — On a point of order, Mr Speaker, the minister is now debating the issue. It would be better to address why he has lost 21 000 jobs in manufacturing in the past 12 months rather than going down this debating track.

The SPEAKER — Order! The latter part of that point of order is out of order. I do not uphold the first part of the point of order regarding debating the question. The minister was providing information to the house in relation to exports.

Mr HULLS — So we will certainly not stand by and allow manufacturing to wither on the vine, as the federal government did.

Building Tomorrow's Businesses Today contains aggressive, focused and funded measures to step into the breach left by the federal government. It contains a cohesive set of export assistance programs aimed at getting more Victorian products into foreign markets and getting more Victorian export firms ready to export.

Manufacturing is well regarded for its innovation here in Victoria, but we cannot rest on our laurels. The statement that was delivered by both the Premier and the Treasurer yesterday contains a cohesive, focused and funded set of very important initiatives aimed at fostering and disseminating innovation. With its value-chain initiatives, technology demonstration and uptake initiatives, and business innovation programs, this business statement will help more and more Victorian manufacturing firms develop high-skill workplaces with a high technology future and a real export focus.

So I congratulate the Treasurer and the Premier on this statement. It has been welcomed by business leaders. I want also to congratulate the manufacturing industry consultative council (MICC), headed up by Peter Thomas, which made a submission in relation to this statement. Virtually all of the recommendations made by the MICC have been addressed. As I said, we will not rest on our laurels; we will continue to ensure that manufacturers in this state are export focused. This is a great statement that has been welcomed by the business community and that I hope is supported by the opposition.

Stamp duty: conveyancing

Mrs SHARDEY (Caulfield) — My question is directed to the Premier. Given that Victoria is the only state in Australia where state government stamp duty on an average-price family home is double the $7000 federal government first home owner's grant, will the government now introduce stamp duty relief for first home buyers?

Mr BRACKS (Premier) — I thank the honourable member for her question. She referred to stamp duty relief. I refer the house to comments made by the Leader of the Opposition on this matter, where he said he would give back half of the increase in stamp duty as stamp duty rebate, which amounts to something like $1.5 billion over the next four years. If you add on the previously announced payroll tax cuts of $1 billion over four years that the Leader of the Opposition claimed he would deliver, you find he is talking about $2.5 billion. Where is the money coming from? It is going to come from cutting police numbers, cutting nurses, cutting teachers — that is where it will come from.

Dr Napthine — On a point of order, Mr Speaker, as amusing as the ramblings of the Premier on Liberal Party policies may be, may I suggest that he is debating the issue and should be brought back to order.

The SPEAKER — Order! I ask the Premier to come back to answering the question posed by the honourable member for Caulfield.

Mr BRACKS — On the question which was raised by the honourable member for Caulfield on stamp duty relief, I was referring to the opposition. The opposition has been totally irresponsible. It is as if there was no tomorrow. The commitments made by the Leader of the Opposition would lead to cuts in police numbers, cuts in teachers and cuts in health workers.

Dr Napthine — On a point of order, Mr Speaker, the Premier is continuing to debate the question and to defy your ruling. I suggest you bring him back to the point of the question.

The SPEAKER — Order! I uphold the point of order and ask the Premier to come back to answering the question.

Mr BRACKS — I have reiterated that the stamp duty rate has not changed over the life of this government, and the government has no plans to change it. The comments made by the honourable member for Caulfield represent the buoyant nature of the economy in Victoria and the buoyant nature of the housing industry in this state.

Education: design initiative

Mr LANGUILLER (Sunshine) — Will the Minister for Education and Training inform the house of the government's new initiative to position Victoria as a leader in design education and of what economic benefits Victorians can expect to gain?

Ms KOSKY (Minister for Education and Training) — I thank the honourable member for Sunshine for his interest in design education, particularly given the background of many of the businesses within his electorate and their need to incorporate design into their activities. Today — —

Mr Doyle interjected.

Ms KOSKY — The honourable member for Malvern has just interjected, 'Name one business in the electorate of Sunshine where it is true'. In fact, many of the companies in Sunshine — —

Honourable members interjecting.

The SPEAKER — Order! That level of interjection is unacceptable.

Ms KOSKY — It is an insult to a whole range of companies within the Sunshine electorate because they are doing an excellent job, but this initiative will assist them to do an even better job.

Today I had the pleasure, with the Treasurer, of announcing a new design. In fact, there is a fair bit of designing going on on the other side of the house for the Leader of the Opposition's position! We can assist the honourable member for Malvern in relation to that.

Today at a Victorian Employers Chamber of Commerce and Industry luncheon I had the pleasure, with the Treasurer, of announcing a $9.2 million initiative in design education. At the luncheon the Premier and the Treasurer spoke very well about the initiatives we are putting in place to encourage business investment in this state, which is something the opposition does not understand. The government knows that design is critical to future product development within Victoria. We know that if we do not invest in design then a lot of those companies will continue to reproduce the products they are currently producing until no-one wants to buy that product.

In Victoria we are moving towards an economy that is based on innovation, where more and more wealth is generated by taking good ideas and transforming them into new and better products, thereby developing new markets. In the innovation economy our people are the best asset of our companies. They give us the competitive edge and provide creativity and entrepreneurship as a premium for those companies.

Countries that excel in design turn good ideas into commercial and practical realities that sell. Only one company can be the cheapest; every other company will have to rely on design and on quality, and that is why we are investing in design education in this state.

Design was once a specialist skill only for a number of people, generally in the visual and construction arts area. Now it is fundamental to how we go about improving all aspects of the process of making new products. It is part of how businesses do business, develop new products and take those products to market. It is about local customers as well as worldwide markets. Today's $9.2 million announcement will make Victoria the design centre of Australia, to which companies will come to develop and improve their products.

There are a number of aspects to today's announcement, including a major showcase event which will promote the value of good design and recognise the achievements of design professionals across a whole range of disciplines and industries. That event will involve a number of competitions and

awards. The government is also looking at new qualifications in design for technically skilled people which will overlay design as an aspect of the technical training that occurs in a range of different industries, as well as skills development programs for the teaching work force in schools, TAFEs and universities and investment in state-of-the-art design facilities across Victoria.

Mr McArthur — On a point of order, Mr Speaker, I draw your attention to sessional order 3(5).

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

Ms KOSKY — Mr Speaker, if there had not been so many points of order it would have been easy to do so.

Why are we doing it? Why are we making the investment of $9.2 million? We are making it not because design is an end in itself but because design will provide the competitive edge for our companies. It is a means to an end of having good product, new product and new areas of investment in markets in Victoria. Victoria is leading the way in the economy, and design will assist our industries to go further.

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

PAPERS

Laid on table by Clerk:

Surveillance Devices Act 1999 — Reports pursuant to s. 37 from the National Crime Authority, Chief Commissioner of Police and Department of Natural Resources and Environment

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

Baw Baw Planning Scheme — No. C17

Bayside Planning Scheme — No. C20

Boroondara Planning Scheme — No. C26

Cardinia Planning Scheme — No. C27

Colac Otway Planning Scheme — No. C10

Glen Eira Planning Scheme — No. C13

Hume Planning Scheme — No. C27

Melbourne Planning Scheme — No. C62

Towong Planning Scheme — Nos C4, C7

The following proclamation fixing an operative date was laid upon the Table by the Clerk pursuant to an Order of the House dated 3 November 1999:

Road Safety (Further Amendment) Act 2001 — Sections 4, 5(3), 7, 8, 10, 26, 29 and 30 on 1 May 2002 *(Gazette G16, 18 April 2002).*

CRIMES (DNA DATABASE) BILL

Council's amendments and Assembly's amendments

Returned from Council with message insisting on Council's amendments and disagreeing with following Assembly's amendments:

Council's amendment 1 as follows agreed to:

1. Clause 2, line 2, omit "17(2)" and insert "21(2)".

with following amendment:

Omit "21(2)" and insert "18(2)".

Council's amendment 2 as follows agreed to:

2. Clause 2, line 5, omit "17(2)" and insert "21(2)".

with following amendment:

Omit "21(2)" and insert "18(2)".

Council's amendments 3 and 4 as follows disagreed with:

3. Clause 5, page 6, line 30, omit ", 464T or 464U".

4. Clause 6, omit this clause.

Council's amendment 12 as follows disagreed with:

12. Clause 8, lines 9 and 10, omit all words and expressions on these lines and insert —

'In section 464ZE(1) of the Principal Act —

(a) after "(4)" **insert** "and section 464ZGO";

(b) in paragraph (d), for "464ZGE; or" **substitute** "464ZGE.";

(c) paragraph (e) is **repealed**.'.

Council's amendment 13 as follows agreed to:

13. Clause 10, page 11, line 2, omit "10" and insert "12".

with following amendment:

Omit "12" and insert "11".

Council's amendments 14 as follows disagreed with:

14. Clause 12, after line 21 insert —

‘( ) in paragraph (a), **omit** “, 464T(3), 464U(7) or 464V(5)”;’.

Council’s amendments 15 as follows agreed to:

15. Clause 15, page 28, line 28, omit “15” and insert “18”.

with following amendment:

Omit “18” and insert “16”.

Council’s amendments 16 to 19 as follows disagreed with:

16. Clause 16, lines 6 to 8, omit sub-clause (2).

17. Clause 18, after line 19 insert —

“(1) Section 464R of this Act as substituted by section 6 of the **Crimes (DNA Database) Act 2002** applies to all forensic procedures conducted on or after the commencement of section 6 of that Act and any application made under section 464T, 464V or 464W as in force immediately before that commencement that has not been determined before that commencement is deemed to have been withdrawn.”.

18. Clause 18, line 20, omit “(1)” and insert “(2)”.

19. Clause 18, line 25, omit “(2)” and insert “(3)”.

Council’s amendment 20 as follows agreed to:

20. Clause 18, line 26, omit “12” and insert “14”.

with following amendment:

Omit “14” and insert “13”.

Council’s amendment 21 as follows agreed to:

21. Clause 18, line 29, omit “12” and insert “14”.

with following amendment:

Omit “14” and insert “13”.

Council’s amendment 22 as follows disagreed with:

22. Clause 18, line 30, omit “(3)” and insert “(4)”.

Council’s amendment 23 as follows agreed to:

23. Clause 18, line 31, omit “15” and insert “18”.

with following amendment:

Omit “18” and insert “16”.

Council’s amendment 24 as follows disagreed with:

24. Clause 18, page 31, line 1, omit “(4)” and insert “(5)”.

Council’s amendment 25 as follows agreed to:

25. Clause 18, page 31, line 2, omit “16” and insert “20”.

with following amendment:

Omit “20” and insert “17”.

Council’s amendment 26 as follows agreed to:

26. Clause 18, page 31, line 5, omit “16” and insert “20”.

with following amendment:

Omit “20” and insert “17”.

Council’s amendment 27 as follows disagreed with:

27. Clause 18, page 31, line 6, omit “(5)” and insert “(6)”.

Council’s amendment 28 as follows agreed to:

28. Clause 18, page 31, line 7, omit “17(1)” and insert “21(1)”.

with following amendment:

Omit “21(1)” and insert “18(1)”.

Council’s amendment 29 as follows agreed to:

29. Clause 18, page 31, line 10, omit “17(1)” and insert “21(1)”.

with following amendment:

Omit “21(1)” and insert “18(1)”.

Council’s amendments 30 and 31 as follows disagreed with:

30. Clause 18, page 31, line 12, omit “(6)” and insert “(7)”.

31. Clause 18, page 31, line 12, omit “(4) and (5)” and insert “(5) and (6)”.

Council’s amendment 32 as follows agreed to:

32. Clause 18, page 31, line 16, omit “16 or 17(1)” and insert “20 or 21(1)”.

with following amendment:

Omit “20 or 21(1)” and insert “17 or 18(1)”.

Council’s amendment 33 as follows disagreed with:

33. Insert the following new clause to follow clause 5:

‘A. ***Substitution of sections 464R to 464X***

For sections 464R to 464X of the Principal Act **substitute** —

“464R. Forensic procedures

(1) If there are reasonable grounds to believe that a forensic procedure on a person would tend to confirm or disprove the involvement of the person in the commission of an offence specified in Schedule 8, sections 464K to 464M apply to forensic procedures as if —

(a) a reference to the taking or giving of fingerprints were a reference to the conduct of a forensic procedure; and

(b) a reference to an authorised person were a reference to a person authorised under section 464Z(1); and

(c) a reference to an indictable offence or a summary offence referred to in Schedule 7 were a reference to an offence specified in Schedule 8; and

(d) a reference to fingerprints were a reference to a forensic procedure or evidence obtained as a result of a forensic procedure.

(2) A member of the police force must inform a person on whom a forensic procedure is to be conducted that the person may request that the procedure be conducted by or in the presence of a medical practitioner or nurse of his or her choice or, where the procedure is the taking of a dental impression, a dentist of his or her choice.".'.

Council's amendment 34 as follows disagreed with:

34. Insert the following new clauses to follow clause 7:

'B. ***Execution of order for mouth scraping***

(1) In section 464ZA(1) of the Principal Act, for —

"If a court makes an order under section 464T(3), 464U(7) or 464V(5) for the conduct of a compulsory procedure, or an order under section 464ZF for the conduct of a forensic procedure" —

substitute —

"If a forensic procedure is to be conducted under this Subdivision".

(2) In section 464ZA(3) of the Principal Act —

(a) for "If the Children's Court makes an order under section 464U(7) or 464V(5)" **substitute** "If a forensic procedure is to be conducted under this Subdivision on a child";

(b) for "a compulsory procedure" **substitute** "the forensic procedure".

(3) In section 464ZA(4) of the Principal Act, after "blood sample" **insert** "or a scraping from a person's mouth taken by that person".

(4) In section 464ZA(5) of the Principal Act —

(a) **omit** "compulsory or";

(b) after "procedures" **insert** "(except a scraping from a person's mouth taken by that person)".

(5) In section 464ZA(6) of the Principal Act —

(a) for "an order under section 464T(3), 464U(7), 464V(5) or 464ZF is executed" **substitute** "a forensic procedure is conducted";

(b) after "the order" (wherever occurring) **insert** ", if any,".

(6) In section 464ZA(7) of the Principal Act, **omit** "compulsory or".

C. ***Forensic reports***

In section 464ZD of the Principal Act, **omit** "in accordance with section 464R, 464T(3), 464U(7), 464V(5) or 464ZF(2) or (3) or sections 464ZGB to 464ZGD or otherwise".'.

but following amendment made:

Insert the following new clause to follow clause 7:

'AA. ***Execution of order for mouth scraping***

(1) In section 464ZA(4) of the Principal Act, after "blood sample" **insert** "or a scraping from a person's mouth taken by that person".

(2) In section 464ZA(5) of the Principal Act, after "procedures" **insert** "(except a scraping from a person's mouth taken by that person)".'.

Council's amendments 35 and 36 as follows disagreed with:

35. Insert the following new clause to follow clause 14:

'D. ***Safeguards***

In section 464ZGE of the Principal Act, for sub-section (11) **substitute** —

"(11) This section does not prevent a member of the police force causing a forensic procedure to be conducted, in accordance with this Subdivision, on a person who has voluntarily given a sample under sections 464ZGB to 464ZGD.".'.

36. Insert the following new clause to follow clause 15:

'E. ***Supreme Court — limitation of jurisdiction***

In section 464ZI(a) of the Principal Act, for ", 464T(1), 464U(3) or 464V(2)" **substitute** "or under that section as applied by section 464R".'.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to each of amendments 1 and 2.

Probably the most appropriate way to proceed is for me to make some general comments in relation to the bill without attempting to cover the ground that has already been covered when it was before the house only last Thursday, and I am sure it is fresh in the minds of all honourable members. There seems to be a

philosophical impasse between the government's proposal and the amendments moved by the opposition in both this place and the other place.

The government has already canvassed its concerns with the opposition's proposed amendments to the Crimes (DNA Database) Bill. The opposition amendments are serving to frustrate the passage of the government's important bill, and I remind the shadow Attorney-General and members of the opposition that by delaying the passage of this bill over 3500 orders for the taking of forensic samples are being delayed at the moment. Indeed, the ability of Victoria to enter into arrangements for the exchange of DNA information with other Australian jurisdictions is also being delayed.

As I said last Thursday, by delaying this bill the Liberal Party is showing yet again that it is soft on crime. All jurisdictions made a commitment at the Standing Committee of Attorneys-General to enter into a national DNA database regime. Attempting to move amendments that will take us outside the national framework and the cooperative arrangement is simply frustrating the national DNA database regime. The opposition is soft on crime when it comes to holding up this important piece of legislation.

The opposition's amendments have some undesirable effects. The opposition has suggested that its amendments provide special safeguards for children. It is important that all opposition members who have supported the Liberal Party's amendments, including National Party members, understand this. The opposition has said that special safeguards have been put in place for children. The government is firmly of the view that these are totally inappropriate safeguards. Under current legislation a forensic procedure cannot be conducted on a child under the age of 17 years unless the Children's Court makes an order.

However, under the amendments proposed by the opposition a court order will only be required for children under the age of 15 and only in circumstances where the child and a parent or guardian refuse to consent to the procedure or cannot be located. The opposition amendments would also remove the requirement for court supervision for vulnerable people who are incapable of giving informed consent by reason of mental impairment. That again will occur as a result of the opposition amendment.

I do not believe the opposition has consulted in any way with the relevant stakeholders about its decision to limit the rights of children and mentally impaired persons under the legislation. Court supervision operates as a very important check against the possible misuse of power. Whatever the opposition has said before in this debate, the forensic procedure provisions in the Crimes Act give police significant powers. By their nature, the forensic procedure provisions are inclusive, especially those involving the taking of intimate samples. We do not object to the police having these powers; the police should have at their disposal all the relevant tools to enable them to investigate crime — but there must always be a balance between powers, ensuring that they are not unfettered powers and that appropriate safeguards exist to protect the community. Every state has such safeguards.

If a person does not consent to the taking of a DNA sample the police can still take that sample but only after getting a court order. The opposition wants to take away that safeguard. In the debate last Thursday many members of the opposition said this was a barrier to the police; but in fact it is a safeguard, and it should stay. I am sure the forensic procedure legislation will be reviewed over time to ensure that it continues to operate effectively and fairly. However, any changes to the scheme should be carefully considered within the context of a nationally coordinated approach and proper consultation with all relevant stakeholders. Ill-conceived changes — and that is what the changes proposed by the opposition are — should not be rushed through this place.

I urge the opposition to support the government and allow this very important bill, as amended by the government in the Legislative Council, to be passed so that Victoria Police can get on with the job of executing the outstanding forensic sample orders and Victoria can start participating in the national DNA database scheme.

These two very important measures being proposed by the government will promote Victoria as a safer place to be, and I urge the opposition not to further delay their introduction.

Dr DEAN (Berwick) — I sometimes wonder whether the Attorney-General listens to himself while he is speaking. It is beyond comprehension, on occasions, when he says things which are so totally the opposite of the correct position.

I say right at the outset that the Liberal Party is not big on blackmail over here. If there is a provision that ought to go into an act, for the government to then try to blackmail us because there are other provisions that ought to be passed or not passed is not the way we do business. In this house we try to get the best legislation possible.

The amendments proposed in the Crimes (DNA Database) Bill are down the path of the very actions that the Attorney-General took, because when the Attorney-General brought in these amendments originally he had two amendments — that is, the videotaping procedure and the independent person procedure — and he said, 'I'm bringing in those because we need further safeguards. They'll safeguard the position further'. The legislation then travelled with those amendments to the upper house. What do we find in the upper house? The Attorney-General removed his own house amendments of those so-called safeguards!

So when the Attorney-General starts talking about safeguards, it is pretty hard to believe him when he removed his own provisions which he then said were for safeguards. Why did he remove them? Because he realised they were an impediment to the use of the most potent weapon available to the police today — that is, DNA sampling. There is absolutely no reason on this earth why DNA sampling, which is the modern version of fingerprinting, should not be able to operate on exactly the same principles as fingerprinting. The police are entitled to take fingerprints, and there are safeguards.

The police have to have a reasonable belief that an offence has been committed. If they do not have that belief they cannot take fingerprints. There is no evidence to suggest that police are taking fingerprints which they should not be taking or that people are being locked up in rooms and beaten around the head. All the evidence suggests that fingerprinting has been used by the police in the appropriate way for the last 20 to 30 years. So why should we, in the modern form of fingerprinting — which is DNA sampling — tie the police's hands behind their backs and create a position where as soon as a person says, 'No, I don't think I will today; thank you very much', the police have to go to a court to get a court order — all the evidence suggests that a court order is always given — and then and only then have the opportunity to use that DNA sample?

The Attorney-General says, 'We've got 3500 orders outstanding and this bill is going to stop them being seen to'. That in itself is nonsense. The bill has nothing to do with that. How odd it is for him to put that statistic when the very thing this amendment is doing is saying that you do not have to get orders! In other words, the 3500 outstanding orders would not exist under this proposal.

Then the Attorney-General goes on with some nonsense about children lacking protection under the amendment. The opposition has been careful to ensure that the position with respect to children remains exactly the same as it is under the Crimes Act — that is, the position with respect to children will not be altered at all.

As for saying that vulnerable people will suddenly have to give DNA samples when they would not otherwise — what nonsense! The guardianship act and all the other acts of Parliament which are there to provide that responsible people have the right to make decisions on behalf of disabled people still exist. The opposition is not doing anything to those measures. I just wonder where the Attorney-General gets his briefings from.

Those things that the Attorney-General introduced in the original amendments, which strengthen the DNA provisions, we agree with. We agree with each one. There is nothing in our amendment which would prevent Victoria joining in the DNA databank. It is nonsense to suggest otherwise, because Tasmania has provisions already that we are suggesting here, and they are not being cut out of the national process. Again, the Attorney-General has this habit of just throwing stuff up in the air — totally wrong, totally unresearched — and hoping that it will stick. Maybe mud will stick out there with 60-second grabs, but in this place it does not stick when you have got detailed analysis of legislation.

As for the intrusive intimate samples and so forth, I hope we are not getting back to the Dick Wynne Special — should I say, The Honourable Member For Richmond Special — who told us all last time when we were debating this piece of legislation that DNA samples were taken from genitalia, not realising apparently that you can take a DNA sample from any part of the body because it just so happens that the DNA is the same no matter where the sample is taken from.

This extraordinary ignorance of what this legislation or amendment is doing is most surprising. All the Liberal Party is saying is that in this modern day and age we should realise that if we have a weapon as potent as this, and I gave examples last time I spoke of the miraculous results of DNA samples, we should use it. For example, in the investigation of Mandy Carter's murder, her killer was found after 15 years as a consequence of simply storing a car seat in a storage place, waiting for science and technology to catch up, and her killer being placed on the car seat. The killer was the taxi driver.

We have fascinating examples in Britain, and I shall take the UK — the mother of democracy — as a good example. In the UK not only have they put in the equivalent to the amendment that the opposition is

suggesting here — that is, that DNA samples can be taken automatically in the same way as can fingerprints, with the appropriate safeguards that are already there — but they do not even have forensic offences. Any criminal offence in the UK can result in a DNA sample being required. Why? Because the UK is a modern and far-sighted government — a Labour government, as it happens — and it realises that the time for putting barriers in the way of these forensic technologies has gone.

It is extraordinary for the government to call the opposition soft on crime when it is the opposition that is trying to remove the barrier to the use of DNA samples. I could understand the Attorney-General saying, 'You are much too tough or aggressive in relation to crime. You should not be giving the police those sorts of powers'. But to say that the opposition is soft on crime because it is making it easier for the police to get samples is another one of those extraordinary twists. It is an example of the capacity of the Attorney-General to throw out a statement that he hopes will be a grab and to which he will get some emotive response but when analysed, is utterly and totally incorrect.

The Attorney-General has made a number of suggestions about particular instances of whether or not a sample has to be intrusive. If the Attorney-General thinks there are problems about the amendment or ways in which the amendment could work better why does he not suggest that instead of running backwards and forwards between the houses? I have told the Attorney-General, and I will tell him again that if he — although that is beneath his dignity — or his parliamentary secretary wants to talk to me about the amendment, I am very happy to talk about it. The principle the opposition puts forward is simple. We have to try to get DNA sampling into the modern era; we have to make it useful. At the moment there are massive delays in the forensic side of DNA samples because the laboratories are lacking resources to do the job. There are 6-month and 12-month delays in returning samples that have gone to the laboratories for analysis. That means we need more resources.

Where can we get resources from? Certainly by saving the costs of having to go to court repeatedly for a rubber stamp. That process means a brief must be prepared; it involves police time and court time. It cannot be done in chambers but in open court, and the process is unnecessary. If the Attorney-General has suggestions to make the process better the opposition is always willing to listen. But it is totally inappropriate for the government simply to say to the opposition, 'It is your idea, therefore we are not interested'.

In conclusion, the opposition believes that the safeguards — that is, you cannot take a forensic sample unless you have a reasonable belief that the person has committed an offence, and the extra safeguard put in by the opposition that you cannot take one if you do not have a reasonable belief that the DNA sample will help to solve the crime, which is an extra one over what exists with fingerprinting — have worked perfectly well with respect to fingerprinting and they should be proceeded with here. The nonsense about having to go to court for a rubber-stamping in situations like this is totally inappropriate.

The opposition sticks by its amendment and it asks the government to get over the emotional impact of the opposition actually having a creative input into legislation. The government should either sit down and talk or accept the amendment that will save the police a lot of time, effort and resources. It will allow DNA to be used in the way it should be able to be used. It will put Victoria in line with the UK and, I suspect, with other countries — certainly the USA is going down that path, particularly after the disaster of 11 September — and I ask the Attorney-General to get over the politically emotive response and start doing something in a parliamentary sense to achieve the objects of the opposition.

Mr RYAN (Leader of the National Party) — On behalf of the National Party I support the amendment moved by the Liberal Party, which is presently subject to this game of ping-pong between the two houses. I am sure all honourable members would agree it is unfortunate that this is happening. When I look at this on a first-principle basis, for the life of me I do not understand why the government has taking the position it has. Perhaps the infatuation enjoyed by the Premier with the British Prime Minister may assist in this case in that, since this DNA system does apply in the UK, perhaps the Premier could give him a ring and we could have it attended to.

The first principle in this is that DNA is a very modern use of forensic investigation that enables those innocent of crime to be able to establish their innocence. In addition and on the other side of that basic principle is the fact that DNA has been used and will continue to be used to ensure that those guilty of crimes are better able to be pursued, charged and convicted.

The use of DNA is so much better than other mechanisms we have had in the forensic sense to date because it cannot tell the proverbial lie. When I spoke on the legislation when it was originally before the house, which seems eons ago, I made the point — and I think it is as valid today as it was then — that there is a

significant distinction between DNA and other forms of forensic tests done, particularly in the nature of fingerprinting, let alone matters to do with more historical forms of investigation of crime, especially the interview of suspects.

The huge distinction is that DNA simply cannot tell a lie; it is in everybody's interests if it is used. It either rules people in or it rules them out, but the great thing about it is that the use of DNA provides an absolutely clinical mechanism of ensuring that the truth of the circumstance is established. This is as distinct from the position where somebody who may be interviewed as a suspect with regard to a crime may or may not say something that rules that person in or out. For all the reasons explored when issues of the right to silence occur, you could have a circumstance where a person who may be entirely innocent of a crime may say something in the course of an interview or commit to some sort of action in the course of an interview which leads to them being charged let alone convicted of an offence when there is simply no justification for that being the case.

I suggest that unfortunately the records of our criminal justice system are redolent with the fact that people have done or said something in circumstances where they have been under investigation and that has been taken as a mechanism of their being subsequently convicted, thereby resulting in people being falsely imprisoned. We now have many cases on point where years or sometimes decades later DNA has subsequently been used to establish the fact that the person concerned is entirely innocent. On the other side of the coin we have so many cases — I suppose the Mr Stinky crimes are those of most recent knowledge — where DNA has been used as the primary mechanism of establishing the guilt of a person who, until then, had not been able to be charged let alone convicted of significant crime.

The marvellous thing about DNA is that it is absolutely forensic in the true sense of the word. It is utterly objective and completely clinical. Nobody can fiddle or tamper with it. The determinations which are reached as a result of its application are beyond issue. So with those things in mind, and bearing in mind the safeguards which exist and which are proposed to exist under what the Liberal Party has proposed, I simply do not understand why the government is resisting the merits of this. I understand it in the sense of politics and the banter that goes back and forth, but surely that should not stand in the way of this amendment, given the outcomes it will bring about for those who ought properly be charged with criminal offences and then convicted and those who ought not be charged with criminal offences and who, if they are, ought to be able to avoid the prospect of being inappropriately prosecuted and convicted. We have a mechanism here whereby that line can be drawn.

On behalf of the National Party I strongly advocate the inclusion of this amendment in this legislation. It is something that will make the legislation better. More particularly for the people who are to be subject to it — for all the reasons I have talked about and which have otherwise been highlighted — this amendment will ensure the proper administration and carriage of justice in the public arena, which, in its absence, will not be given such fruitful effect.

Mr HAERMEYER (Minister for Police and Emergency Services) — The government rejects the amendments proposed by the Liberal–National Party coalition in the upper house.

Firstly, we really have to question why the coalition parties want to introduce this particular provision to remove the requirement for a court order now, when they did not consider it necessary to do so when their own legislation was introduced back in 1998. Why was it necessary to require a court order then and not now? The opposition parties have not explained what has changed, other than the fact that they are sitting on the opposition side and we are sitting on the government side of the house. That is the only thing that has changed since 1998, and they are trying to find some relevance for themselves and some relevance for that Jurassic Park across the hallway.

I find it perplexing that the opposition parties are wanting to further change this legislation. The bill now before the house was introduced by this government because the previous government bungled the legislation in the first place. That is why some 3000 samples that have been taken in the prison system have been invalidated by the courts. This bill is about ensuring that those 3000 samples can now be analysed so that certain people may be relieved of suspicion and certain other people may be tried for otherwise unresolved offences.

Dr Dean interjected.

Mr HAERMEYER — You have had your time, you pompous, posturing, pretentious poser!

The DEPUTY SPEAKER — Order! The minister, through the Chair. And I ask the honourable member for Berwick to cease interjecting.

Mr HAERMEYER — As I said, the government introduced this bill because the previous government

bungled the legislation and to validate the 3000 samples that have already been taken in the prison system. It will enable some crimes to be resolved, and it will also enable the police to avoid being led up the garden path in terms of other crimes. That is why it is important that this legislation goes through.

However, the opposition members seem to somehow think that legislating is all that is necessary. They think they can legislate every problem and every issue out of existence. This legislation was introduced in 1998. How long did it take for the prison population of this state to be DNA tested? It took over two years — and it took the election of this government. This opposition was prolific in introducing legislation when it was on the government side of the house, but it is not so prolific when it comes to providing the resources.

Dr Dean interjected.

Mr HAERMEYER — This legislation existed for two years. Did the opposition when in government test the prison population? Did it DNA test the prison population? No. Members of the previous government went around saying, 'We have introduced this DNA legislation', and they thumped their chests. But what did they do about it? What did they do to actually make use of that legislation? They did absolutely nothing.

This government went out and comprehensively tested the entire prison population. It was not done by these people opposite. They think that all they ever need to do is pass a law and that somehow, by some process of osmosis, it will automatically happen. It does not automatically happen. You need resources on the ground. One thing honourable members opposite need to come to terms with is that you need police to take DNA samples. They think that you do not need police, staff or resources: you just pass a law and it somehow happens overnight. Good grief! Somebody ought to tell them magic puddings do not exist.

Dr Dean interjected.

Mr HAERMEYER — The provision for the independent person which the honourable member for Berwick referred to was originally put in to provide for the lesser likelihood of a DNA sample being challenged in court. However, after further discussions with the police and the Police Association, the government accepted the argument that that would not, however, be the case and that it would generate a greater obstacle to the DNA legislation being accepted in the court.

However, that is not the case with the abolition of the court order. The Victoria Police has not asked for the court order requirement to be removed.

Dr Dean interjected.

Mr HAERMEYER — Where?

Dr Dean interjected.

The DEPUTY SPEAKER — Order! The minister and the honourable member for Berwick! I ask the minister to address the Chair.

Mr HAERMEYER — The only conversation the honourable member for Berwick has had with the police is to say, 'You're sacked'.

The removal of the requirement for a court order has not been asked for by the Victoria Police. The buccal swab process — which is the process that is used for taking DNA samples — is more reliable than using a hair sample, but it is more intrusive than taking a fingerprint.

It is important that we do not threaten to undermine community support for the DNA legislation by putting in place processes that will undermine it. It is critical that we also do not conduct the processes surrounding the DNA legislation in a way that heightens the likelihood of police resources being tied up in court because the legislation or the sampling process is challenged. For that reason it is entirely appropriate to take a sample on the basis of a court order. That is not an unreasonable expectation whatsoever.

I suggest to the opposition that before moving the amendment it wants to move it wait until it has a democratic mandate to do so — that is, until it is on the government side of the house. I suspect that that may be quite sometime away. I suggest that it come to terms with the fact that it is not in government and that it does not have a democratic mandate. It is using the votes of upper house members elected two elections ago to try to obstruct an important piece of legislation.

Let's get this legislation through. Let's allow the victims of countless crimes the peace of mind that comes with knowing that a crime has been solved or that somebody long suspected of having committed that crime has been cleared of suspicion. Let's get on with that!

Let us get this legislation through. It is important public safety legislation. While honourable members in the upper house continue to use their numbers to obstruct this legislation they are, without any shadow of doubt, being soft on crime. They are the people who cut police numbers, who ripped the resources out of the law enforcement agencies and out of the criminal justice system, and they think all they need to do to solve

crime in this state is to bring a bill into the house. Obviously it has not worked. That is why this government is putting appropriate resources into the prison system, and that is why we are acting on legislation that the former government passed but did nothing about.

I would urge opposition members in the upper house, instead of playing this silly exercise of one-upmanship in their desperate attempt to make themselves relevant, to stop holding this legislation up so that the victims of countless crimes can have some peace of mind and we can get on with the business of implementing the legislation.

Ms McCALL (Frankston) — The Leader of the National Party referred to this as ping-pong legislation. I suspect that is exactly what it is.

I have no difficulty in supporting the amendments put forward by the honourable member for Berwick and supported by the National Party. At no stage have honourable members on this side of the house ever suggested that they did not want Victoria to be part of the national DNA database; quite the reverse. We have always said that we are supportive of being part of the brave new world that involves crime detection and that it means giving police every available skill and resource at their fingertips — literally — to solve crime.

However, there is no question in our minds that the amendments we have put before this house will make the police's job easier. If you talk to the police about the detection of crime, particularly homicide, they will tell you that speed is of the essence. When taking a sample and putting it into the computer to see whether potentially there is a hit, speed is absolutely of the essence because the trail can go cold very quickly. It is not our job to put impediments in the way of police to prevent them from performing their duty to the best of their ability. As I said, speed is of the essence.

The Minister for Police and Emergency Services said that when the bill was originally introduced in 1998 the court order provision was included. Fascinating! We have now got to 2002 and the government has spotted that fact. If my recollection is right, the former opposition voted against the bill right from the very beginning. The most important thing about DNA is that every day the knowledge of DNA and of forensic procedures and the way in which we deal with the police moves rapidly, so what may well have appeared to be a perfectly logical introduction in 1998 might not be so now. One might accept that in 2002 science and technology have moved far enough and fast enough ahead to make the removal of this court order provision not unreasonable.

I therefore have absolutely no hesitation at all in supporting the amendments put forward by the Liberal Party and the National Party in the Legislative Council.

Mr WYNNE (Richmond) — I rise to support the Attorney-General in this important endeavour to try and get this piece of legislation through the house. While the honourable member for Berwick seeks to make cheap points in debate, this is quite a serious issue. As I indicated when this debate occurred last week, the honourable member for Berwick has been seeking to position himself around the so-called tough-on-crime approach since January of this year. It is clear that the opposition's blocking and obstruction of this bill is a significant impediment to the police in undertaking their lawful activities.

I am sure a number of members would have been interested to hear this morning the excellent interview with the Chief Commissioner of Police, Commissioner Nixon. I think today is the anniversary of her appointment to this state, and what an excellent appointment she is! Chief Commissioner Nixon is widely respected on both sides of the house for her performance. She indicated today that DNA is one of the important crime-fighting mechanisms that the police need to pursue more vigorously.

Honourable members on both sides of the house are in furious agreement about the power of DNA as an investigative tool; that is not in debate in any way. So essentially the argument gets down to a very simple proposition: whether as a question of good public policy you should have checks and balances within the judicial system for the taking of DNA samples. The government has argued that the taking of a DNA sample is demonstrably different to the taking of a fingerprint, that it is more intrusive and that there should rightly be some appropriate checks and balances in that. As the Minister for Police and Emergency Services indicated, Victoria Police has offered no objection to the position the government has taken on this matter.

It is well known that this debate has gone back and forth between the chambers — I think now for its third time. There have been numerous opportunities for the Victoria Police to make representations to the government about the position we have taken, which is that a reasonable safeguard of checks and balances be made available when DNA samples are being taken. The police minister has indicated that no correspondence has been received nor have

representations been made that seek to raise objections to the government's position.

Since we last debated this question two other serious matters have arisen, and they are the potential outcomes that could arise from the position taken by the opposition. They have been lightly dismissed by the honourable member for Berwick, and I would ask him to avail himself of the opportunity to discuss the matters that I have raised with our staff. As the honourable member would know, officers of the Department of Justice are readily available to him. They are experts not only on this bill but on many areas of criminal law.

I ask him to take the opportunity to have private discussion with the officers of the Department of Justice around two particular points. The first concerns the special safeguards for children. The government believes these safeguards are too limited. Presently under the legislation a forensic procedure cannot be conducted on a child under the age of 17 years unless the Children's Court makes an order. Under the opposition's amendment, a court order is required for children under the age of 15 years and only in circumstances where a parent or guardian refuses consent to the procedure or cannot be located. This is an important anomaly that has arisen, and clearly children who fall between the ages of 15 and 17 must require the protection that we would all agree should be afforded to them. I would ask the shadow Attorney-General to consider that matter when he has the opportunity to brief his colleagues between this debate and the debate in the upper house.

The second and I would hope unintended consequence of the opposition's amendment removes the requirement for court supervision of vulnerable people who are incapable of giving informed consent by reason of mental impairment. Again, I do not believe that the opposition in developing this amendment has considered this question. These are two important issues. The issues around the age of children and people with mental impairment may inadvertently — I accept it may be inadvertently — have been picked up as anomalies that exist under the current amendments as proposed by the opposition.

I seek an undertaking from the opposition that it will consult with the government in relation to what the government believes to be very clear and quite dangerous anomalies which need to be rectified. From here we go to the basic question of whether there should be some checks, balances and safeguards. This is a fundamental position for the government. It is very reasonable from its perspective that where the police have a reasonable suspicion about a person and seek to take a DNA sample, if the person refuses, which is their legal right, the matter should be placed before a court.

This is not an unreasonable proposition in the government's view. As the Minister for Police and Emergency Services has indicated, it has not met with any objection from the police force, and I therefore ask the opposition to rethink its position. There are 3500 DNA samples waiting to be dealt with. The unseemly bouncing around of this legislation between houses does not do credit to the opposition. If the opposition thinks there is some vague — —

An honourable member interjected.

Mr WYNNE — Indeed we are the government, and we are trying to maintain a principal position, which is that there needs to be appropriate checks and balances in this legislation. There is no political gain in this for the opposition. If it thinks this is some indication of a tough-on-crime approach, it has sadly failed. I ask the opposition to reconsider the position it has taken in a sober and reasonable way, withdraw these amendments and support this important piece of legislation.

DNA sampling is a powerful tool which will assist the Victoria Police. On the very day that the Chief Commissioner of Police celebrates her first distinguished year in the service of the government, I ask that this house demonstrate leadership on a bipartisan basis and support this bill.

Mrs FYFFE (Evelyn) — I am pleased to support the honourable member for Berwick's amendments, and I also support the honourable member for Richmond when he says that this is a serious bill. This is serious, and we have given it sober, careful consideration. DNA testing is many steps ahead of fingerprinting. If you do not use DNA you are using substandard crime-fighting processes, and to delay the quick and proper identification that DNA provides is to tie the hands of our police. It prevents them from properly identifying the perpetrators of crime. We need and should take every step to protect our society from crime. It should be possible for the police to take a DNA sample from a reasonable suspect. There is a reasonable expectation that identification by DNA sampling will lead to the solving of crimes or the clearing of people who have been suspected of committing crimes of which they are not guilty. That is equally as important as its use in getting a conviction.

This government has made a lot of noise about caring for community safety; but when it comes down to it, when there is a clear, sensible way whose success rate

has been proven overseas, it will not take that way. The government will not follow the steps taken in the United Kingdom. In a previous contribution to the house I outlined a recent case in the UK, where someone who was picked up for a minor crime had a routine DNA sample taken and two months later, after the sample underwent computer checks, it was found that this person had been involved in a murder 20-odd years before. That is what DNA can be used for — not only the identification of criminals and the clarification of whether someone is guilty of a crime but also tracing unsolved crimes.

This government should show its commitment to fighting crime. Funding is needed to clear the current DNA backlog of some 3500 cases. There should be adequate finance for the police department and forensic laboratories, and it should be part of the coming budget. The government should show the seriousness of its commitment to provide a safe community for the people of Victoria and to fight crime.

The rules currently relating to the collection, use and retention of fingerprints should also be applied to the collection of DNA samples. If there are reasonable grounds to believe that someone was involved in a crime the police should have the powers to take the DNA sample to prove or disprove that suspicion.

There has been consensus over the treatment of children, and I support what the shadow Attorney-General said about that. There has to be special protection for minors; we all accept that. The opposition is not holding up the DNA legislation; it is putting up an amendment that is sensible, well thought out and logical. DNA is today's modern tool that should help our police in fighting crime. I support the amendments.

Mr STENSHOLT (Burwood) — I rise to support the motion of the Attorney-General in proposing how to deal with the amendments of the Legislative Council in respect of the Crimes (DNA Database) Bill. We discussed this matter extensively last week. The opposition in the upper house is seeking to introduce, indeed to insist on, amendments that will make far more intrusive forensic sampling procedures more common than fingerprinting. The nature of such sampling was expounded in some detail in the house last week. I do not propose to go down that path and repeat all the details that were mentioned.

It is also important to note that the procedure of taking DNA samples seeks something more than fingerprinting. Fingerprinting gives an identity check whereas DNA provides a whole genetic blueprint. As the honourable member for Richmond described, under current processes there are checks in the system whereby an order can be sought from a magistrate. This is very sensible in the current situation. Furthermore, before we might consider taking any further steps on DNA testing I believe there is a need to look at quite a range of issues, and some of them were discussed last week. Today the honourable member for Richmond pointed out some further issues, such as the need for proper procedures, the need to look after the rights of those who will be tested as a result of this bill passing and of how to deal with minors.

Last time this bill was discussed in the house we noted that the newspaper leaders were very much in favour of proper examination and consultation before taking any further steps on DNA testing. Indeed honourable members related to us what happened in Tasmania in terms of the reaction of the Tasmanian police regarding comprehensive DNA testing. There is a need for such examination, and indeed Liberty Victoria and other organisations have views in respect of that. The government concurs with the need for such proper examination.

The amendments from the upper house are pretty typical of the Liberal Party. They jump in and adopt an extreme view and extreme positions without bothering to take any consideration of consultation. We heard from the Minister for Police and Emergency Services that we do not even have an indication from the police of their views on the proposals of the Liberal Party, which typically has jumped in without any consultation and without any proper consideration of the issue.

I note that the opposition's amendments come from the upper house, which put the reference to the Law Reform Committee on DNA testing and databases and asked for a comprehensive examination. That committee has barely started its considerations and the opposition is pre-empting its findings and its consultations with various parties without feeling the need to check up on such issues as those raised by the honourable member for Richmond this afternoon.

The opposition is like a ship without a rudder on this sort of issue. It does not know what it stands for. It does not know whether it wants to have an inquiry by a committee or whether it actually wants to agree to this particular proposal. The government knows what members of the opposition stand for. Nothing! And here they are holding up the processing of 3500 samples. They say they are tough on crime but, typically, they carp and they whine and they disrupt and they delay. They are delaying 3500 samples. They are not really committed to community safety in Victoria or

to looking after the people of Victoria. It seems they are committed to delaying this legislation and the processing of 3500 samples.

The opposition is the party that sacked 800 police and denied resources to the police in successive budgets. The Liberal Party is soft on crime and is not committed to doing anything for community safety. It does not support appropriate processes. As I said, it is soft on action, soft on crime, soft on decision making and soft on getting the backlog of 3500 samples actually processed and done. It is poor on proper consultation and poor on decision making. I urge the opposition and the National Party to let the police get on with their job and get on with processing the 3500 samples and to pass this legislation.

Mr MAUGHAN (Rodney) — I want to make a brief contribution to this very important piece of legislation. I have listened with a great deal of interest to the rhetoric of the honourable member for Burwood. I suggest to him that we on this side of the house are certainly not soft on crime, and no-one could accuse the National Party of being soft on crime. We simply want to get on top of it. We simply want to be able to provide the tools for the police to get on top of and to resolve some outstanding crimes and to use the forensic means that are available to them to nail those out there in our community who are causing so much hurt, damage and destruction.

We simply want to make it easier for the police to solve crime. The Leader of the National Party in his contribution spelt out, as he usually does in his very succinct and precise way, why the National Party is supporting the amendments and that it simply wants to get this legislation through, but with the amendments that have been put forward in the upper house. We strongly support DNA testing. As the honourable member for Richmond pointed out in his contribution, the sad part about this debate is that we are in furious agreement on DNA testing and on the value of clinical testing. We agree about its clinical accuracy and we agree that it provides the means of eliminating the innocent from police investigation — we all agree that it provides a really good opportunity to nail people who have committed criminal offences whom we otherwise might not be able to get. Therefore it is a great tool that can and should be used.

I also agree with honourable members from the other side that there is widespread support for the Chief Commissioner of Police and the outstanding job that she is doing. She was in Echuca recently, and I have spoken with senior police as recently as yesterday. There is absolutely no doubt that she is a breath of fresh air to the force, and the morale of the police force is now very high. We simply want to give police more tools to get on and do the job that they are so well trained and so well able to do. We want to make it easier for police. We believe there are sufficient checks and balances in the legislation and the amendments; we do not need to put further impediments in the way of police, who really want to get on and solve crimes.

As the honourable member for Richmond pointed out in his contribution, the crime scene very easily goes cold, and if police are delayed with unnecessary checks and balances they will sometimes find that they are unable to get the evidence they need and that is right there on the spot if they are allowed to get onto it.

If and when it is proved that the provisions of the legislation are being abused, then surely there is the opportunity to come back and tighten up the legislation. I would suggest to honourable members of the government that they should agree to the amendments before the house. Let's get this legislation passed, let's give the police the tools they want, and if there is any abuse of the system — as the Attorney-General suggested there may be — let's come back and amend the legislation. I am sure that the government would then have the support of both the Liberal Party and the National Party to tighten up the legislation if and when that abuse is proved.

I believe the amendments are logical, carefully considered and designed to assist police, yet have sufficient checks and balances. I support the amendments. I suggest that the government get on with it and accept the amendments so we can give the police the tools they need and stop this ridiculous political ping-pong, with the bill going back and forth from one house to the other. The government can resolve it by agreeing to these sensible amendments, and I suggest it do so.

House divided on motion:

Ayes, 45

Allan, Ms	Kosky, Ms
Allen, Ms	Langdon, Mr (*Teller*)
Barker, Ms	Languiller, Mr
Batchelor, Mr	Leighton, Mr
Beattie, Ms	Lenders, Mr
Bracks, Mr	Lim, Mr
Brumby, Mr	Lindell, Ms
Cameron, Mr	Loney, Mr
Campbell, Ms	Maddigan, Mrs
Carli, Mr	Maxfield, Mr
Davies, Ms	Mildenhall, Mr
Delahunty, Ms	Nardella, Mr
Duncan, Ms	Overington, Ms
Garbutt, Ms	Pandazopoulos, Mr

Gillett, Ms
Haermeyer, Mr
Hamilton, Mr
Hardman, Mr
Helper, Mr
Holding, Mr
Howard, Mr (*Teller*)
Hulls, Mr
Ingram, Mr
Pike, Ms
Robinson, Mr
Savage, Mr
Seitz, Mr
Stensholt, Mr
Trezise, Mr
Viney, Mr
Wynne, Mr

Noes, 40

Asher, Ms
Ashley, Mr
Baillieu, Mr
Burke, Ms
Clark, Mr
Cooper, Mr
Dean, Dr
Dixon, Mr
Doyle, Mr
Elliott, Mrs
Fyffe, Mrs
Honeywood, 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
Shardey, Mrs
Smith, Mr (*Teller*)
Spry, Mr
Steggall, Mr
Thompson, Mr
Vogels, Mr
Wells, Mr
Wilson, Mr

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendments 3 and 4.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendment 12.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to amendment 13.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendment 14.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to amendment 15.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendments 16 to 19.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to each of amendments 20 and 21.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendment 22.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to amendment 23.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendment 24.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to each of amendments 25 and 26.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendment 27.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to each of amendments 28 and 29.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendments 30 and 31.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on the amendment made to amendment 32.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendment 33.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendment 34 and insists on the amendment made by the Assembly to the bill.

Motion agreed to.

Mr HULLS (Attorney-General) — I move:

That this house insists on disagreeing with amendments 35 and 36.

Motion agreed to.

Ordered to be returned to Council with message intimating decision of house.

ROYAL ASSENT

Message read advising royal assent to:

Constitution (Governor's Salary) Bill
Corporations (Financial Services Reform Amendments) Bill
Electricity Industry (Amendment) Bill
Statute Law (Further Revision) Bill

APPROPRIATION MESSAGES

Message read recommending appropriation for:

Fisheries (Further Amendment) Bill
State Taxation Legislation (Further Amendment) Bill

BUSINESS OF THE HOUSE

Program

Mr BATCHELOR (Minister for Transport) — I move:

That, pursuant to sessional order 6(3), the order of the day, government business, relating to the following bill be considered and completed by 3.30 p.m. on Wednesday, 24 April 2002:

Building and Construction Industry Security of Payment Bill.

The purpose of the government business program this week is to commence and complete the Building and Construction Industry Security of Payment Bill. Last week I had indicated that we might also be in a position to start the Electoral Bill but that is not the case this week, and that situation accommodates the need expressed by a large number of honourable members to finish early on Wednesday. The intent of this motion is to have the guillotine occur at 3.30 p.m. on that day.

For the assistance of honourable members, tomorrow — Wednesday — we will deal with matters of public importance in the morning; we will then proceed to deal with formal business and then the second readings, which will be interrupted by the 3.30 p.m. guillotine; and we will go on to the adjournment debate at the conclusion of the second readings, which may or may not occur at roughly the same time.

Mr McARTHUR (Monbulk) — The Liberal opposition supports the government business program. As the Leader of the House has pointed out, there has been some discussion over recent days to try to arrange a suitable time for the house to finish tomorrow afternoon so that honourable members can get back to their country electorates and attend the Anzac Day dawn services they will all want to go to. Those honourable members who will still be in the metropolitan area will be able to attend the dawn service and watch the march in the morning here in Melbourne, and then march down to the MCG and watch the mighty Bombers slaughter that rabble from Collingwood! All in all it will be a fine day.

Mr MAUGHAN (Rodney) — The National Party will be supporting the government with this business program, and I simply want to thank the Leader of the House for accommodating country members by ensuring that we will be finished in reasonable time on Wednesday.

We have a very onerous business program this week: we have one whole bill to deal with, although we have actually dealt with two because we have already dealt with one. We are really lifting our average. The Building and Construction Industry Security of Payment Bill will probably take up the rest of today, and tomorrow we will debate matters of public importance. It will be a fair week's work, and we will all then be able to get back to our electorates to participate in Anzac Day functions.

Nearly every country member will be involved in Anzac Day ceremonies, so the National Party supports the government business program. Again I thank the Leader of the House for accommodating the desires of country members to get on the road in reasonable time and get home to attend those very important Anzac Day services.

Motion agreed to.

MEMBERS STATEMENTS

Landcare: report

Mr PERTON (Doncaster) — Yesterday I met with the land management council of the Victorian Farmers Federation, and one of the significant topics was Landcare and the excellent results that it has had in relation to land degradation and reafforestation. One of the questions that was raised was: where is the report of the second-generation Landcare task force chaired by the honourable member for Ballarat East?

The minister, in giving a speech to a Landcare conference in the middle of 2000, promised that the report would be completed by June 2001. Then the government altered the date and said it would be due in late 2001. Then it reviewed the date again, and the web site of the Department of Natural Resources and Environment says it is due in late November of 2001. We are now almost into May of 2002 and the Landcare movement wants to know where it stands! Is it true that the minister has been rolled by the Treasurer and that there is, in fact, no money for second-generation Landcare? It seems quite likely indeed.

This report is now almost a year overdue. If this minister is to treat the participants in Landcare with the respect they deserve, she ought to be able to finish her work on time. The report is sitting on her desk at the moment. Let her sign it off and release it to the public.

Stamp duty: reform

Mr JASPER (Murray Valley) — I join with large numbers of constituents within my electorate of Murray Valley to express concern at the huge escalation in stamp duty being charged and collected by the Victorian government. The *Herald Sun* highlighted in its Saturday edition that home buyers have paid $1.8 billion in stamp duty, which is about $750 million more than the Victorian government expected. Home buyers are justifiably outraged with this situation whereby the stamp duty rates have not been adjusted since 1987 to take account of price increases.

Stamp duties paid for motor vehicle registration and transfers are estimated to increase by approximately $50 million in this financial year. These rates, which have not been adjusted since the late 1970s, are now generating massive revenue for government.

Stamp duty is imposed on a range of items at the rate of 10 per cent, and in the case of property insurance the charges are calculated on the end price, which includes the fire service levy and the GST. The state government claims to be concerned about the escalation in public liability insurance charges yet still imposes a 10 per cent stamp duty on the gross amount of this insurance.

The Victorian people are justifiably angry about this money grab by the government, with the massive increase in the range of stamp duties payable. This issue must be addressed immediately with a review of stamp duty charges to meet the demands of the Victorian public for justice in the imposition of stamp duties in this state.

Member for Warrandyte: performance

Mr LONEY (Geelong North) — We have recently seen a number of significant milestones and achievements celebrated in various aspects of the Victorian community. Among these are Kevin Sheedy's 500 games as coach of Essendon and Michael Malthouse's 600 games as player and coach. These have attracted significant press coverage, acknowledgments and a range of presentations and functions — and rightly so.

Last week, however, a significant parliamentary performance was reached without any acknowledgment or fanfare, and I believe it should be given due recognition as well. During question time last week we reached a remarkable 150 consecutive questions asked in this place since the last question about school education asked by the Liberal shadow minister. Not one question on school education since last November! This is an unprecedented achievement in the history of this Parliament and should not be permitted to pass without due recognition. No previous shadow minister has managed to achieve anything near this sustained burst of inactivity.

Not only does it show a remarkable dedication to indolence, it also confirms — —

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

High Street Road: duplication

Mr WELLS (Wantirna) — This statement condemns the do-nothing Bracks Labor government and in particular the Minister for Transport for bungling once again the High Street Road duplication project between Glen Waverley and Wantirna South.

The residents of Knox and Monash have again been conned by the Bracks government over the High Street Road duplication after having to wait for more than two years for the project to commence following the original announcement by the previous government in August 1999. Information has only now come to light

that High Street Road will only be duplicated between Gallaghers Road, Glen Waverley, and the Scoresby freeway reservation in Wantirna South.

Vicroads documents reveal that the original plan, which was to have included the full duplication of High Street Road from Cathies Lane East in Wantirna South to Gallaghers Road in Glen Waverley, has now been scrapped and a completely new set of plans has been drawn up with little or no public consultation. The new plans will simply cause massive traffic bottlenecks and a total disruption to residents, road users and in particular, the Waverley Christian Fellowship and the Waverley Christian College complex in Cathies Lane East.

This is again typical of a do-nothing Bracks Labor government, which has botched the Scoresby freeway and has again botched the High Street Road duplication.

Unidrive Pty Ltd

Mr LIM (Clayton) — Last Friday I had the honour to accompany the Minister for Manufacturing Industry to present the Clayton-based Unidrive Pty Ltd with a certificate of manufacturing excellence from Victoria's Manufacturing Hall of Fame. Unidrive deserves to be hailed as a Victorian manufacturing hero by the hall of fame because of its achievements in the design and manufacture of automotive drive-train, suspension and steering components.

Unidrive supplies components to all four local car manufacturers and also exports drive-train components to General Motors in the United States. The exports include complex drive-shaft assemblies for the well-known GM Corvette sports car.

The company has substantial design and manufacturing capabilities, which have been acknowledged by the Society of Automotive Engineers, Australasia, through the automotive engineering excellence awards in 1997 and in 2001.

Unidrive employs 425 people at its Clayton plant. It first commenced business in 1949 as a joint venture between two United Kingdom and Japanese companies. It is interesting that Unidrive is now exporting to Japan.

Victoria's Manufacturing Hall of Fame, set up by the Bracks government in partnership with key industry associations, recognises outstanding achievements in manufacturing.

Insurance: public liability

Ms DAVIES (Gippsland West) — When I saw a young lad selling flowers on the side of the road in Wonthaggi over the school holidays my reaction was to say 'Good on you!' for showing some enthusiasm and initiative. To encourage him I stopped and spent $1.50 on flowers. He was not running the sort of operation which would threaten local businesses.

The local council's reaction was to shut him down because he did not have a permit or public liability insurance. Firstly, I hope the council will acknowledge that action as bureaucratic overkill which does no-one any credit. Secondly, the fact that Tyrone, the lad in question, would have needed to pay $500 for the insurance is yet another indication of the need to reform the insurance industry and public liability insurance in particular.

In the end we may need some kind of limit on payouts. I also suggest, however, that the insurance industry get its house in order to ensure that premiums realistically reflect the actual risk. Small community facilities and events, and young lads setting up in business, are not exactly high risk, and the current premiums are out of line.

The onus is on the state and federal governments to finalise a solution to the problem as soon as possible, and I urge them to do so.

Police: Bellarine Peninsula

Mr SPRY (Bellarine) — If the responses by the Minister for Police and Emergency Services to my concerns about police response times in the Geelong region are any indication of the way he runs his portfolio, then Victorians have every reason to be concerned.

In a letter I received yesterday the minister apologises for misleading me in an earlier letter in which he tried to explain why it took police in Geelong 30 minutes to attend a peak hour accident near my office. Fortunately a number of good Samaritans covered for the police, but for them to have to direct traffic for 30 minutes is simply not good enough.

To his credit the minister eventually offered an apology. But then he could not help himself: he had to get in a dig about cost cutting under the former Kennett government. He forgets that we had no option. The state of Victoria was virtually bankrupted by the previous Cain and Kirner regimes — sadly, a Labor government characteristic.

Worse still, as far as I am concerned, with regard to police numbers he says in his letter that 'There is no record of any expression of concern on your part'. Wrong again. If he checked his files properly he would find a letter from me dated 23 April 1999 to the former police minister, the Honourable Bill McGrath, in which I raise the issue of operational resources at the Drysdale police station.

I ask the minister to get his facts right in future. My constituents are simply not impressed.

Russian trade delegation

Ms ALLEN (Benalla) — I have great pleasure today as member for Benalla on behalf of my constituents and on behalf of other government members to welcome members of a trade delegation from Russia who are currently sitting in the gallery. They include Victor Timofeev, the Governor of Krasnodar's proxy, and his wife Inna. Heading the delegation is Vladimir Melnik and partners Edem Ashurov and Eduardo Goloborodko.

The delegation will be finalising a joint venture agreement with Global Products International Pty Ltd, a Victorian company led by Marg and Ian Collins of Myrtleford, and Maxbrad Ltd — its Russian company — which concludes four years of planning and negotiation.

One of the outcomes of this visit will be to purchase and enter into long-term contracts and to investigate other trade opportunities from Victoria, particularly from businesses in and around the north-east, including wineries, Monsbent and agriculture.

I, along with Global Products International, am very excited about present and future opportunities this delegation will bring to the state of Victoria. Global Products International and Maxbrad thank Ian and Ross Kennedy from Food Group for sharing in the vision of this joint venture.

They are also being assisted by the Shire of Alpine, the Rural City of Wangaratta and the Benalla community council, who will host the delegation at luncheons and morning teas and will be showing delegation members around various businesses right round the north-east and meeting with Department of State and Regional Development representatives tomorrow.

Surf Coast: debt

Mr PATERSON (South Barwon) — Constituents of mine living and paying rates in the Surf Coast Shire have good reason to question whether this Labor state government has completely lost the plot.

Barely a day goes by when the ALP's Mr Negative, the honourable member for Geelong North, or some other Labor desperado is not frothing at the mouth over the City of Greater Geelong. Yet here is the Surf Coast Shire, just down the road and $8 million in the red, yet there is not a peep from these hopeless nongs from the ALP. Surf Coast Shire residents are losing under Labor.

The ALP's community cabinet is meeting at the Surf Coast Shire soon. It will be a test for this lazy Labor government as to whether it bothers to give assurances to local residents concerned at the state of their council's finances.

Recently the Labor government cancelled the electrification of the Melbourne–Geelong rail line, walked away from the Grovedale railway station plan, and told the Barwon Heads Football and Netball Club that no money will be available to enable it to relocate to Village Park. When the community cabinet visits Torquay, just what bad news from Premier Bracks will be revealed on the Surf Coast? No doubt the ALP will confirm that it will continue with the great home buyers stamp duty rip-off.

Labor deserves to be thrown out of office at the next election. And once again, the Liberal Party will clean up the ALP's mess.

The ACTING SPEAKER (Mr Lupton) — Order! The honourable member for Geelong has 1 minute.

Melbourne–Geelong road: traffic control

Mr TREZISE (Geelong) — As this house is well aware, the upgrade to the Princes Freeway is due for completion in September. In recent days debate has begun in the community of Geelong as to whether the speed limit should remain at 100 kilometres per hour or be increased to 110 kilometres per hour. As a regular commuter on that road I appreciate where those calls are coming from.

However, as a member of the Bracks government, a member of the Road Safety Committee, and importantly as a member of the Geelong community, I firmly believe that we must treat any such decision with utmost responsibility.

I further believe that any decision must be taken with an emphasis or focus on safety far above that on speed. I personally believe that an emphasis on safety over speed is necessary for three important reasons: firstly, the Melbourne–Geelong road has an abhorrent history

of death and carnage; secondly, a significant contributor to those deaths is speed; and thirdly, increasing the speed limit by 10 per cent will take only 5 minutes off a trip. I do not believe that a 5-minute saving on a 60-minute trip is worth the loss of one more life on that road.

Therefore, I repeat that any decisions — —

The ACTING SPEAKER (Mr Lupton) — Order! The honourable member's time has expired. The time for raising business under members statements has expired.

NATIONAL CRIME AUTHORITY (STATE PROVISIONS) (AMENDMENT) BILL

Introduction and first reading

Mr HAERMEYER (Minister for Police and Emergency Services) introduced a bill to amend the National Crime Authority (State Provisions) Act 1984 so that it more closely reflects the National Crime Authority Act 1984 of the commonwealth and for other purposes.

Read first time.

MAGISTRATES' COURT (KOORI COURT) BILL

Introduction and first reading

Mr HULLS (Attorney-General) introduced a bill to amend the Magistrates' Court Act 1989 to establish a Koori court division of the Magistrates' Court, to provide for the jurisdiction and procedure of that division and for other purposes.

Read first time.

THEATRES (REPEAL) BILL

Introduction and first reading

Mr HULLS (Attorney-General) — I move:

That I have leave to bring in a bill to repeal the Theatres Act 1958, to amend the Anzac Day Act 1958 and for other purposes.

Mr BAILLIEU (Hawthorn) — I ask the Attorney-General to provide a brief explanation of the purpose of the bill.

Mr HULLS (Attorney-General) (*By leave*) — An all-party committee looked at the Theatres Act and made recommendations — —

An honourable member interjected.

Mr HULLS — Indeed, the subcommittee of the Scrutiny of Acts and Regulations Committee — that high-profile committee — made a recommendation to repeal the Theatres Act, which would enable picture theatres to open on Good Friday and Christmas Day, but in repealing the Theatres Act the prohibition on live entertainment on Anzac Day would have to be dealt with. So the Anzac Day prohibitions are now being moved into the Anzac Day Act from the Theatres Act.

I assume the reason for the question is to determine whether or not there is any change to the current situation on Anzac Day. The answer is no. The prohibition under the Theatres Act simply moves over to the Anzac Day Act.

Motion agreed to.

Read first time.

RACING ACTS (AMENDMENT) BILL

Introduction and first reading

Mr HULLS (Minister for Racing) introduced a bill to amend the Racing Act 1958 to provide for the approval of the entering into of certain classes of partnerships by bookmakers and the approval of certain classes of companies acting as bookmakers, to make other amendments to that act, to amend the Lotteries Gaming and Betting Act 1966, to amend the Victoria Racing Club Act 1871 to remove the borrowing restriction on the Victoria Racing Club and for other purposes.

Read first time.

ENERGY LEGISLATION (FURTHER MISCELLANEOUS AMENDMENTS) BILL

Introduction and first reading

Ms GARBUTT (Minister for Environment and Conservation) — I move:

That I have leave to bring in a bill to amend the Electricity Safety Act 1998, the Gas Safety Act 1997, the Electricity Industry Act 2000 and the Gas Industry Act 2001 and for other purposes.

Mr BAILLIEU (Hawthorn) — I ask the minister for a brief explanation.

Ms GARBUTT (Minister for Environment and Conservation) (*By leave*) — I can advise the honourable member that this bill deals with a range of

technical issues mainly to do with safety, and obviously the details will be in the second-reading speech.

Motion agreed to.

Read first time.

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT BILL

Second reading

Debate resumed from 21 March; motion of Ms DELAHUNTY (Minister for Planning).

Mr BAILLIEU (Hawthorn) — The Building and Construction Industry Security of Payment Bill comes in a noble cause — the cause of peace and tranquillity in the building and construction industry. The Liberal Party opposition will not be opposing the bill. It will be raising some concerns. In addition it will raise some concerns that the industry has raised with it.

It had been my understanding that the government would propose amendments. The honourable member for Mitcham had advised me of that earlier this week, but I understand today that that will not proceed and there will be no government amendments. Given some of the industry's concerns I think that is unfortunate. I suspect there is cause for some amendment to the bill. The opposition would counsel the government to consider those amendments proposed by the industry while the bill is between houses.

I note, though, from the briefing that the opposition received from the government that the honourable member for Mitcham agreed with my synopsis that at least in the short term this bill is likely to have very little impact. He has also advised me that the government expects to review the bill in 12 months time, so in that sense we acknowledge that the bill has a noble cause. However, it is our view that it is unlikely to have any material impact on the industry at this stage.

The building industry is generally a volatile and difficult one. It is prone to disputes. It is prone in some cases to the actions of hotheads, and in some cases to difficult dispute resolution procedures. There are breakdowns in both communication and contracts, and failures of contracts on a regular basis. At its best the building industry is a proficient and essential one for Victoria and for Victorians, and in general those who participate in it do an extremely good job. It is only when we get those breakdowns that problems emerge. Builders, contractors and consultants go broke; they get into financial difficulty. They do so for a range of reasons, though. I know from my own personal experience, because I have witnessed some of those unfortunate failures and breakdowns. As I said, they occur for a range of reasons. They include underpricing, the financial management failure of both contractors and their subcontractors and their consultants; poor workmanship; time pressure; inexperience; and also, obviously, unscrupulous behaviour on the part of those at both ends of the contract. Be they principal contractors, subcontractors or consultancies, there are unscrupulous people in the building industry. We only have to refer to the royal commission which is currently being conducted into the building industry — but also the construction industry — to be a witness to that, and that needs to be acknowledged.

It is somewhat unfortunate that the minister's press release on this subject tended to betray a certain bias towards some business components of the construction industry. That is to be regretted.

However, payment difficulties occur. Undoubtedly some breakdown and failure in contract positions occurs because of payment difficulties. It is that issue which this bill seeks to address. In that vein a task force was established by the government in 2000 to look at this issue to see whether any legislative or policy changes might be made in regard to security of payment or basic payment difficulties in the industry. This bill is a consequence of that task force's report and the government's consideration of the report.

The bill comes in four parts. Part 1 is a preliminary section which includes critical definitions, which I shall come back to. Part 2 establishes the right to progress payments. Part 3 goes to the issue of recovering those payments, and that part in itself has six divisions which cover a number of items. Part 4 contains the miscellaneous provisions in the bill.

Who is affected by this bill is an important question. The answer is that potentially everyone involved in the building and construction industry is affected, be it the state government, the federal government, local government, or contractors, consultants, builders, subcontractors, sub-subcontractors, professionals, designers, detailers, suppliers, and those who provide services to the building and construction industry.

Interestingly, though, there are a range of exclusions in the bill. They are contained in the definitions. They are exclusions as to what comprises the building and construction industry, what comprises the goods and

services provided to the building and construction industry, and what comprises the contracts involved.

When it comes to the contracts involved it is useful to contemplate building and construction industry contracts as a chain. We need to understand that that chain can be a continuous link between a financier, a developer, an owner, a project manager, a consultant, a builder, a subcontractor, a sub-subcontractor, and suppliers along the way. We need to understand that each link in the contract chain in the industry is the subject of scrutiny in this bill. And depending where you are in the chain, unfortunately — and I foreshadow one reservation we express — you can be treated in a different way.

So who in the industry is not affected by the bill? It is difficult to say at this point, and it will undoubtedly be the subject of some confusion. Hopefully at some stage it will be the subject of some amendment or certainly some clarification by a ministerial guideline or directive, or even regulation, because the exclusions in the bill make it particularly difficult. As I said before, the function of those exclusions is to potentially consider each link in the chain in a different manner.

The purpose of the bill itself is essentially fourfold. Firstly, this bill establishes a default system of payment in the building and construction industry. Secondly, it establishes an adjudication process in the building and construction industry in regard to those payments, and that is where there is a matter of dispute. Thirdly, and this is a key point pressed by the government, it deals with provisions which are described by the government and the task force as pay-when-paid provisions. They are provisions which simply mean that one party to a contract says to another, 'I will pay you when I am paid'. That is not an uncommon provision, be it in writing or verbally, throughout the building and construction industry. It occurs on both the professional side and the building work site side. Fourthly, the bill establishes the novel process of recovering payment from the principal at the top of the chain. That in itself is new to the legislative system, and it will no doubt test the provisions of the bill and the operation of the industry.

The need for this bill is established primarily by personal experience and rhetoric. The task force has indicated that it was not able to quantify the need. I will quote from the task force report. Item 4 of the executive report recommendations refers to its missions, one of which was:

> … to obtain data on current industry contract payment practice and evaluate its incidence and effect.

The task force response for that is interesting:

> The task force was advised in its initial discussion paper of earlier attempts to quantify the security of payment problem. Task force members concluded, however, as did the 1993–1994 Economic Development Committee of the Victorian Parliament, that an accurate statistical measure of payment problems is not possible.

It goes on:

> The task force could not identify any means by which it was possible to extract from the general records of bankruptcies and receiverships precisely how many could be attributed to a building and construction industry payment problem. In this way conventional statistical measures fail to identify the significance of payment difficulties.

That in itself is probably not an unreasonable conclusion because it is difficult, but it does raise the question of how we came to the detail of this bill. This highlights the fact that we have no way of knowing whether the bill has been or will be successful, because there is no benchmark. Short of having that benchmark, we can only guess that we will be relying on the rhetoric and experience of individuals in the industry and perhaps the conclusion of inquiries such as the current royal commission. However, whether the royal commission itself gets into issues as far down the line as a few thousand dollars in dispute between a subcontractor and contractors or consultants is unlikely. So how are we going to measure it?

Perhaps the only measure we have is the New South Wales experience, upon which this bill is substantially based. Given that this bill establishes an adjudication procedure similar to the New South Wales experience, we were advised in the briefing that in the past 12 months New South Wales made just 50 adjudications. Given that this bill covers, as does the New South Wales act, issues right across a building and construction industry worth billions and billions of dollars, that is a very small drop in the ocean. Perhaps that is a good thing. Perhaps it is an indication that the New South Wales building industry has a payment problem, or perhaps it is an indication that things are working. I suspect that in reality it is probably a reflection of the fact that the New South Wales act, as with this bill if enacted, is unlikely to have a material impact on industry practices which go back for essentially hundreds of years.

In terms of what exists at present, there is no Victorian act which deals with a particular payment system. We have consumer legislation; we have common law and contract law; we have a building commission which oversees the conduct of building; and we have the Domestic Building Contracts and Tribunal Act. Most importantly we have existing contracts, which are

perhaps the key to understanding where the building industry in Victoria is at. For instance, there are Australian standard contracts; there are a range of Master Builders Association (MBA), Housing Industry Association and Royal Australian Institute of Architects (RAIA) contracts — —

An honourable member interjected.

Mr BAILLIEU — I do not want to bore the house any more than I am sure I will with this rather dry topic.

Mr Robinson interjected.

Mr BAILLIEU — The honourable member for Mitcham and I can share a vital interest in this, as I am sure everybody else in the chamber does as well!

There are Australian building industry contracts for minor works and basic works; the basic building contract; construction industry contracts for simple works; the joint contracts committee of the RAIA, the MBA and the Property Council of Australia; the minor works contracts of the RAIA; and the simple building works contracts, to name just a few. They already provide payment arrangements and payment dispute arrangements for a very substantial part of the construction industry. They are not legislative, but they are under contract law and common law, and in the vast majority of cases they operate extremely successfully — and they have operated on the basis of widespread knowledge in the industry.

That brings me to the origins of this bill. Clearly the 1994 Economic Development Committee looked at this issue and found it a difficult one to resolve. In New South Wales, as I mentioned earlier, an act has been in place for a couple of years. In the United Kingdom an act has been in place since 1996 which provides arbitration and suspension opportunities for contractors. In Canada a common-law lien provision has been enacted since 1997, and we are advised that in the United States of America there is at least a government requirement for the posting of bonds by contraction, but that is to a large extent a separate issue.

The task force made some 30 recommendations regarding this issue. The task force was represented by unions, contractors and government and departmental officials.

Ms Asher — Who was it chaired by?

Mr BAILLIEU — In response to the honourable member for Brighton, the task force was chaired by the honourable member for Mitcham. I guess that is significant. He must feel a little aggrieved by the claims of those members of the industry who said it was regrettable that despite the contribution of the task force over a long period it was not consulted on the content of the bill. The task force made several recommendations, and the government responded to some of those in the report that was issued. Unfortunately, however, the task force and its members were not consulted on the bill.

Ms Asher interjected.

Mr BAILLIEU — And as the honourable member for Brighton says, I suspect that it is a function of the shallow consultation that this government always engages in. Perhaps it is a function of its personal relationships with some members of the task force, some of whom have made comments very critical of the government in recent weeks — including union member Dean Mighell. But suffice it to say that there are — —

Mr Maclellan — No wonder they did not give him a copy of the bill. He has been giving them a copy of the bill!

Mr BAILLIEU — In his case he may have given them other bills as well.

An honourable member interjected.

The ACTING SPEAKER (Mr Kilgour) — Order! The honourable member for Hawthorn will ignore interjections from both sides of the house.

Mr BAILLIEU — I take your point, Mr Acting Speaker; nevertheless it is very difficult to ignore the fine contribution of the honourable member for Pakenham.

Mr Maclellan interjected.

The ACTING SPEAKER (Mr Kilgour) — Order! The honourable member for Pakenham will have a full opportunity to contribute to the debate if he cares to stand in his seat at a later time, so rather than listening to the honourable member for Pakenham it might be better if we continued with the address of the honourable member for Hawthorn.

Mr BAILLIEU — I am in awe of your ruling, Mr Acting Speaker.

I want to address, in general terms, those areas where the opposition thinks there are failures in this bill. Perhaps the principal failure is that the government has assumed it has industry support on the bill. I guess it had industry desire for the bill, because there was a

collective, in principle view amongst industry players that this would be a useful contribution if these disputed issues could be resolved. In fact in this chamber last week during the government business debate the Leader of the House suggested that the opposition could have brought this bill on immediately. The responsible minister was sitting at the table at the time, and the honourable member for Monbulk and I both made the point that industry consultations had not concluded and that we had been given assurances that the bill would not come on last week.

The minister, in her wisdom, said that the opposition was obviously out of touch with the industry and that it should be prepared to debate the bill immediately. The sad reality is that on 15 April the Housing Industry Association (HIA) wrote to the government and the minister. I have read the minister's correspondence, because I received a copy from the HIA. It was not a copy that fell off the back of a truck; I was actually sent a copy by the HIA — so I had read the minister's correspondence, but the minister had not. I suspect that that is a reflection of the lack of consultation with the industry since the bill was drafted. Similarly the Air Conditioning and Mechanical Contractors Association has — —

An honourable member interjected.

Mr BAILLIEU — 'Not known at this address'! That is perhaps exactly what happened, because she did not seem to be aware that the Housing Industry Association, a major contributor to the task force and a body with whom she had allegedly had recent contact regarding issues associated with insurance, had expressed similar concerns.

I want to deal first of all with some of the concerns expressed by the opposition and then some that have been raised by industry, which I also share. In particular I want to deal with the exclusion provisions in this bill. The Building and Construction Industry Security of Payment Bill provides for significant exclusions in its definitions. Clause 5(1), which deals at length with the definition of 'construction work', has very extensive inclusion provisions. But equally, clause 5(2)contains exclusion provisions, saying that 'construction work' does not include:

(a) the drilling for, or extraction of, oil or natural gas;

(b) the extraction (whether by underground or surface working) of minerals including tunnelling or boring, or constructing underground works, for that purpose;

(c) any other works of a kind prescribed for the purpose of this subsection.

At face value it seems reasonable, but in the construction industry — this is beyond the building industry — these are very important exclusions. That is because subcontractors run right down the line in almost every one of those, and many of them are concerned that as a consequence they will be excluded from the provisions of this bill — and they have expressed those concerns to the opposition. I presume, indeed I am sure, they have expressed those concerns to the government.

Clause 6 goes to the definition of 'related goods and services'. It is an extensive inclusion of what they define. I note that local government services are not specifically mentioned as part of those services, and it is the opposition's understanding from the briefing that they are deemed to be included as related goods and services. Thus local government is roped into the application of this bill.

We get into difficulties with clause 7, which is entitled 'Application of the Act'. Subclause 7(2) provides a very extensive exclusion. Paragraph (a) provides for exclusion from the application of this act to:

> … a construction contract that forms part of a loan agreement, a contract of guarantee or a contract of insurance …

In some respects I suggest that is not an unreasonable exclusion because at least we can assume that someone who is lending money on a contract in the construction industry is likely at least to apply adequate standards to ensure the performance of the contract will be as required.

We get into difficulty with paragraph (b), which relates to issues raised by the opposition and by the industry. It excludes from the application:

> … a construction contract which is a domestic building contract within the meaning of the Domestic Building Contracts Act 1995 between a builder and a building owner (within the meaning of that Act), for the carrying out of domestic building work (within the meaning of that Act) the whole of which is carried out on any part of a premises that the building owner resides in or proposes to reside in …

That is cumbersome and difficult and thus the bill contains an exclusion clause which requires us to go to another act — the Domestic Building Contracts Act. Section 5 of that act is the equivalent of what clause 7 of the bill applies to. Subsection 5(1) of the Domestic Building Contracts Act is an extensive inclusion clause about what domestic building work the act applies to. Such work includes the erection or construction of a home, landscaping, paving, fencing, garages, carports, workshops, swimming pools or spas. It also includes provision of lighting, heating, ventilation,

airconditioning, water supply, sewerage. Subparagraph (b) includes the renovation, alteration, extension, improvement or repair of a home.

So, the bill before us has an exclusion of those provisions subject to them being relevant to the building owner residing in or proposing to reside in the building. Effectively, renovations are excluded. Presumably no-one will be living in a fence, a swimming pool or a spa. To the extent that they are included in the Domestic Building Contracts Act, they are excluded by the additional part of clause 7(b) in the Building and Construction Industry Security of Payment Bill.

And if that was not difficult enough, we can go to section 6 of the Domestic Building Contracts Act 1995, entitled 'Building work to which this Act does not apply'. It does not apply to:

(a) any work that the regulations state is not building work to which this Act applies;

You cannot get much more general than that. It goes on:

(b) any work in relation to a farm building or proposed farm building (other than a home);

(c) any work in relation to a building intended to be used only for business purposes;

(d) any work in relation to a building intended to be used only to accommodate animals;

(e) design work carried out by an architect or a building practitioner registered under the Building Act 1993 as an engineer or draftsperson …

Interestingly, that introduces the phrase 'design work' and we have to distinguish that from the previous paragraphs, which refer to 'any work'. The act goes on:

(f) any work involved in obtaining foundations data in relation to a building site;

(g) the transporting of a building from one site to another.

So we are in a situation where we are dealing with a security-of-payments bill. The bill includes exclusions, and those exclusions are found in the Domestic Building Contracts Act. But those exclusions themselves include exclusions. I am saying it slowly so that Hansard staff can get it down, but I suspect that if you were in the building industry and you were contemplating an action under this legislation, the very act of determining whether you are covered in your contract relationship by this bill is set to be one of considerable complexity.

The double exclusion provisions are very complex indeed. In reality the opposition can foreshadow that there will be situations where contractors, be they tradesmen or consultants, will find themselves operating under different regimes for different jobs, different regimes from one contract to another and different regimes according to where they fall in the link in the chain because a contract between a builder and a building owner who intends to reside in the building is excluded by subparagraph (2)(b) of clause 7. But a subcontract between that builder and the subcontractor, who is perhaps a tradesman, is included.

The reality is that a subcontractor or a tradesman who subcontracts to a builder will be covered by the Building and Construction Industry Security of Payment Act, but if he directly contracts with the owner he will not be and he will be subject to the provisions of the Domestic Building Contracts Act which run to disputes being settled by the Victorian Civil and Administrative Tribunal (VCAT). It is fair to say that stakeholders in the industry have every right to be cautious about the complexity in this bill. I will come back to that in a little more detail, covering some of the submissions that we have received.

I also want to express a concern about the lack of mandatory provisions in this bill. There is a minimum of sanctions. It is one thing to say that this will happen and people will change their habits — the honourable member for Mitcham commented to me in our briefing that at least we will be seeking to change the culture, and changing the culture in the building industry is, as I said before, a noble cause but very difficult to do — but if we are not going to mandate behaviour, then I suspect that the existing practices will continue.

As we go through the bill we find many opportunities for contractors, tradesmen, and consultants to do things at their option rather than having them mandated. By way of example, one of the principal objectives of the bill is established under clause 13 — that is, the pay-when-paid provisions that I mentioned earlier. Clause 13(1) reads:

A pay when paid provision of a construction contract has no effect in relation to any payment for —

(a) construction work carried out under the contract; or

(b) related goods and services supplied under the contract.

In itself it reads quite reasonably, but in reality all it is saying is that those paragraphs will have no effect. The intent expressed by the task force was to ban those provisions, but the reality is that they will continue to exist and that they are the preferred practice in many

parts of the industry, particularly on the consultancy side of it.

We can say that pay-when-paid provisions have not been banned and have not been outlawed, and that the bill provides no sanctions. They will continue to operate, and it is only when there is a failure or a breakdown that we can expect somebody to turn to the bill to find some remedy. That is perhaps a shame, because it does not send a message that changes the culture. Instead it just sends a message that, as it reads, the provisions will have no effect in the event of a dispute but that we can expect them to continue in contractual relationships.

We are not just talking about written contracts, we are also talking about verbal contracts, and the government has been at pains to ensure that verbal contracts are covered by this bill.

So as I said, we do not have many mandatory provisions, and there are minimum sanctions involved. There has also been an emphasis on the clauses of this bill providing a speedy resolution. The reality is that that is not going to occur. In fact according to the time lines scheduled for the adjudication procedures under the bill — and I received a briefing note from the honourable member for Mitcham via the department just this afternoon, and I thank him for that — if everything goes according to plan and is fairly neat, we will have a delay of 35 business days between the first claim and the claimant having the capacity to suspend work. So effectively we will have an eight-week turnaround if everything goes well. That is hardly a speedy resolution in the building industry.

Mr Robinson — Compared to what?

Mr BAILLIEU — And it has a proviso. The honourable member for Mitcham says that that has to be compared to the existing situation. But in the vast majority of cases we have an industry that operates on an existing contract basis — and we will come back to that, but existing contracts are essentially excluded. However, they operate on a speedier basis than that. In reality there is, under the seven or eight-week delay, the additional provision that if the proprietor or the contractor upstream disputes the claim and the adjudication, everything is on hold and we are back into a Victorian Civil and Administrative Tribunal arrangement.

I wish the provision well; I do not mean it any harm. However, I suspect the reality is that the lack of sanctions and mandatory provisions will mean, as I said at the start, that it is likely to have very little effect, if any, in an industry that is not shy about representing itself over matters of payments due and before a range of tribunals. I am concerned it will not provide a speedy resolution as promised in the second-reading speech.

I wish to express some further reservations. While I acknowledge that most of the bill has been lifted from the New South Wales act, clause 14(2) has not. It is a clause of deliberate and single construction by this government and was not, so far as I know, sought by the task force. It reads:

> A claimant may serve only one payment claim in respect of a specific progress payment.

It reads fairly innocently and one could be forgiven for overlooking it. The reality in the building industry is that if you are working on a monthly claim basis you make your claim, set out what you are claiming, and in the typical fashion under the usual contract arrangement, somebody then assesses your claim. If there is a dispute over the claim, often a part payment will be made and that portion of the claim that is disputed will be set aside. The dispute usually will be resolved by negotiation and with many contracts by arbitration. If the claimants can serve only one payment claim in respect of a specific progress payment, then the way the bill reads, we run the risk of those disputed claims becoming an obstacle to further progress of work and further progress of claims.

The briefing suggested that this has been introduced because of a problem in New South Wales with multiple claims. My experience is that in the building industry overlapping claims exist constantly and have existed for as long as I can remember. I suspect that while the intention is a noble one — to prevent a problem — the government may find this will lead to even worse problems being created as a consequence.

Division 4 of part 3 of the bill deals with the recovery of payments from a principal. This is essentially a new concept and is substantially untested, certainly in this state. It says that if a claimant has made a claim on the basis of his contractual relationship with an upstream contractor and then seeks an adjudication of that claim, where that adjudication is then disputed by the upstream contractor and there is then a failure to provide security of the payment in dispute or a further failure of the upstream contractor to pay in accordance with the dispute resolution or the adjudication, the claimant can then take the claim two links up the chain to the principal involved and claim from the principal.

In itself that seems reasonable when you are looking up, but if you are looking from the side or you are looking down you can find a different perspective. I

have seen this in the industry myself. Subcontractors were the victims of a building failure of their head contractor and they then went to the principal — the proprietor in this case — and sought payment. The difficulty is that the principal, the one two links up the chain, may have already paid. That presents the problem of a principal effectively being required to pay twice. The problem was noted by the task force but I am not sure that it has been adequately resolved in the bill. I look forward to the honourable member for Mitcham resolving that for me in his contribution to the debate. I only wish we had the opportunity of going into committee stage so that it could be done in a more precise way with the minister. I suspect we are not having a committee debate for that very reason.

Recovery from the principal in division 4 of part 3 stands to be a problem. On top of that, in the event that legal action is taken by the principal under clause 37(1)(b), those recovery provisions basically are set aside until the legal action is resolved. Hence speed is again lost and the goodwill intent of this bill to produce speedy, easy and simple resolutions of building disputes is foregone.

As I said, clause 9(2) goes to the exclusions and I wish to come back to that briefly — that is, to the effective exclusion of existing contracts. I dealt with exclusions in the definitions of construction work and goods and services and with exclusions on the basis of the application of the act and the double exclusions that flow from that. However, clause 9(2), as the heading 'Rights to progress payments' suggests, establishes a right for progress payments. However, clause 9(2)(b) effectively excludes from the application of this act all existing contracts where progress payments are provided for in a contract. Clause 9(2)(b) specifically states in part:

> … if the contract makes no express provision with respect to the matter, the date occurring 20 business days after …

And it goes on. Effectively there is an interval of 20 business days, but that is only where the contracts do not provide. If the contracts do provide effectively there is a further exclusion, and that then excludes all those standard contracts which I mentioned before and which already dominate the building and construction industry. Consequently the list of exclusions from this bill has grown greatly. While the bill is in the name of a noble cause, it has a very narrow effect on not too many.

I also want to highlight some things which might have been but have not been included or covered in the bill. They go to what I describe as the principle of certified all-paid claims, which has been operating in the building and construction industry in a professional manner for some time. That is a protection provided to subcontractors by ensuring that before a payment is made to a contractor, the principal or the certifier — in the case of an architect or a superintendent under the Australian Standard 4000 series contracts — calls for a certification from the contractor that subcontractors' and employees' wages and entitlements have all been paid to that point. It is a provision that protects particularly those subbies and consultants from the failure of the contractor at least in the term of that period. It goes to the example I used earlier. It is potentially a useful addition and I invite the government to consider it again in the future.

I also highlight that the bill does not cover what I call the horizontal exposure of contractors and subcontractors. The bill deals with a contract chain, but when it comes to a subcontractor or tradesman they will no doubt have contracts in a number of different areas.

A contract relationship up the chain is one thing, and that is covered by the bill to some extent with all the exclusions noted, but in the event of a failure on another job that a contractor or subcontractor may be undertaking at the same time, that would still expose that contractor or subcontractor — depending on the nature of those contracts — to a failure or a breakdown within the contract chain itself, and that is not covered by the bill.

The other things that are not covered are the third-party certification opportunities. As I mentioned before, under the AS 4000 construction contract series there are provisions for a superintendent to certify for claims, and under Master Builders Association, Housing Industry Association and Royal Australian Institute of Architects standard contracts which operate right throughout Australia there are provisions for an architect as an agent to certify claims, and those provisions have stood the test of time. The provisions have certainly been under assault from a variety of quarters for many years to try to displace the superintendent from that role, but third-party certification has served the industry well, and that is not covered by this bill.

One other item I wanted to raise is clause 25(6), which contains the appeal provisions. As I indicated earlier, an adjudication procedure is established by this bill, but in the event of there being a dispute there is no formal right of appeal. However, as an intermediary step this adjudication is still subject to common-law provisions which allow a party to take a dispute to a further tribunal or to the courts, be it on a point of law or under a specific act. The reality is that if a respondent to one of these claims signals a dispute and pursues that

dispute, then the objectives of this bill are delayed and, indeed, not met, and the matter returns to a tribunal-based or court-based solution.

They are some of the concerns the Liberal opposition raises directly. I also want to cover some concerns raised by the task force itself. As I noted earlier, the task force made some 30 recommendations, 15 of which were of a legislative nature. The task force report dealt with those recommendations, and the government — admittedly before the construction of this bill — responded to them. I will deal with a few of those recommendations because they highlight some of the issues that have not been picked up and which remain issues that we hoped would have been resolved by the government before it constructed this bill.

Recommendation 1 states:

> A Victorian security of payment system should be broadly based through the building construction industry and cover all parties —

I note the words 'all parties' —

> in the contractual chain, including clients, consultants, contractors and subcontractors as well as direct suppliers. This coverage should include civil and non-civil works.

That was the intention. The response from the government of the time reads in part:

> The broad scope of the legislation should cover all construction work and all contractual participants in the industry under the contractual arrangements between them but only where there is a contractual arrangement.

It then goes on to say:

> There are some exemptions which will be needed in the legislation …

We have still not had a definitive explanation for the need for those exemptions, and the industry and the task force seem not to be comfortable with those exclusions.

Recommendation 2, as I mentioned earlier, went to the desire to ban the use of paid-if and paid-when clauses, and that has not been taken up other than to make them not effective, so they are not banned at all. Recommendation 2 went on further to seek the introduction of legislation to apply to all contracts, whether written or verbal. I note that in the government's response — and it is an important note to get into the second-reading debate because I would not want it to become an issue down the track in relation to some contracts — it has indicated that:

> Milestone payments should be accepted as meeting the requirement for progress payments and it is recognised that payment upon completion may be appropriate in specific areas such —

the word 'as' is omitted —

> delivery of a computerised traffic management system to be installed in a tunnel or bridge project.

Milestone payments are not periodic payments; they are payments made at certain stages of work and they are certainly not uncommon in the building industry, but they are not specifically reflected in the legislation so it is important to note in this debate the fact that the government is supportive of milestone payments meeting the notion of progress payments.

Recommendation 2 went on further to seek legislation that would:

> … prohibit the recommencement of suspended work by a third party while payment remains outstanding.

That recommendation was specifically not taken up by the government, and in its response it suggested that it was contrary to the common-law position. The Liberal opposition accepts that response, but again it is worth noting.

Recommendation 2 went on further to seek legislation that would:

> … prohibit the contracting away of rights granted by the legislation, with the exception —

and it is important to understand this —

> of the periodic payment period that may be agreed to be beyond a month under certain circumstances.

That is similar to the milestone provisions I referred to before.

It is important to read the response from the government to understand how the bill will apply to any conflict that may emerge. It has been suggested by some industry players that conflict may emerge between the provisions of the bill and the provisions of existing standard contracts as to which provisions will have priority. The government's response to this recommendation reads, in part:

> … if the parties agree upon periodic payments, those provisions should apply rather than those provided for in the act. This means that whilst the parties are free to agree on the frequency of payment, if a payment is not made the rights to implement the payment requirements of the act apply including the tight time lines for adjudication that cannot be overridden.

In effect, the government in that response is giving strength to the concerns expressed by the industry that there will be conflict between existing contracts and

those provisions of the bill. The Royal Australian Institute of Architects has set out those concerns at some length in correspondence to us.

Mr Robinson — Declare your interest!

Mr BAILLIEU — Declare my interest, the honourable member for Mitcham says. I am an architect. I confess: I am an architect. Hold me responsible!

The institute of architects has expressed to us its concerns that there will be a conflict and that that conflict is set to emerge in a more substantial way than even the example occurring in New South Wales right now.

Recommendation 3 is also an important one, and it reads:

> That references to variations be taken to include references to set-offs, and other equivalents.

The issue of whether variations and set-offs or disputed work standards can be taken into account by an adjudicator in this adjudication is unclear under the provisions of the bill, and if memory serves me correctly it is clause 23 that sets out the requirements of the adjudicator's determination. The question of whether or not set-offs, offsets, charges against or variations can be considered by the adjudicator is likely to cause further disputes.

Recommendation 5 states that:

> The periodic payment period deemed by legislation should be monthly.

That has been covered by clause 9(2)(b), but I again note for the sake of clarification of future conflict that the response of the government to recommendation 5 included the words:

> … the deemed periodic payment period should not override payment arrangements set out in contracts.

That response is actually in conflict with the response to part of recommendation 2, and I suspect that if somebody pores over this debate as part of some legal arrangement in future it will be covered off in favour of the existing contracts.

Recommendation 6 goes to the issue of establishing a payment dispute resolution system based on the New South Wales model, its emphasis being affordability and speed of determination. I have mentioned my concerns before about the speed or otherwise of this, and I again note that the task force recommended that speed, not delay, was of the essence.

Recommendation 7 again deals with core payments and variations as they might be considered by the adjudicator. I quote again from the response of the government to that recommendation:

> … but where there is uncertainty as to the amount due it is likely that the determination will be for the amount without the variation.

That is having a bob each way and will probably again lead to some conflicts.

Recommendation 8 states:

> That the payment dispute resolution facility … be accessible by domestic building contractors and subcontractors who currently access VCAT's building cases list.

This recommendation is no doubt supported by the honourable member for Mitcham. He was chairman of the task force that made the recommendation, which has specifically not been taken up by the government — in fact, quite the opposite. Those players in the industry have been excluded by clause 7(2), and I will not go over that again. It is important, however, to understand the following as recorded in the government's response to recommendation 8, which reads in part:

> There should be an exclusion for disputes between owners and builders under the Domestic Building Contracts and Tribunal Act, as such disputes should be only dealt with by VCAT.

That is the only rationale we have had for that exclusion, be it in the second-reading speech, the briefing or this response. I look forward to a more succinct and considered indication from the honourable member for Mitcham about why that has occurred and why it is that various industry groups are wrong in continuing to pursue it.

Recommendation 9 seeks:

> That appeals be allowed against the adjudicated determination of the payment dispute resolution facility to the appropriate civil court, and that such appeal hearing be expedited.

Clause 25 does not provide for appeal provisions against the adjudicator's decision but clause 25(6) says:

> (b) in the case of a determination from which there is a right of appeal …

The right of appeal is not defined anywhere in the bill, so we can only assume that a right of appeal emerges from common-law provisions or from other acts. As I said earlier, we can see ourselves going back to VCAT again.

Recommendation 13 goes to the issue of recovering from a principal and states:

> That an expedited procedure for recovery of payment direct from a head contractor or principal be considered as part of the right of appeal to the civil courts for outstanding progress payments.

I note here that the government itself acknowledged that:

> There is a need to ensure that the principal or head contractor does not pay twice in such circumstances …

I do not see any provision in the bill, however, that covers off that response or that concern.

I do not intend to go further through the task force recommendations, because basically they cover policy issues which the government has indicated it intends to pursue in some other arenas. I do, however, want to raise some concerns expressed by the Housing Industry Association — no stranger to the government. In a letter to the minister dated 15 April John Gaffney, the executive director, said:

> HIA believes that the government should review the bill in the light of developments in New South Wales before the bill is debated.

In effect the HIA was saying that the New South Wales act is being amended. New South Wales has essentially taken the lead in the provision of this legislation and the law associated with it, so why proceed with it now until New South Wales makes the changes, which are on a catch-up basis? The government has chosen not to go down that line but has indicated that it intends to review the act and no doubt amend it in 12 months time.

In the submission the HIA made to the government it said on page 2:

> No opportunity however was given to the task force or its members to independently review the actual draft bill before its tabling into Parliament.
>
> …
>
> This paper therefore seeks to address certain deficiencies in the bill, which have also been highlighted under the New South Wales act. HIA believes these issues should be addressed before final passage of the bill.

About clause 7, which outlines the scope and application of the act, the HIA says, in line with some comments I have made earlier:

> HIA does not see any justification for this limited exclusion to apply between a builder and building owner. HIA is of the view that if such legislation is to be introduced it should be as comprehensive in its scope and application and should apply to all domestic building disputes.

The HIA is certainly making clear where it stands on that provision.

Clauses 9 and 11 are about rights to progress payments and the evaluation of construction work and related goods and services. About them the HIA says:

> HIA believes that this latter subclause should be referenced to the estimated cost of replacing or rectifying the defective goods and not just the estimated costs of rectifying.

That is a highly technical issue but again is one that the government could have picked up in an amendment had it wished to. No doubt it will have to be picked up at some other stage.

Concerning clause 13, the pay-when-paid provisions, the HIA says:

> The no contracting out provisions under clause 48 could be seen as being in conflict with ‘paid when certified’ clauses under such contracts. If this is correct, ‘paid when certified’ clauses under a contract would have the effect of excluding, modifying or restricting the operation of the act and therefore would be void.
>
> HIA does not necessarily support the banning of ‘paid when certified’ clauses as distinct from ‘pay when paid’ clauses.

Clearly the HIA is reflecting a concern about the construction of the bill.

The HIA comment on clause 14, which makes provision for payments claims and the time line, is as follows:

> Under this clause there is no time limit for the claimant to make a payment claim under the bill after a claim entitlement arises.

About clause 14(c) the HIA says:

> The bill requires that a payment claim must state that it is made under the bill. Unless this is done the bill is not activated.
>
> This is a common provision in both New South Wales and the Victorian bill. Proposed amendments in New South Wales are likely to do away with this requirement, as there is no longer to be a deemed debt in the future to provide a payment schedule.

It is a highly technical issue and it is not going to have people dancing in the street, but the HIA has highlighted a deficiency in the bill, which could have been addressed.

In respect of clause 18, adjudication applications, it notes:

> HIA is of the view that the nominating authority should refer the application within a set time period of, say, 5 to 10 business days …

Again, this is regarded by the HIA as another deficiency.

There are a number of other concerns expressed, and I am sure the minister has this correspondence in which almost every clause is looked at in detail by the HIA. I only want to highlight some of them.

Clause 22 deals with the adjudication process. The HIA notes:

> There is no appeal process under the bill.

But as I have indicated before, there are effective appeal provisions under common law and other acts which will ensure that disputes interrupt what would otherwise be a smooth time line.

As to clause 23, the comment is:

> HIA notes that there is no specific provision for interest.

Again, that is another provision not picked up.

Clause 25 deals with security of payment following an adjudicator's determination. Where an adjudicator's determination is made and there is a dispute the adjudicator may then require the respondent to the claim to set aside an amount of money as security while that dispute is resolved. The HIA comments as follows:

> The bill provides for the respondent to give security (either an unconditional bank guarantee or payment of the adjudicated amount into a trust account). A similar provision applies in New South Wales but is likely to be abandoned under changes foreshadowed in New South Wales.

Again, it seems unfortunate that if that is occurring in New South Wales we are not matching that provision. It further says:

> HIA is of the view that security provisions/options be abandoned in line with the New South Wales proposals.

Clause 27 is entitled 'Consequences of not complying with adjudicator's determination'. The submission states:

> HIA is of the view that the bill should allow for the registration of determinations with the appropriate court, similar to rules of court which apply in cases in default judgment procedures. The determination once registered would become a judgment of the court. This procedure would accelerate prompt enforcement and payment procedures and save costs.

On clause 29 in respect of a claimant's right to suspend the HIA expresses concerns about the time line for building contracts and whether or not those time lines stop when there is a dispute or whether it is just an interruption into an otherwise fixed time line. The HIA goes into some detail about concerns which are not resolved under the bill.

The HIA also comments on the payment of a respondent's debt by the principal and the discharge notice provisions under clauses 35 and 40 respectively. I am sure the government is aware of all of those issues, but it has chosen not to respond at this stage. I am hopeful that it will respond while the bill is between the houses. The HIA has been cooperative with the Liberal Party — it certainly has been cooperative with the government on a number of other issues — and it is a shame that the government has chosen not to deal with those issues at this stage, but perhaps it is because it would have required amendments to be made and the bill to go into committee. Perhaps some further exposé of the detail of this bill would not necessarily have been good for the government.

I briefly mention three of the concerns expressed to us by the Air Conditioning and Mechanical Contractors Association. Firstly, it has a particular concern that the application of the bill to high-rise residential buildings is not clear. Application or otherwise is really the question, because under the inclusion of exclusions which include exclusions — —

Mr Hulls — That's easy for you to say.

Mr BAILLIEU — It is easy for me to say — I have practised it — but it will not be easy for contractors, consultants and those involved in the industry to work out what all of that means. I suggest that the Attorney-General, who is at the table and is no doubt enjoying the finer points of this debate, will pay due heed. Whether high-rise residential is in or out is a disputed provision.

Secondly, the association takes issue with the provision as to whether or not speculative builders are in or out on a domestic scene. There are builders who develop land and speculative housing and provide it in such a way that they, as owners of the property, also intend to live in the property. As a consequence whether they are in or out is an issue. Concerns are expressed about cross-charging, variations and like issues, which I mentioned earlier, and the capacity of adjudicators to deal with those issues.

However, the association's third point of concern relates to the status of equipment. If you were an airconditioning or mechanical contractor you would no doubt be very familiar with the situation where there has been either a dispute, a failure or a breakdown on a building site and equipment has been provided but not yet installed. Where that equipment has been provided

and not yet installed but is on site and there is a failure — for instance a builder goes broke — then there is often a dispute as to who owns the property. The Air Conditioning and Mechanical Contractors Association notes that under the provisions of this bill the prospects of there being even greater disputes about such equipment provisions under the provisions of the bill are still as strong as ever.

The Victorian Institute of Steel Detailers also expressed concerns about the proposed legislation. Correspondence received from the institute states:

> We therefore respectfully request that the act be given the broadest possible set of criteria with 'no exclusions'.

I repeat, 'No exclusions'.

> We are very concerned that many involved in the drafting industry could find themselves 'apparently' covered on either parts of projects or not at all, depending on the particular project they are drafting.

The institute has raised with us issues that go to the exclusions under the definitions. If you are a steel detailer there is a good prospect of your conducting work as a workshop contractor, in effect, but that you would be providing steel fabricated material to the mining industry, the oil industry, to oil rigs or farms. There is a real prospect of your being excluded from the provisions of the bill. It is certainly reasonable that the position of detailers in that situation be clarified by the government. As I said earlier, the RAIA has also expressed concerns, but I will not go further into those.

I would love to walk through the bill clause by clause, but the house will be relieved to know I am not going to do that. The honourable member for Mitcham is expressing his frustration because he knows every clause of the bill backwards!

Before I conclude I wish to mention a further provision — that is, a section 85 clause. How could I not mention the inclusion in the bill by the government of a section 85 provision? Clause 51 is headed 'Supreme Court — limitation of jurisdiction' and states:

> It is the intention of section 46 to alter or vary section 85 of the Constitution Act 1975.

The horrifying prospect for the Labor Party in opposition was a section 85 statement. I cannot remember how many Bracks government pieces of legislation the house has dealt with, but I would be surprised if it was not already up around the 100 mark for bills containing section 85 statements. I suspect it must be around 100.

Honourable members interjecting.

Mr BAILLIEU — Around the chamber there are some suggestions that that figure is not high enough while others suggest it is too many — I suspect I am probably on the right track. I cannot ignore the inclusion of yet another section 85 clause as an act of sheer hypocrisy by a government which, when in opposition, banged on about section 85 provisions in its absolute shameless pursuit of an issue.

I do not intend to say anything further other than to reiterate that, although the bill has a noble cause, the opposition does not believe it will yet have a material impact on the building industry. The opposition wishes the provisions well to the extent that they provide perhaps a change of culture or some peace and tranquillity or some subcontractors with the opportunity they may not have had before for a resolution of disputes. To that extent, the Liberal Party wishes it well and will not be opposing the bill.

Mr DELAHUNTY (Wimmera) — I rise not only as the honourable member for Wimmera but as the representative of the National Party on the bill. The Building and Construction Industry Security of Payment Bill has as its main purpose in clause 1:

> … to provide for entitlements to progress payments for persons who carry out construction work or who supply related goods and services under construction contracts.

My colleague in the other place the Honourable Jeanette Powell and I sent the bill and the second-reading speech to many industry people. They included Stan and Yvonne Jezewski, domestic builders of Shepparton; Anthony Villani, a building contractor from Kialla; R. J. and J. M. White, electrical contractor of Shepparton; and Wolfgang Kalveram of Hansen and Yuncken Pty Ltd, builders in Melbourne. I also sent it to various builders in my electorate, including Locks Constructions of Horsham.

The National Party received feedback and consulted widely. It was briefed by the Department of Infrastructure, for which I thank Robert Bradford for his support. I understand Robert had not long left the Department of Infrastructure to take up a position with Deacons Lawyers. I thank him for helping the National Party through the legislation.

Having considered its provisions, the National Party will not oppose the legislation but will be raising some concerns during my contribution to the debate. I will quickly put some of those on the board, because I know the honourable member for Mitcham was the chair of the task force. Some concerns raised included the fact that when the notification for suspension of work is to be given, there may not be an appropriate person on a

construction site, even the managing director, who could accept the notification. That is a matter that could be considered while the bill is between here and another place.

Another major concern I picked up during my consultations was that often most problems occur with government contracts. For example, one industry in my area pays its subcontractors within 30 days. Often on the big jobs — often they are government jobs — they have to put in for progressive claims. The claim firstly goes to the architect who has 14 days to turn the claim around. If it is ticked off by the architect it goes on to the quality supervisor.

Mr Robinson — Why do they need 14 days?

Mr DELAHUNTY — I know there is no reason why they need 14 days, but under present circumstances they take the 14 days. The claim goes from the architect to the quality supervisor who has another 14 days. Then it goes to the facility manager for him to pay, which often takes 14 days. If you add that up it takes 42 days, which is a long time considering the subbies in this construction company like to be paid within 30 days.

Overall the responses from builders indicated they had not too many problems with the bill. Some companies have been getting away with not paying their subbies and the like. Most building people we spoke to are glad that the bill addresses that issue.

The introduction of the legislation came about as a result of the industry task force appointed by the government to review remedial action to be taken to address poor payment practices under the building construction contracts. As the house knows, the task force recommended the introduction of legislation to reflect the New South Wales Building and Construction Industry Security of Payment Act 1999. From the discussions and briefings, I believe that act has been working successfully in New South Wales.

As I was conducting research on the bill I read the minister's press release of 21 March about it. It states that the task force had been set up and was to be chaired by the honourable member for Mitcham. I am glad to see him in the chamber tonight. The task force had about 18 members, including a representative of the Property Council of Australia. I am sure that person would have had good input to the task force. According to the press release the task force included:

> … construction owners, builders, head contractors, subcontractors, suppliers, unions, employers and cost-management specialists.

I will not give details on each of the approximately 18 members, but they seem to cover a good spread of input to the recommendations resulting from the task force. The media release of 21 March further states:

> The Bracks government is determined to preserve the integrity and ensure confidence in the building industry.

The legislation could be one way of doing that, but other work must be done by the government to preserve integrity and ensure confidence in the building industry. At the end of the day we need people to be able to work within the building industry. It is unfortunate that the Labor government is addressing only the concerns of owners and contractors, because it needs to make sure workers are involved in the process. If I were running a building business like that — I ran a farm for a while — and the workers knocked off for most of the time so that I did not have much productivity from it, the industry would have to wear the cost, which would go on to the consumer. That does not give people much confidence in the industry.

The key measures in the new laws include banning 'paid if' and 'paid when' clauses in contracts. I understand that most of those clauses have been banned since about 1996. It also allows for the contractor to suspend work in the event of non-payment. The National Party supports that provision. Some of the key measures are about making priority payments to conform with the monthly instalments. The press release talks about building confidence. I think the government has a lot of work to do to make sure that happens.

When we had the briefing from Mr Vicari and Mr Bradford we were given a copy of the government's response to the report on legislative and non-legislative issues arising from the Victorian security of payments task force report. As I said, there were 18 members of the task force, which was chaired by the honourable member for Mitcham.

I almost said Richmond, which is not going too well after its loss last week. But the Bombers will go very well this week when they give Collingwood a thrashing! I had better get back to the bill before you jump on me, Mr Acting Speaker!

It was interesting to note in the report that the task force received briefings from a number of people, including Mr Bob Giles and Mr John Scrivens from the legal and contractual division of the Queensland Department of Public Works. My understanding from the research we have done is that the Queensland government is also looking to move towards this sort of legislation, which I understand is similar to the New South Wales

legislation. The task force also received a briefing from Mr Ed Shestovsky and Mr Phil Armessen from the New South Wales Department of Public Works and Services; and Mr Bryan Sullivan. I know a Mr Bryan O'Sullivan very well. He is a fantastic bloke and a good Mallee man. But my understanding is that this Bryan Sullivan is from the New South Wales Master Plumbers and Mechanical Contractors Association. There was also a briefing from Mr Roger Frith and Mr Ken Hudson, from the Victorian Department of Infrastructure, and Mr Phil Davern from the Victorian Building Control Commission.

It is interesting to note that most of the consultation occurred with New South Wales people. As I said earlier, my understanding is that the legislation is modelled on that New South Wales legislation. I am aware from research that back in 1993 and 1994 the Economic Development Committee of this Parliament made some recommendations and suggested some initiatives. I do not believe they progressed too far. Also I am aware that the previous government made some attempts to address the concern relating to the public building program. But I know that what is driving this is the Labor Party's policy statement and, as I said, the recommendations of the industry task force led by the honourable member for Mitcham.

It is my understanding from reading through the report that the task force made about 30 recommendations. This bill covers about 15 of those. I also understand that the New South Wales legislation has been operating for approximately two years and that there are now facilities to put money into a trust if there is a dispute. Obviously that covers some of the concerns that have been raised. As I said earlier, Queensland is moving towards the New South Wales model, and I understand Western Australia is also moving in that direction.

When we asked in the briefing about the administration costs and how many staff were involved in this, we were told that one person administers the whole system in New South Wales. So it seems to be fairly effective and fairly efficiently run. I understand that some 40 cases have been adjudicated in the past two years. Obviously it is another form of addressing those concerns, but it does not seem to be overloading the system in New South Wales.

I understand that this bill is aimed at the value of the work that has been done. From the discussions I have had I understand that the Property Council of Australia would rather have milestones than just days, but obviously it did not get its way.

Clause 22(4) relates to the determination of adjudication applications and specifies a period of 10 business days, which may be lengthened by agreement between the parties concerned. It is my understanding that the suspension of work can go under three processes — and I will come back to that later. In relation to adjudication, in New South Wales it costs between $1000 and $1500. That seems to be fairly reasonable for this industry.

I know from reading through the second-reading speech that the main thing driving the government is security of payments for contractors and subcontractors, consultants and others in the building industry. As I highlighted earlier, most of the building people we spoke to were very happy that this legislation was going through in order to give some security to the building industry. But as I said, there are some more structural concerns that I believe the government needs to look at on top of this legislation.

The government gave an election commitment to establish a task force, which, as I said, was led by the honourable member for Mitcham and made about 30 recommendations. The second-reading speech says there is broad support for this from key stakeholders in the building and construction industry, the developers, peak bodies and also the unions. The Liberal Party's shadow minister spoke about some of the letters that honourable members had received outlining people's concerns. I will not go through them, but National Party members have also received those sorts of letters.

We know the main purpose of the bill is to provide for entitlements to progressive payments for persons who carry out building and construction work or supply related goods and services under construction contracts. That can also be for work that is done off site, so this is a very broad bill that covers a lot of the work that goes on in the building industry. I understand that this bill reflects the New South Wales building and construction industry security of payment legislation, which was introduced in 1999 and has been going for about two years now. It seems fairly well supported by the industry in New South Wales.

I suppose the need for this bill has come about because of poor payment practices in the building industry, and that is why the National Party is not opposed to it.

I want to cover the clauses of the bill. Clause 2 covers the commencement, providing that the legislation will come into operation on 31 January 2003 if it has not been proclaimed before that date. I hope the government has an appropriate lead-in time. I am sure it will go through an education program so that everyone

in the industry understands the legislation. As I said, it is important to work with the industry, but it needs to get down to the grassroots. I have not seen anything at this stage to indicate that an education program has gone out there to ensure that people understand what this legislation will do. It is all right for us in Parliament to go through it clause by clause, but when this legislation commences I hope all in the industry will understand its ramifications. I am pleased to see the Minister for Planning walking into the chamber at a very appropriate time.

Clause 5 talks about construction work and includes a reference to materials put together off site. That is why I highlighted the need for an education program so that people right across the industry know that this includes not only what is happening on construction sites but, importantly, all the construction work that might be going on off site.

Clause 6 contains the definition of 'related goods and services'. It seems to the National Party that that definition is very broad and covers many matters, so it will encapsulate a lot of the work that will go on. Therefore we support it, because it needs to go to that level, so anyone doing work under this bill is covered.

The bill also relates to the adjudication process. We are led to believe that under certain contracts processes can go to the Victorian Civil and Administrative Tribunal (VCAT). I am not sure about the flow chart of how that works, but my understanding is that under the Domestic Building Contracts Acts of 1995 the VCAT process can be used if an appeal needs to be lodged, but I am sure the honourable member for Mitcham will know about that in more detail than I would.

Clause 13(1) refers to the effect of pay-when-paid provisions. My understanding is that that practice has been banned since 1996, but this clause strengthens that provision to ensure that it covers some of the moneys owing or when pay-when-paid provisions are included in the definition, so that is an important part of the legislation from the National Party point of view.

Part 3 of the bill covers a procedure for recovering progress payments and clause 15 deals with the payment schedule. It is important to help people within the building industry by providing a pro forma so that the adjudicators do not receive tons of paper and the people who are making claims under this payment schedule process are assisted. I know we raised this matter in the briefing, and the departmental people said work was being done on that, but I am not sure if the honourable member for Mitcham can tell the house if that has taken place. A pro forma will help speed up the process, and that is what we are all about here.

Clause 16 provides a process for payment when there is no payment schedule. Clause 17 provides a way of making claims when there has been some payment but not all payments have been forthcoming. The turnaround time for payment claims is 10 working days.

Clause 18 covers the adjudication applications. We understand that the expression 'authorised nominating authority' can include organisations like the Master Builders Association and others, so it is fairly broad. We believe there is no set body in New South Wales, but again I think there is to be an agreement between the two parties to try to get someone who has the skills to adjudicate on this process.

Clause 21 deals with the adjudication responses, and clause 21(1)(a) provides that within five business days after receiving a copy of the application the respondent may lodge with the adjudicator a response to the claimant's adjudication application. Five days is a fairly short time, but it also includes two business days after receiving notification of the adjudicator's acceptance of the application, so although there are strict time lines in this legislation the industry is quite comfortable with what happens there.

Clause 29 in division 3, headed 'Claimant's right to suspend construction work', provides that the claimant may suspend work for various reasons, but I am still not satisfied. If false claims are put in the claimant could suspend work and slow down the whole process. We were told in the briefing that if people do this they will get a bit of a record and obviously will not get away with it too many times, but the reality is there is an opportunity for false claims to slow down some of the construction work. Some people in the industry raised with me the problem that if someone wants to suspend work on the construction site the appropriate person might not be there to administer the application.

Clause 45 deals with adjudicator's fees. We were told that in New South Wales they ranged from $1000 to $1500, and we think that is reasonable.

Clause 46 deals with the liability of an adjudicator. As we know, the second-reading speech provides that a section 85 statement takes away this liability. My understanding from my colleagues is that the Labor Party used to belt hell out of the previous government on the number of section 85 statements it brought into Parliament. I have only been here for a short time but many section 85 statements have come into this

Parliament in that time. Again, we have no problem with that.

I will now refer to just one of the letters we received, and it comes from HIH Insurance and is addressed to the minister. It states that HIH believes the government should review the bill in the light of the developments in New South Wales before the bill was debated. I know that HIH believes there are certain deficiencies within the bill, and they have been highlighted. Today at 12.09 p.m. I received an email from the honourable member for Mitcham that states that:

> … after lengthy discussions with parliamentary counsel the government has decided not to amend the bill before the house.

It continues:

> We are confident that the concerns of HIH and the AMCA have been adequately addressed at this time, but they have indicated a willingness to review the operation of the act a year or so after its introduction.

I thank the honourable member for Mitcham for that. But again, there is a four or five-page letter from HIH outlining some of its concerns about various clauses. I know the minister and the chair of the task force would have a copy of this letter and I trust that they will be able to address all of the concerns raised by HIH in it.

I finish by saying that we in the National Party do not oppose this legislation. I thank the government for providing the briefing from the departmental staff. We have raised concerns about the appropriate person being on site. We also raised concerns about some of the big works, particularly in relation to slow turnaround time in government works, which obviously comes about because of the slow process of going through an architect, which takes 14 days, then through to a quality surveyor, which is another 14 days, and on to the facilities manager, and it can be up to 42 days before payment is made for some of the government works.

A building construction company in Horsham, Locks Construction, said it always plans to pay its subcontractors within 30 days, but again it is important that payment processes for some government works be speeded up.

With those few words I say on behalf of the National Party that we will not oppose the legislation.

Mr ROBINSON (Mitcham) — It is with some degree of pride that I speak on the Building and Construction Industry Security of Payment Bill, commonly referred to as the security of payment bill. I acknowledge the contributions of the honourable member for Wimmera on behalf of the National Party and the honourable member for Hawthorn on behalf of the Liberal Party. I note that in his contribution, the honourable member for Hawthorn adopted a 'what if' position — that is, he had concerns with the bill on the basis of: what if the provisions in the bill presented to the house are not adequate? I suspect that although we can deal with most of his concerns in this debate, what he actually laid out for the house was an exposition of why the Liberal Party in government for seven years did not act.

This industry is complex and no government, including this one, can actually stand up and present legislation to the Parliament which it can claim is perfect in all circumstances. That is certainly not what this government does, but it has made a very significant start. The bill is, in reality, landmark legislation in this state and people in the industry have waited more than 20 years for it to be enshrined in the statute book. It is built very much on the sweat and hardship of independent contractors and unionists, and the government pays tribute to a number of the unions who have been involved in raising concerns about insecurity of payments through the industry for a number of years and those who contributed to the task force.

Earlier in the debate the honourable member for Brighton made an aside across the table that she was happy that I was involved in this legislation because it kept me away from the Mitcham electorate. In all seriousness I say to the honourable member that this legislation has great relevance to the Mitcham electorate, and I want to explain my reasons for highlighting the point about sweat and hardship because this is a very important point and is in fact the genesis of the legislation.

I first became aware of payment problems within the building and construction industry in the lead-up to the 1999 state government election. In the space of two days whilst I was doorknocking, two or three home owners told me they were in the building game, and that if the Labor Party wanted to do something to help them it should tackle the problem of poor payment and non-payment in the building and construction industry. I naturally investigated, and over the course of time I had the opportunity of discussing the Labor Party's election commitment, and what is now a bill before the house, with a number of people in my electorate. I am sad to say that there are some tales of great hardship in the Mitcham electorate, and I am sure elsewhere.

I recall talking to an electrician in the Mitcham electorate who had his own company. He was very pleased to see that the Labor Party had made a

commitment to this bill. When I rang him a year later and said a task force was under way and things were happening he said, 'I am delighted, but I wish it had come a bit earlier because I have not only lost the business out of that bad debt I told you about some months earlier, but I have actually lost the house'. In many cases the house is offered as security for the overdrafts that support small businesses of independent contractors in the building and construction industry. There was someone who, after many years in the industry, by virtue of a bad debt — someone in the industry who had not paid him either what he was entitled to on time or not paid him at all — who went under and lost the family home. That is one example.

I can quote another example of an airconditioning mechanical servicing company located very close to my office. I went to see them not long ago, and knowing of their interest in this issue I said, 'You will be pleased to know that legislation is on the way and here is a copy of the bill'. I did not see the good humoured, elderly proprietor whom I had bumped into on many occasions; I saw his daughter. She said to me, 'We are really pleased that legislation is on the way, but I am sad to say that Dad died last year'. He could not handle the strain of a $60 000 bad debt outstanding for two years and which had crippled the company. That debt actually killed that bloke in the Mitcham electorate. So it is a very real and significant problem.

These are the human tragedies which are the face of insecurity of payment and bad payment practices within the building and construction industry that never show up as statistics. You do not go around asking people how many houses have been sold because of non-payment of building industry debts. It just does not happen. That is why the 1994 Economic Development Committee that examined the problem was on the wrong tram from the word go because in its report — and the government quoted it in its report — it was looking for 'a substantive or costly scheme to address it'. The government has gone down an entirely different track, it has tried to avoid setting up a costly and burdensome scheme to deal with this problem, and I think it has succeeded.

Ms Asher interjected.

Mr ROBINSON — I will talk about that in a few moments.

We have addressed what I believe all honourable members should agree is the most profoundly corrupt practice in the building and construction industry. There has been a lot of talk in recent months, and certainly by virtue of the federal government's activities, of what constitutes corruption in the building and construction industry. I put it to the house, and I am happy for anyone to challenge me on this point, that the most corrupt practice in the building and construction industry in this state is the failure to pay for work performed, which leaves people like the ones I have quoted hanging out on a limb where years of investment in building up a business counts for nothing; it evaporates. Their houses go under and their families are destroyed. That is the corrupt practice that we want to try and address through the passage of this bill.

For a long time the problem has been that unless you had a debt owed to you of more than about $10 000 it was not worth pursuing through the civil courts, because you would wait so long and chew up so much in legal fees in waiting to go court that it just was not worth your while. The lengthy delays in pursuing civil action have proved fatal in many cases, but of course these delays did not show up in statistics. By contrast we have tried to deliver on Labor's commitment to legislate, which was a clear election commitment in 1999. It further develops the work of the task force, which I had the pleasure of chairing. For the record I will briefly list its members so that people can understand its broad representation.

The members are Bill Barlow from the Office of Housing; Bill Beck, state manager of Leighton Properties; John Cummins from the Construction, Forestry, Mining and Energy Union (CFMEU); David Eynon, executive director of the Air Conditioning and Mechanical Contractors Association (AMCA) of Victoria; John Gaffney from the Housing Industry Association (HIA); Philip Green, chief executive officer of the National Electrical and Communications Association (Victoria); Ray Hallett from the CFMEU; Ray Herbert, executive director of the Master Plumbers and Mechanical Services Association of Australia; Rodney Jeffrey, executive director of the Civil Contractors Federation; Dean Mighell from the Communications, Electrical and Plumbing Union (CEPU); Jock Rankin — I will say more about Jock in a minute; Dan Renehan, who was then with the Victorian Employers Chamber of Commerce and Industry; Earl Setches from the plumbing division of the CEPU; David Stewart, director of WT Partnership Quantity Surveyors; Clive Weeks from GHD; Brian Welch from the Master Builders Association of Victoria; and Alan Woodhouse, the general manager of Actrol Parts.

That was a great cross-representation and we got through an enormous amount of work in only two or three months. All members made great contributions, but I am particularly indebted to the late Jock Rankin

for his contribution, and other members of the Parliament will concur with this. Jock gave most valuably and generously of his time and thinking to the service he provided on the task force. He probably had more opportunity or reason than most members, by virtue of his then position with the Property Council of Australia, in taking a line that was somehow less than supportive of what the government was hoping to achieve, because the Property Council in New South Wales had adopted that stance. But nothing could be further from what he provided for the task force. He was full of enormous enthusiasm for the job we were doing and saw it as a great opportunity to promote better practices within the industry. I am greatly indebted to him for his advice and the contribution he made in that role and for the role I am sure he played further afield than our task force.

A number of other people provided assistance, including Jeff Norton, the assistant building commissioner; Tony Arnel, the building commissioner; Paul Vicari; Roger Frith; and Rob Bradford. We also received assistance from solicitors, including Jane Button. We are indebted to their work in this complex field.

As a task force, we had a clear choice: to adopt either the Queensland model or the New South Wales model. These probably summarise the two streams of thinking in dealing with security of payment issues. A number of jurisdictions around the world have looked at the issue, but these were the two clear choices in Australia. The task force chose to go down the path the New South Wales government had pursued, and we did so because the Queensland model struck us as incredibly cumbersome. Queensland employs hundreds of bureaucrats in its public works department and its administration for the purposes of administering registration schemes which — —

Ms Asher interjected.

Mr ROBINSON — I suggest that the honourable member for Brighton hop on a plane and have a look at the Queensland government's system, which has been in place for a long time, to see whether she thinks it is a better system than the one the government has proposed. I will bet her London to a brick that she does not!

We chose the New South Wales model with some improvements. That was the task before us. The basic elements of the bill are that it creates a right of statutory period payment, a right that has not existed in this state. That is done in clause 9 and will provide a 20-day periodic payment period, or for agreed periods other than that which will accommodate the industry practice of milestone payments. In our recommendations to the government we struck a balance. A number of people in the industry said, 'You simply cannot insist on periodic payments in every instance, because if you are working on a six-week project or something that has to be delivered and which is a fundamental part of the project, milestone payment agreements are more appropriate'.

We agreed and noted the nefarious practice of using 'paid if' and 'paid when'. If there is one thing within the building and construction industry that rankles with independent contractors and others who have borne the brunt of non-payment it is those clauses. In response to the honourable member for Wimmera, they have been banned in the public sector since 1996, but they have been common practice across the industry and in the private sector right up until today. The honourable member for Hawthorn suggested that we were not banning them, but that is an exercise in semantics. We say they have no effect, and that is equivalent to banning them. That is a great step forward.

The bill does not guarantee payments. The government has never claimed that it does. The bill does not guarantee that it will resolve every payment difficulty, and a number of hypothetical situations were raised; but again, we have never suggested that it would. The bill does not guarantee standards will forever be higher simply by virtue of the bill becoming law. The government has never promised that, but it is a great start, and one which, in my opinion, is 20 years overdue. It gives us in this place the very distinct opportunity to help people in the industry better manage their affairs. Under the bill they will determine when they wish to exercise that right. We are not forcing them to exercise a right; we are giving them the option. That is a significant feature of the bill.

Importantly, as I alluded to earlier, it does not require enormous expense — it is effectively a user-pays system in the event that a dispute emerges. We have not had to set up a huge department to administer it, and when adjudication is to be arranged the costs will be quite modest. That is a very significant advantage of the scheme we have proposed.

The Liberal member for Hawthorn raised a number of concerns, and I will just run through them. He referred to the concerns of the Air Conditioning and Mechanical Contractors Association and the Housing Industry Association. Firstly, let me say that we have been in regular contact with the AMCA and the HIA. We had a further meeting with them yesterday — —

Honourable members interjecting.

Mr ROBINSON — It is interesting that the Leader of the Opposition interjects, because I know he has been putting letters in the paper, trying to get some response. When we asked him what his response is he said, 'I'll get back to you when people answer my letters'. The Liberal Party had seven years in government to deal with this. It has known that the government has been on about the task force and about drafting legislation, and still the Leader of the Opposition does not have an opinion of his own! That is very instructive.

Suffice it to say that the HIA and AMCA made a number of representations to us, and we believe we have dealt with all of them adequately. The meeting we had yesterday covered many things, which I will go through as quickly as I can. They raised clauses 9 and 11, which deal with rectification. They wanted to ensure that rectification included the cost of replacement, and our legal advice to them was that it certainly does.

Clause 13 is the paid-when-certified clause. Representatives of the HIA raised some concern about the paid-when-certified provisions and whether they might sit in conflict with the bill. We suggested to them that we would be happy to look at specific examples from New South Wales, but they have not provided us with any at this point in time.

Another suggestion they made was that clause 14 ought to be amended to put a 12-month limitation on claims for payment. We have examined that, but we believe that would be an unfair infringement of people's rights to pursue, under this statutory scheme, payment for work they have performed.

We had a discussion about set-offs, which were probably the major point that was canvassed. We are confident, based on advice from parliamentary counsel, that the definitions we have put together in the bill will not allow respondents to introduce into the adjudication procedure, at the time provided for in the bill, matters extraneous to those of payment. We believe — and the language supports this — that the only issue which respondents will be able to raise in response to a claim is that of defective work. The issue of set-offs and cross-claims will not be permitted. We point out that the Building Commission has the power to issue practice notes at some point in the future if this shows signs of becoming a problem. We also point out that the bill has a regulation-making power. So at this point in time we are confident that set-offs will not become an obstacle to adjudication in a timely fashion.

Similarly there was some discussion about the right to suspend and how that would sit with liquidated damages claims. Again we are confident that the language is clear enough to ensure that people who exercise their right to suspend work — only after an adjudication is made or a determination is reached, not beforehand — will be protected.

One point the HIA made in one of its earlier submissions dealt with the distinction between domestic and other building work. It is true that in our task force report we made a recommendation that all parties in the building and construction industry should enjoy the same right or the same access to a payment dispute resolution process. However, we noted as well that parties to domestic building contracts do have access to the Victorian Civil and Administrative Tribunal. Although the VCAT building list was principally set up for home owners to act against builders in the event of inadequate work, it provides an opportunity for subcontractors and contractors to work out their payment disputes.

The government decided that it would not be good public policy to tamper with that right and to extract from VCAT the rights that are enjoyed by those parties and transplant them to what this is doing. It would mean taking rights that exist under a tribunal and replacing them with rights that exist with no tribunal. We are confident that the two systems sit side by side. The distinction is that if you currently have a right under the Domestic Building Contracts and Tribunal Act, that right continues. If you currently do not have a right under that act you will be covered by the bill before the house. Some complications are read into that, but we are confident that our legislation is sound on all fronts.

The government, through the minister yesterday, has given a commitment that it will review the operation of this legislation in 12 months to 18 months. We hope that the system we are outlining does not have to be used. Experience in New South Wales has been that payment practices improved markedly once its bill came into effect. We hope the same thing will happen here. Nonetheless it is a much-needed bill because it sends a clear message that this government will stand up for those who have been hard done by for years. It is good legislation. It looks after people, particularly those at the bottom end of the payment chain, and I hope it will make a real difference in ensuring the livelihoods and the wellbeing of people, not just those in the Mitcham electorate.

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

Ms ASHER (Brighton) — The opposition has already indicated its non-opposition to the Building and Construction Industry Security of Payment Bill. The bill has been introduced to fix a widely known problem — that is, we have contractors, subcontractors and people providing goods and services in the building industry, and there is often for no reason of the constructor's making failure to make payments. It has been a fundamental problem in the industry, not just for companies that are going broke and failing to pay but also for companies that delay payments.

The building industry has not had a particularly good reputation of recent times. I am more than happy to place on record that notwithstanding the fact that contracts under the Domestic Building Contracts and Tribunals Act are exempt from this legislation, I have recently had some building activity in my own home and every single one of the contractors has been terrific.

Mr Robinson — Did you pay them on time?

Ms ASHER — And I paid them on time — immediately — and well within the seven days required of me. When problems arose they were all handled with a great degree of speed. Given that the building industry suffers from a bad reputation, I wish to say that one of my few experiences with this industry has been a positive one.

The bill features a number of items, and the changes have been gone into in great detail by the honourable member for Hawthorn. Suffice it to say that the primary change brought into effect by the bill is the provision for progress payments. The government wishes to eliminate the pay-when-paid practices that were rife throughout the industry. Notwithstanding the honourable member for Mitcham's comments on those issues, I tend to agree with the honourable member for Hawthorn that to simply say that a provision has no effect is not the same as banning or outlawing the particular practice. However, we will see how this particular clause evolves, given that it is a longstanding practice in the building industry — the honourable member for Mitcham talked about cultural change — and one which I think will be difficult to stamp out.

The second major feature of the bill is that the government will establish a system of adjudication for disputes and allow circumstances where an adjudicator can make determinations of payments in particular disputes. The government is claiming that this will lead to security of payment in the building industry, which is a noble and laudable objective.

Mr Robinson interjected.

Ms ASHER — Increased security — I am glad the honourable member for Mitcham has made that accurate qualification. The government is claiming increased security of payment for the industry as a consequence of the framework established by the bill.

I wish to briefly touch on the background to the bill. Initially a task force to look at this issue was established in September 2000. It is my understanding that the government made an election commitment to establish a task force to look at this issue, which of course has been a major issue in the building industry for many years, and a particularly serious one. I note the honourable member for Mitcham's comments about a particular instance in his electorate. That is probably the most graphic example of the seriousness of the situation.

The task force membership was 18, and the honourable member for Mitcham has gone through naming those 18 members. It would have been enormously difficult for the honourable member for Mitcham, who was chair of the task force, to handle personalities such as the representatives of the building industry and to also handle the union representatives, particularly John Cummins and Dean Mighell. I do not know the tactics employed by the chair of the task force, but I find it extraordinary that people as disparate as representatives from the Victorian Employers Chamber of Commerce and Industry, the Property Council of Australia — and I too would like to make a couple of comments about the late Jock Rankin, who always fought vigorously for the issues he believed in — and Brian Welch from the Master Builders Association of Victoria, could actually present a united report that had also as signatories John Cummins and Dean Mighell. I do not hand out praise too lightly, but I would be interested in learning more about the tactics of that task force in securing that agreement.

The committee's terms of reference were particularly broad. They were to review the existing contractual arrangements for payments to subbies, consultants and supply firms; to obtain data on current industry contract payment practice — and the honourable member for Hawthorn noted the difficulty in obtaining that data, as did the task force; to review both legislative and non-legislative methods to achieve the objective of security of payment; to consult with industry participants; and to report to government on this matter. I note that the final report was handed to government in February 2001, with half the recommendations requiring legislation and the other half being steps forward that did not require legislative change but required administrative changes to the way the Building Commission in particular operates.

The bill broadly reflects the recommendations of the task force report; but again, as the honourable member for Hawthorn has indicated, it does not pick up all the recommendations. I also find it odd that this government, which talks about the level of consultation it embarks upon, did not consult with the industry on the final bill.

There are significant exemptions in the bill, which other speakers have touched on. For example, domestic building will be covered under the Domestic Building Contracts and Tribunal Act, thereby setting up two systems — one system for domestic building, with appeal to the Victorian Civil and Administrative Tribunal; and another system under the regime established by this bill, with a dispute adjudication process which does not apply to existing contracts.

I will make a couple of comments about the bill and the process by which it came to this place. There is no doubt that the industry is looking for an in-principle agreement by the opposition to the security of payment legislation, which is one of the reasons, of course, that we are not opposing the bill. However, this is a particularly difficult issue. Speakers have touched on the Economic Development Committee report of 1993–94, which said that it did not want to establish a substantive or costly scheme to get this particular result. Again I note that the Queensland scheme is particularly expensive. Times have changed, and in many ways New South Wales has acted as a guinea pig for this scheme, and no doubt we will continue to look at the New South Wales experience. But it is a difficult issue, and it has been so for many, many decades.

I note that the chairman of the task force does not regard this as a final rectification of the problem. I believe it is a small step forward but that we will be back in this place discussing amendments to this bill within a short period of time.

The bill is based on New South Wales legislation, which is itself now being amended, but the greatest issue that concerns me is the fact that, according to the briefing the opposition received, in New South Wales there have been only about 50 adjudications. Given the problems within the building industry, I would have thought we would have seen more than 50 adjudications, so to my mind something is not gelling there. Perhaps people are not using the system. I would be delighted if, for subbies and contractors, the level of disputation in the building industry was diminishing, but I do not think that is the case. We will look with interest to see how many adjudications there are in Victoria.

I will make some brief general comments about the bill, given that the honourable member for Hawthorn has spoken in detail about the individual clauses, comments from industry and the opposition's response. The first comment I would make is that the bill and the process involved in getting it before the Parliament are most consistent with this government's style of government. We have had a series of reviews — and there are more to come — and a very elongated time frame for bringing this bill before the house. Let me remind honourable members how long it has taken to get to this position and for how long this process will continue.

First of all there was an election promise that there would be a task force to look at security of payments issues. Eleven months later — 11 months! — a task force was established in September 2000. The task force has been the most efficient of the lot. It reported in February 2001 — a month late, but I am not worried about a month, given this overall scheme.

Mr Robinson — Two weeks.

Ms ASHER — Two weeks — I am not worried about that. The task force did its job in a condensed period.

The next critical stage is the government's response, which was not made until January 2002. The government received the task force report following an enormous commitment from the industry, which spent a significant amount of time trying to work out a solution. It took almost a year for the government to issue its response, and legislation was not introduced until April 2002. We have now heard today that we are going to have another review in 12 months — and that is just the legislative recommendations.

I move on to the non-legislative recommendations, which formed half of the task force recommendations. Its response again indicates the hallmark of this government — that is, its incapacity to make a decision in a speedy or timely manner. In terms of the non-legislative recommendations, the Bracks government has now established a government working party, called a GWP. The working party will have a whole series of departmental representations from the Department of Premier and Cabinet, the Department of Treasury and Finance, the Department of Justice, the former Department of State and Regional Development — which has now changed its name, the Office of Regulation Reform, the Building Commission and people from Vicroads, the Department of Human Services and the Department of Infrastructure. The one party missing is, in fact, the industry.

The government working party will review the registration procedures under the Building Act. Then, as part of this process and as stated in the government's response to the task force recommendations, it will be run:

> … in conjunction with a general review by the Building Commission of the Building Act and the regulations and the outcomes can be combined to recommend any further legislative and policy changes.

The government's response to the task force report goes on to say:

> As part of this task, the GWP will be required to further review:
>
> the current processes and changes in other jurisdictions;
>
> the task force recommendations
>
> the outcomes of other reviews …

So there are more reviews associated with this process. There is to be a review of owner builders and another review of builders warranty insurance. According to the government's response we are told that all these reviews — that is, the government working party's review, the review of owner builders, the review of builders warranty insurance and further reviews — will come together to provide a report to the Minister for Planning before the end of 2002. This, of course, raises the question: will there be any action? Judging by this government's record, there may well not be.

There are some particularly important issues in the latter part of the process, particularly in relation to registration standards and owner builders, and I recommend that the government quickly get on with these reviews and actually make a decision.

Another aspect of this bill that demonstrates the style of this government is the spin that has been put on it — and there is always spin associated with this government. I refer to a press release issued by the then Acting Premier and then Minister for Planning on Thursday, 17 January 2002, entitled, 'New law to protect builders from unfairly going broke' — a sweeping claim! The press release simply states that:

> The Acting Premier and planning minister —

then —

> John Thwaites today announced a major change to payment practices in the building industry to prevent contractors and subcontractors from unfairly going broke or being left out of pocket for work they have done.

That is a sweeping claim which does not fit well with the earlier interjection from the head of the task force, the honourable member for Mitcham. He is well aware that this is one small step forward because he has worked on the issue, whereas the minister came in and clearly wanted to present this as some sort of solution.

The next point I make relates to the so-called consultation process the government embarked on. If you are going to have consultations with the industry, the least you can do is involve it in what actually comes before the house. The honourable member for Hawthorn has already referred to the Housing Industry Association submission to the now Minister for Planning, in which it advised of deficiencies in the bill from its point of view and made the observation that:

> No opportunity, however, was given to the task force or its members to independently review the actual draft bill before its tabling into Parliament.

One has to ask why, if the government is going to be an open, honest and consultative government, it would not put the final bill before the industry, given that 18 people sat on the task force, 18 people were aware of the recommendations and 18 people were involved in the process. This is not a leaking issue; this is a failure to meaningfully consult with the industry on this issue.

I also ask why the industry is not involved in the working party — yet another review set up by this government — which will look at issues such as owner–builder registration and the low levels of prosecution of registered builders in a particular sector.

So I would urge the government to involve the industry in a real sense, not just come along to five meetings, which is how many times the task force met. If you are going to talk about a genuine consultative process with industry you need to involve industry in the detail and the issues that actually have an impact.

The industry is broadly supportive of the legislation, but it has some real queries regarding the detail. I also have some real queries about the government's lack of sincerity in consulting with industry on the detail of the bill and what the government proposes to do in the reviews that are to follow the legislation.

Mr Hulls interjected.

Ms ASHER — The Attorney-General would do well to be careful with the advice he is giving me. This is one small step forward, which I am prepared to acknowledge, after two and a half years; but it will be back for amendment and for yet another of the 700 reviews. We are already having another review about the bill. You have to ask why a minister would say, 'My bill is inadequate. I will come back and

review it'. I would have thought that a minister with a grasp of her portfolio would present a bill to the house that she thought would stand the test of some time rather than needing a review after one year.

The real problem with this government is that although it has looked at the issue in principle it has failed on the detail. That is the fundamental problem that the industry has with this government. The bill will have a narrow effect — it is a small step, as I said before — and there are deficient areas that need improvement. Where are we after two and a half years of review after review, consultation, fiddling and carrying on? We have only an inch of reform in the miles that need to be travelled to ensure security of payment.

I look forward to the legislation that comes back to this house, which will prove me correct.

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

Mr CARLI (Coburg) — I rise in support of the Building and Construction Industry Security of Payment Bill, which realises a promise the then Labor opposition made before the last election to legislate for a security of payment system. It is in that sense that the bill is the realisation of a promise and of a reform process within the building industry.

I commend the work done by the honourable member for Mitcham, whom, if I understood correctly, the honourable member for Brighton also commended. He brought the stakeholders together and produced a report which has numerous recommendations, including one to legislate on security of payment for subcontractors in the building industry and another to effect a series of reforms, which we as a government will realise. These are reforms that will improve the skill base of the building industry, improve the registration of builders, improve the culture of the building industry and stamp out the sorts of practices all honourable members have seen where small subcontractors have lost a lot of money as a result of unscrupulous players, who might be principal contractors or even owners.

There have been situations in which, because of the difficulties in the system, contractors who have not been paid for work done have either not been able to get the money through civil action or have found civil action too costly, as a result of which they have come out with a substantial loss. In many cases, such as those highlighted by the honourable member for Mitcham, people have lost substantial amounts of property and substantial wealth. Clearly, therefore, a change in the culture will be very important. The bill, which is in part borrowed legislation from New South Wales, provides for an adjudicator and works to improve the culture. It is a wake-up call for the industry: if the payments are not made correctly and in time, an adjudicator will act to enforce the payments.

The honourable member for Brighton said that only very few cases have come up — and I think she mentioned only 50 cases in New South Wales. I understand the anecdotal evidence is that that is because there has been a shift in the culture in New South Wales. The fact that the adjudicator body exists and legislation is now in place has ensured that payments are made, so the legislation is assisting in the work of changing the culture of the building industry.

It is important to see the bill in the context of the bigger changes that are envisaged within the building industry, which come directly out of the recommendations of the security of payment task force that was headed by the honourable member for Mitcham. We know that we have a problem in the industry and that it has been a problem for a long time. Many contractors and subcontractors in the building and construction industry who are not paid on time have little if any redress for lack of payment; and as I said, their recourse in the civil courts is either too costly or takes too long. This legislation puts in place a system to rectify those impediments so that contractors and subcontractors can get their payments. The bill affects a very important constituency — the small builders, the electricians, the plumbers and so on — who are so important to our building industry.

The present situation has existed for a long time not only in Victoria but in other states. The task force looked closely at various models, both from interstate and overseas, and most particularly the Queensland and New South Wales models. The one seen as the most appropriate was the New South Wales model.

I am concerned by the comments made by the honourable member for Brighton, who stated that although the government made the promise it has taken too long to get this far. That is because there have been consultation and discussions with and involvement of the stakeholders. It seems a ridiculous comment from a minister in the previous Kennett government, which had seven years to act. There were plenty of opportunities in those seven years. The problem was there; it could have been rectified.

Honourable members interjecting.

Mr CARLI — We have acted in due time, and in that process not only have we introduced this legislation

to ensure security of payment, but we have got a series of recommendations that we will bring into effect through the government working party which will ensure that the other changes, such as the registration of builders and training within the industry, will bring about substantial improvements.

It is very easy for members on the other side to say, 'It could have been done more quickly'. They had their opportunity in government and they didn't get it done! It has taken this government to bring about this reform, as is often the case. When the previous government was in power we saw numerous examples where decisions were made without consultation, without involving stakeholders. We are still cleaning up the mess from its period in government.

It is important that we see that this government's processes are very good processes. We seek the opinions of the various stakeholders and we are able to talk to employers as much as to unions. We are able to bring different opinions around a table and we are able, as in this case, to bring together a series of recommendations and genuine reforms that are broadly acceptable to the stakeholders. The reforms are genuinely important for, as I said, a very important constituency in our community, the hardworking people who are trying to make a living and who, in many cases, get ripped off and have been ripped off.

The bill creates a statutory right to a periodic payment which will be made every four weeks if it is not already stated in the contract. It creates a procedure of adjudication when those payments are not made in a specific time. It creates a right of further dispute resolution after adjudication. As a process in the bill it provides a very easy and relatively cheap opportunity for contractors and subcontractors to get their payments. That is an important change and an important reform, so we do not have people who are not able to get redress in terms of those payments.

This important bill, which we as a government are pleased to introduce, has broad support from the contractors, the subcontractors and the people who go about doing the work — that is, those who are trying to bring bread to their homes to feed their families. The bill has the support of industry bodies and trade unions, and it is important in the sense that the government is, again, delivering on reforms as promised, which were part of the Labor Party's promises at the last election.

Importantly, we have done it in a consultative way and have brought the various stakeholders with us. It has not left the level of conflict that we often saw with the previous government when it brought about its so-called reforms. This bill does not leave the mess on the carpet after the process of change that we saw with the previous government. It has taken time because of the quality of the work.

Again, I commend the honourable member for Mitcham and the 18 members of the task force who contributed to these important reforms. I look forward to the passing of this bill. More importantly, I look forward to the changes coming out of those recommendations that will reform and change the culture of the building industry, make it a better and more productive industry, get rid of the shonks, ensure that the builders who are registered are under greater scrutiny, and that we see a much better and more functional industry. It will be better for all people concerned.

We currently have a situation where many of the complaints that come before us as members of Parliament involve building disputes. It is good to see changes that will resolve those disputes in an easier and less costly fashion.

I commend the bill to the house.

Mr COOPER (Mornington) — The principal and general thrust of the Building and Construction Industry Security of Payment Bill is one that is supported, and that is why the opposition is not opposing the legislation.

The bill, as members on both sides of the house have commented, is based heavily on New South Wales legislation, and it is interesting to note that problems have emerged in New South Wales which now require the government up there to remedy the shortcomings of its legislation.

The Housing Industry Association (HIA) made a submission to the Minister for Planning in a letter and attachments dated 15 April this year. It urges the minister to not proceed with debate on this bill until the government examines the remedies that the New South Wales government is pursuing.

The introduction of the submission states:

> This paper therefore seeks to address certain deficiencies in the bill, which have also been highlighted under the New South Wales act. HIA believes these issues should be addressed before final passage of the bill.

The submission also comments that no opportunity was given to the task force or its members to independently review the draft bill before its tabling in the Parliament.

One has to ask: why has the strong advice given by the HIA been ignored? After all, the HIA is not just a bit player in this whole operation. The HIA is an organisation which represents a wide range of contractors, subcontractors and building material suppliers. It puts the views of those organisations and individuals who are their members, and these are the people that the bill purportedly sets out to protect.

I draw the attention of the house to the purpose of the bill, as set out in the explanatory memorandum to the bill:

> The purpose of this bill is to address delays in payment under construction contracts to parties who carry out construction work or who supply related goods and services under those contracts.

These are the people that the HIA represents. It is not the only organisation that represents them. The Master Builders Association represents them as well. Of course, individual organisations like the Master Plumbers Association and others represent suppliers and contractors to the building industry too.

Why would the views of one of the major players, the HIA, be ignored by this government? Why was the government so hell-bent on proceeding so quickly when perhaps a few weeks of delay while it looked at what was going on in New South Wales and the experience there could have been very helpful in addressing some of the issues which opposition speakers are already highlighting as being shortcomings in the legislation?

In the time available to me I cannot go through this bill in detail and refer to some of its deficiencies and ask the questions I have. Perhaps it would be better for me to say that the issues I want to address are more like questions than perhaps deficiencies, because I am not sure exactly where this bill is going to end up in the sense of being deficient in achieving the purpose it sets out to achieve.

The purpose is admirable. This is like a motherhood statement. I do not mean that unkindly, but it is a motherhood statement. It is one that everybody should be supporting. The purpose is in fact — —

Ms Beattie interjected.

Mr COOPER — If the honourable member for Tullamarine listened she would be okay. But of course she does not want to listen, she just wants to yell.

The principle of the bill is in fact supportable, but as the Deputy Leader of the Opposition said, the devil is in the detail on this bill. This is what should be being addressed or should have been addressed by the government before it brought the bill into this place. It should have been very careful about the detail. It is all very well to have a pile of words contained in a piece of proposed legislation that will become a statute on the books of Victoria. But will it achieve anything? Will it protect the parties it says it is setting out to protect?

I want to draw particular attention to clause 7(2)(b), which says the following is exempt from this legislation:

> … a construction contract which is a domestic building contract within the meaning of the Domestic Building Contracts Act 1995 between a builder and a building owner (within the meaning of that Act), for the carrying out of domestic building work (within the meaning of that Act) the whole of which is carried out on any part of a premises that the building owner resides in or proposes to reside in.

In other words, what this bill is saying — what the act will say when the bill becomes law — is that any works that are carried out on any part of premises that the building owner resides in or proposes to reside in will not be subject to the provisions of this legislation; they will be subject to the present provisions that exist already — that is, the Domestic Building Contracts Act 1995, which gives people who are short-changed by shonks in the industry the ability, if they wish and if they have the wherewithal and the time to do it, to go to the Victorian Civil and Administrative Tribunal (VCAT) to pursue their claim.

The very fact that we have this bill before us shows that the provisions that exist already that enable subcontractors and suppliers who are short-changed or cheated by shonks in the building industry to go to VCAT are not working. That is why this bill is here. Yet I heard the honourable member for Mitcham saying when he responded to the very fine speech by the honourable member for Hawthorn that the government made a decision that the best thing to do was to have two bob each way on this issue. He did not use those terms, but basically he said government's decision was not to have an all-embracing situation where everybody could go out and pursue their claim under the provisions of this bill, but one under which some people could go one way and some people could go the other.

This will create confusion. But worse than that, it will leave a significant number of people in the building industry only able to pursue a course of action to a body that has palpably failed them in the past — VCAT. It has failed them on two counts: first, because it has failed to deliver to those people that have gone to VCAT. Again, even worse, it creates a situation where people who are cheated by the shonks in the building

industry — the small people; the single contractors and the builders or subcontractors who might employ one or two people — do not have the time or the resources to go off and sit in a tribunal for two, three or four days waiting for their case to come on. It would cost them more sometimes than the very claim they were pursuing.

That is why it is so wrong. That is why it does not work. This bill says to those people who are engaged in the additions and renovations area of the building industry, 'Bad luck, boys and girls, you stay with VCAT. The rest can go off to pursue their claims under this new bill'.

I can tell you now, Mr Acting Speaker, from a very long experience in the building supplies industry, that in the area of construction there is a significant and growing amount of activity in the extension and renovation industry in this state — and even more so now because the stamp duty that is being applied to new building operations is driving people to the situation of saying, 'We will not build a new house; it is cheaper for us to go off and renovate the existing place'. So that area of the construction industry will grow.

There is a whole range of people involved, starting with the building contractors and going through all the subcontractors — the carpenters, roof tilers, plasterers and so on — and the suppliers who supply timber, windows, airconditioning units and so on. It is a mini house construction area, and all those people will be left like shags on a rock if they are cheated out of their due by the principal contractor, the builder.

It is not a new thing. It has been going on for years. As the honourable member for Bellarine said by interjection during the contribution to the debate of the honourable member for Coburg, this has been going on for yonks, and it has been.

This bill very properly says it wants to bring that era to a close, but is it doing that in this very significant and growing area of the building industry? It leaves the people in that area to a system which is no good for them now and will be no good for the bulk of them in the future. I can tell you now, Mr Acting Speaker, from my time in the building supplies industry that the incidences of builders going down without telling anybody but catching not only the subcontractors on the job but also the suppliers were rife. It was going on all the time.

The builders would come in and order large amounts of materials. You might have been dealing with them for some years and their credit was okay. But nobody knew that their business was going rotten. You would deliver or might have already delivered onto the site thousands of dollars worth of materials. In the worst instances those materials would be worked on and be put into a frame or into the building in some way — and therefore irrecoverable — and then maybe two or three weeks later, before you had any chance to even lodge an invoice with them, out the door they would go: you would get a telephone call to say they had gone broke and the receivers or banks had moved in and it was just bad luck.

It is all very well for large companies, which have to suffer enough through these kinds of activities, but what about the small suppliers and the family firms? What about the carpenter who employs one or two assistants, or the roof tilers who employ a labourer, or the bricklayers who have a labourer working for them who are just caught and left behind? That would be thousands of dollars worth of labour that would never be paid for. Worse, there would be materials that would never be paid for. It is all very well to say that bricklayers supply only their labour. They do not; they supply more than that. They supply the sand and cement. So their hand would have gone into their pocket and they would have paid for materials, and they would never see that come back to them.

During my time in the building industry most building supply companies would have worked on perhaps a gross margin of about 10 per cent with an expectation that at the end of it all they might have made a 3 or 4 per cent net profit. You do not have to be too much of a mathematical genius to work out that if you were caught for $24 000 by one of these characters you would have to do an awful lot of work to get back to square one. It would be money that had gone down the gurgler and would never be seen again. Over the years I have seen hundreds — I mean that literally — of small people pushed to the wall by people who are nothing less than thieves and charlatans.

Mr Robinson interjected.

Mr COOPER — I am talking about the realities of what this bill should be addressing. The honourable member for Mitcham does not seem to understand the point I am getting at, which is that this section of the bill leaves these people in the present situation. He is not doing anything about bringing those people within the provisions of this bill. Instead he is leaving them to their own devices, their only option being to pursue their claims at the Victorian Civil and Administrative Tribunal, which has failed them. That is the reason he brought in the bill — the very reason — yet here he is

saying to this large section of the building industry, 'You don't have an option. You stay where you are'.

I say to the honourable member for Mitcham and to the government, 'This is an area that needs to be addressed very carefully'. The government has said, 'This is a suck it and see piece of legislation. We will bring it in and in 12 or 18 months time we will have a review and see whether it is working'. That is admirable, I do not knock it at all, but I find quite surprising that the Housing Industry Association has asked it to do some of that work right now and the government has refused to do it. It has said, 'We will let this go for 12 to 18 months and then we will do the review', when in fact most of the work should have been done for it by the New South Wales government. This government could have looked at that, waited a few weeks and then brought in a bill that would have answered some of the questions being posed to it in this debate.

As I started out by saying, in its principal and general thrust the bill is certainly supportable, but the devil is very much in the detail. I find it very surprising indeed that organisations such as the HIA that were on the working party chaired by the honourable member for Mitcham have not been listened to on this important proposal.

Mr Robinson interjected.

Mr COOPER — The honourable member for Mitcham said he spent two hours with them yesterday. Perhaps if we go into a committee stage the honourable member for Mitcham might get another opportunity to comment on the fact that in its letter to the Minister for Planning on 15 April the HIA stated that 'the government should review the bill in the light of developments in New South Wales before the bill is debated' — before the bill is debated!

The honourable member for Mitcham is sitting over there, valiantly yelling away and trying to defend his minister, who has obviously ignored the letter. The honourable member for Hawthorn made a very interesting point when he said he read this letter because he got a copy of it sent to him before the minister read it. We do not even know that the minister has read it yet! However, the Minister for Planning stated that the HIA had given its total support to the bill when that support was clearly qualified, because the HIA put in a submission to the minister on 15 April and the minister has not taken any notice of it. In fact, as of last week the minister did not even know that HIA had put the submission in! That is how on top of the job the new Minister for Planning is.

In closing, I found it surprising that the Minister for Planning did not bother to come here and listen to the shadow minister's response to the bill. The honourable member for Hawthorn would know more about planning and building matters than the new minister knows or is likely to know, and she could have learnt a lot by coming up and listening to the honourable member for Hawthorn; but the fact is that she is not interested in learning and she is not even interested in giving the house the courtesy of her presence during the response by the lead speaker for the opposition. The opposition has some queries about the bill, but we will not be opposing it.

Mr LONEY (Geelong North) — I support the introduction of the Building and Construction Industry Security of Payment Bill into this Parliament. I congratulate the Minister for Planning on bringing it before the house, and I regard the debate on this bill as extremely important for the Victorian community, and particularly for my community of Geelong. I will have more to say about that later.

This bill is designed to bring about a better payment regime, for subcontractors in particular, than currently exists in the building and construction industry. For many years this industry has failed to protect subcontractors and suppliers from defaults in payments by contractors. It has been a serious and ongoing issue for very many years and I am delighted that this government is addressing it, which certainly stands in stark contrast to the previous government, which did nothing at all.

The bill will establish for contractors in the industry an entitlement to progress payments when no right to progress payments currently exists. I listened to the honourable member for Mornington telling us that the bill does nothing to help the current situation. In fact it does; it makes significant advances. The right to a progress payment when no current right exists for subcontractors is particularly important. The bill also allows claims for progress payments against the party for whom the construction work is being done or to whom related goods and services have been supplied, which again is a significant advance. That particular clause will prevent a principal under contract from using disputes to delay payments or to avoid progress payments where the contract is silent on the issue. That again is significant, because in my experience many disputes occur in the building industry purely because payments are not made. I will specify a few that I have come across after I have made some other comments about the bill.

After listening to what I would regard as some interesting contributions from honourable members on the other side, I would have to conclude that what they have said, from the lead speaker, the honourable member for Hawthorn, on, is the Clayton's version of 'We are not opposing'. Seriously, every opposition speaker has opposed the provisions of the bill. It is extraordinary that the one claim that every speaker consistently makes is that this government is not cleaning up their mess quickly enough. That is the only claim they can make. In fact, if you listened to the honourable member for Mornington you would believe that he had been on sabbatical between 1992 and 1999!

He evidently was not here, because he talked about the hundreds of cases in his area that were brought to his attention, yet I do not recall him ever raising them in this chamber or calling for this legislation. Where was he, where were the other members of the opposition, between 1992 and 1999? They were the lost years for that side! They just want to erase them from history. If I had been a member of that government I would want to erase them from the history books too!

It is interesting that while all the opposition wants to do is criticise this legislation, saying, 'It does not go far enough. It does not address this, it does not do that', it has not produced one amendment. It is either policy lazy, as it is on every other subject or, and I suspect this is the real reason, it is not serious about this legislation.

The honourable member for Mornington used the term 'the hopeless VCAT'. I do not share that view. The government is saying that the Victorian Civil and Administrative Tribunal is one avenue which can be pursued, but more is needed if we are to ensure that these people actually receive their payments. The history of this legislation is that this government has acted where the opposition when in government did not.

The opposition says it took the government two and a half years to introduce this bill. I was in Parliament between 1992 and 1999 and I recall that this legislation was floated about in 1994 and nothing happened. It just drifted off into the ether because Liberal Party members did not care about subcontractors and suppliers; they did not want to do anything. Why? Because they thought it was too hard. This is from the so-called small business party. There is no greater slice of small business in this state than subcontractors in the building and construction industry. This is true small business. What did the Liberal Party do for them? Not a thing! It just let them go.

Since I became the member for Geelong North in 1992, there has been a recurring theme of contractors collapsing, defaulting and leaving subcontractors lying broken all around them. Unfortunately, Geelong has achieved a reputation as an area where subcontractors are often abused, and it is time that legislation such as this was introduced. In my time I have seen many examples of the abuse of subcontractors. For example, some time back a Torquay builder in the electorate of the honourable member for South Barwon — and I do not recall the honourable member ever raising it in Parliament — went broke, defaulted, left town owing hundreds of thousands of dollars in the Geelong area and nothing was done about it. Did the honourable member for South Barwon raise that issue? A resounding no. He did not raise it; the police investigated the matter.

There were other major projects in Geelong on which I received deputations. I had subcontractors come to me on the Geelong waterfront project because they had not been paid. They knew the contractor had been paid and that government money had gone into doing that, but the Kennett government did nothing to ensure that subcontractors received their payments. This happened time and time again, and the only people who stood up for them — —

Mr Spry — What did the unions do for them? Absolutely nothing!

Mr LONEY — I will take up the interjection from the honourable member for Bellarine. The only people who stood up and fought for those subcontractors were the unions. At the same time you had the mayor, Cr Jarvis; Cr Kontelj; and the chief executive officer, Mr Whitbread; going out and abusing the unions because they were taking action to support the basic right of subcontractors to be paid for work. Yet people like Cr Kontelj do not think that if you are a subcontractor you should be paid for your work. The problem was — —

Mr Spry — Rubbish!

Mr LONEY — This is the view of the Liberal Party! If you can get away with not paying — —

Mr Baillieu — On a point of order, Mr Acting Speaker, there is no stronger defender of subcontractors' rights than Cr Kontelj. I suggest that the honourable member not mislead the house.

Mr Hulls — On the point of order, Mr Acting Speaker, that is a ridiculous point of order. Even Ted knows that! He has got a big smile on his dial. If he wants to get up and make a 90-second statement

defending somebody, that is entirely a matter for him, but this is absolutely not a point of order, and he knows it.

The ACTING SPEAKER (Mr Jasper) — Order! There is no point of order!

Mr LONEY — As I was saying, Cr Kontelj and others take the view that subcontractors and the unions that fight for them to be paid have no rights. That is their view and the view of the Liberal Party in Geelong. I am pleased to hear it is not the view of the honourable member for Hawthorn, but it is clearly the view of the Liberal Party in Geelong. Perhaps that is why Geelong has a record for leaving so many subcontractors unpaid. There was another example of this at the Grovedale West Primary School, which is in the area of the honourable member for South Barwon.

Mr Robinson — That is not a domestic one!

Mr LONEY — No, not a domestic one at all but, again, it was one where hundreds of thousands of dollars were left owing to subcontractors. The builder went out of business and there were huge delays on the project that became more and more costly. Contractors had completed their work but were in no position to get the payments. Those who had not completed their work had some leverage in that they were able to get back on the job and complete it, but those who had completed their work found that the contractor had been paid for their work but had not paid them. Of course, the government said, 'Well, we have already paid for the work. We are not paying twice'. That is a defensible position, but where does it leave the subcontractors?

There were other examples in recent history, such as the collapse of Wycombe Constructions, which left trails of unpaid subcontractors around Geelong. Contractors have left trails of unpaid subbies around the town. The only people who have taken action to try and get payment for them were not the honourable members for Bellarine and South Barwon but members of the building unions. They were the only ones who stood up publicly and said, 'These people should be paid!'. There was not a whimper from the honourable members for Bellarine and South Barwon about these subcontractors. And on and on it goes!

We have a cultural problem in our town that stems from people like those I have named actually believing that there is nothing wrong with this and that if you can make a profit on the backs of small subcontractors — who are working people — by rorting them, that is all right. Clearly this government has said in this legislation that it is not all right. If this is not a clear difference between this government and the previous Liberal government, then I do not know what is.

We go back to the fact that in seven years the previous government did not move on security of payment in the building and construction industry. They did not care enough to want to move on it. Why? Because they did not want to offend their mates at the big end of the industry. This is what it is all about. 'Don't offend your mates at the big end of the industry! Don't look after the small ones! They are only small and their voices are not all that big and cannot hurt us too much'. That is what they were about as a government: only listening to the big end of town. They made 'mates' an absolute art form, and nowhere did it show up more clearly than in the building and construction industry.

I am pleased to support this security of payment legislation brought in by this government, and I am proud that this government has seen fit to introduce it. Again, I congratulate the minister for doing so. It stands starkly so that those small business people who are subcontractors and suppliers will know where they will get real support from in the political system. They need not bother looking to the other side of the house, which let them down for seven years. This legislation is about protecting subcontractors and ensuring that they get a fair deal. I ask members of the Liberal Party in particular that when they keep debating this bill throughout the next day or so that they be honest in their approach and tell us what it is they are really driving at. To date, their contributions have been less than honest.

Mr SPRY (Bellarine) — We have listened this afternoon and this evening to some very practical, pragmatic comments and contributions from this side of the house on the Building and Construction Industry Security of Payment Bill. By contrast, from the other side of the house we have just been treated to one of the most appalling displays of apology for government legislation that I have had the misfortune to have to listen to in this house for a long time. That includes the comments from the honourable member for Geelong North, who has had a bit of a struggle trying to defend this sort of legislation. In fact he has tried to take the big stick to a number of identities in Geelong, including the former mayor himself, whom the honourable member has accused of contributing to the problems in the building industry in Geelong.

I must set the record straight and inform the house that the problems of the building industry in Geelong are manifest and are recognised throughout Victoria. Those problems can be sheeted home fairly and squarely to the thuggery of the unions down there, and in particular

the Construction, Forestry, Mining and Energy Union. That union has perpetrated on the people of Geelong and Victoria one of the greatest disgraces in terms of industrial unrest anywhere in any sector of industry in this city. I condemn the honourable member for Geelong North for the way he stood up and tried to defend the union and, at the same time, to lay the blame at the feet of people like Cr Stretch Kontelj, the former mayor of the City of Greater Geelong, and another former mayor, Cr Ken Jarvis.

I know for a fact that those people tried to defend an industry that was struggling against union thuggery. When you look at some of the things that occurred on the waterfront in Geelong and at the delays, disruption and increase in costs to those projects on the waterfront you can only be absolutely dismayed at what has happened down there. For the honourable member for Geelong North to try to excuse and defend those actions not only brands him as an apologist, but a weak apologist at that. I hope the people of Victoria recognise the falsehoods he is trying to lay on that industry in Geelong. It is simply not acceptable. I intend to make — —

Mr Robinson interjected.

Mr SPRY — Back to the bill? I was pursuing the track the honourable member for Geelong North took earlier, but back to the bill itself.

The bill seems to me to pose more problems than it solves. The main purpose as disclosed in the second-reading speech of the bill is:

> … to provide for an entitlement to progress payments for persons who carry out building and construction work or who supply related goods and services under construction contracts.

That sounds great — —

Mr Robinson — It is great!

Mr SPRY — It is good, and there are many merits to it. But I will come back to and deal with the honourable member for Mitcham in a moment.

Those sentiments expressed in the second-reading speech sound great, but in the task force's executive report and recommendations — —

Mr Robinson interjected.

Mr SPRY — I have had a look at the important bits of this. That report — the honourable member for Mitcham was the chairman of the task force that authorised the report — states in its executive report and recommendations:

> After considering the material presented to it, the task force supports the view that there is no single cure for payment problems and that a broad range of measures is required to address security of payment difficulties.

And he expects to solve it in this one piece of legislation!

Previous speakers on this side of the house have eloquently demonstrated the shortcomings of this bill. They have demonstrated that it will take far more than one simple — or complex, if you like — piece of legislation to address a very real problem in the building industry. It is not only the building industry: trying to recover costs that are due to anybody in any business is always very difficult. The bill tries to address the specific difficulties that are faced by contractors, subcontractors and building suppliers in the building industry.

It is debatable whether the provisions in the bill will cover all situations. There is no doubt that a problem exists, and it probably goes back centuries, if not millennia. The honourable member for Mornington picked up an interjection I made earlier that this literally goes back millennia, and I do not think the problem has ever been solved.

The honourable member for Mitcham headed a task force that sat on five occasions. Yet he has come into this house and made recommendations through the government, expecting to solve this problem through one bit of legislation. What abject temerity the honourable member for Mitcham and his cohorts display in expecting to solve this problem with one piece of legislation.

I do not condemn the government for trying, but there are shortcomings in the bill that will be revealed when we revisit the legislation in due course. However, in the meantime the effect of the bill on the problem it is trying to solve is debatable, which is the point the opposition is making this evening.

Having been engaged in the subcontracting area myself a couple of decades ago, I have personal experience in the industry. A number of other honourable members may have suffered the same sorts of problems I have, although I have no way of knowing. I can recount one incident many years ago when I was in the fencing contract business. I was subcontracted by a principal builder to put an elaborate sort of fence in front of a fairly big building project in the main street of

Queenscliff. We assumed that the builder was of high repute and was well backed financially.

My company built the fence; the builder then went broke. We had the materials in the ground and were left high and dry for some thousands of dollars. Nowadays that may not seem a lot of money, but going back a couple of decades it was a lot. Not only did we lose our labour, but we were in a position where we could not take out the fence posts and the other building materials involved. We simply had to write off the debt. As honourable members can imagine, that bit pretty hard. It meant that in my little family there was not too much food on the table for a few weeks until we managed to recover the situation. So government members should not think that I do not understand the problems and difficulties encountered by many contractors and subcontractors in trying to recover bad debts. It is a horrific situation.

Furthermore, I have two sons-in-law: one was previously involved in the building and construction industry; and one still is a builder in New South Wales. On many occasions they have recounted to me just how they can get caught short in trying to force the principal contractor to pay them. It is not easy. Very often a principal contractor may be suffering from a lack of payment from the house owner or the project developer. If they are suffering from financial difficulties, they then pass that problem on to their subcontractors.

Let's say that the subcontract job is worth some thousands of dollars. It is very often easier for the subcontractor to accept a decreased payment and get on with the job and with life rather than trying to pursue those contractors through the courts. They face a very difficult problem. Those experiences tell me that a ruthless principal contractor can hold the whip hand over subcontractors, and there is very little a subcontractor or supplier can do about it.

In principle this sort of legislation has merit. It must be said that the government should have put a little more time into it and followed the lead of the New South Wales government, which is already experiencing some difficulties. It was the honourable member for Brighton who mentioned during her penetrating contribution that there had been only 50 adjudications under similar legislation in New South Wales. Knowing the number of people involved in the subcontract industry and being familiar with the sorts of difficulties those people can face, 50 adjudications — whether it was in a year or a longer time I am not sure — means there are serious shortcomings in that legislation. There must be literally thousands of valid claims by subcontractors against principal contractors from time to time. If only 50 hit the light of day in the adjudication process in New South Wales, there are obvious shortcomings in the legislation.

Why then the government should rush in and bring in legislation that even the honourable member for Mitcham would agree has to be reviewed in a short time is beyond my comprehension. If you are trying to give subcontractors some faith in the system and some confidence in what they are doing, for goodness sake do not sell them short. That is exactly what the government is doing in this case. The Bracks Labor government — —

Mr Robinson interjected.

The ACTING SPEAKER (Mr Jasper) — Order! The honourable member for Mitcham has made his contribution to the debate, and I would thank him to listen to the honourable member for Bellarine.

Mr SPRY — I can only conclude from the honourable member's very vocal interjections throughout my contribution that he recognises there are shortcomings in the legislation that should have been addressed before it was introduced to this chamber. At a glance it creates doubt about its effectiveness in the minds of those it is trying to help. That is a sad reflection on the legislation.

The issue of exclusions, which has been touched on by a couple of previous speakers, is confusing. This legislation should provide a blanket cover for all subcontractors and suppliers across the building industry. It should not exclude one sector — namely, the house building contractors area of the building contract industry. Those same subcontractors not only work for that sector but from time to time cross over into bigger construction contracts.

In his contribution the honourable member for Geelong North criticised my colleague the honourable member for South Barwon for failing to come to the assistance of subcontractors in his area. Let me assure the house that the honourable member for South Barwon is one of the greatest advocates for his electorate that anyone could hope to meet. He does a great job on behalf of all his constituents. He recognises that there is a difference in this legislation — no doubt he will draw attention to it later in his contribution — between major contracts and house building contracts. Apparently that difference has been missed completely by the honourable member for Geelong North, so he is obviously not across this industry.

I note that the second-reading speech says that domestic building contracts for construction work on the residences of building owners are excluded, and that is the very point to which I have just been drawing attention. The construction industry in Victoria is huge. When construction of all descriptions — and I include residential, commercial and major projects — is booming, the multiplier effect ensures that Victoria enjoys general prosperity.

Construction activity is a major economic indicator in the state of Victoria, and the activity we have enjoyed in the last 12 months — thanks, I might add, to the condition that this state was left in because the previous government had been responsible in making sure that the foundation stones of economic prosperity had been laid — has demonstrated to all Victorians that we are enjoying an enormous boom in prosperity.

This legislation attempts to address one major issue — that is, equity in payment to subcontractors and building suppliers. The bill attempts to protect subbies and suppliers against payment default. Whether it is sufficiently well thought out and considered remains to be seen, but I definitely have my doubts.

Ms DAVIES (Gippsland West) — The previous speaker commented that the problems this bill is attempting to address have been going on for millennia. I will have to take his word on that one.

My awareness of this issue stems from the early days of my time as the member for Gippsland West, when I had subcontractors coming to me in considerable degrees of distress. They were the days of fairly hot competition for Vicroads contracts, with large contractors bidding perhaps unwisely low to achieve contracts and then coming unstuck along the way. The people who really suffered during those times were not so much these large contractors but all their subcontractors, who would come to me and say, 'This firm owes me $25 000 or more. What am I going to do? If I stop doing the work I will be in trouble for breaking my contract'. I felt that that was a terribly unjust situation for those many subcontractors to find themselves in. As I said, the previous speaker indicated that the problem has been going on for a very long time.

This bill attempts to address some of those issues. Its main focus is that people who carry out building and construction work or provide related services are entitled to progress payments and that those progress payments are payable every 20 working days, which is basically a calendar month. That means that when payment has not been made on time, those contractors have the right to apply for their payments to be enforced or adjudicated, if there is a dispute, and the right to stop work in cases where there has been non-payment of progress payments without being considered to be in breach of their own contracts.

It also means that where the contractor cannot or will not pay, the subcontractor can go to the next level and access funding from the principal up to the amount that the principal owes the contractor. These are very important extra rights for subcontractors.

I understand that this legislation is largely modelled on New South Wales legislation and that it is based broadly on the recommendations of the building and construction industry task force. I noted the concerns expressed by the honourable member for Brighton and other members that although there was broad industry consultation through the task force, this government did not provide an exposure draft or undertake final consultation.

I am very supportive of the value of exposure drafts and the benefits that can be obtained from final in-detail consultation with the different parties when exposure drafts are made available, and I note that the industry still had some reservations when it saw the nitty-gritty of the legislation.

I will support this legislation on the understanding that an agreement has largely been reached with the industry. I take particular note of the comments of the opposition supporting the provision of exposure drafts, and I hope that the next time members of the opposition are in government we can expect to see exposure drafts and negotiation of amendments as a result of full consultation. I also note that amendments to drafts and a less combative and more consultative approach, which sometimes takes a little bit more time, are important parts of becoming a more consultative government. I am looking forward to the change that the opposition has declared itself in favour of.

There are exclusions in this bill. The definition of construction work is fairly broad, including the construction and alteration or repair — including demolition — of any works forming part of land, including roadworks, buildings, railways and drainage construction. It also includes related goods and services such as engineering, landscaping and technical and advisory services related to construction work. I note that it excludes domestic building contracts, with the understanding that related issues and disputes are to be resolved by the Victorian Civil and Administrative Tribunal.

As I said, I support this legislation. I have many, many subcontractors who are self-employed working out of my electorate. Those people work very hard and very long hours. They often do not have enormous capital behind them, so they are vulnerable to the non-payment of any work they undertake. I hope this legislation will go some way towards addressing some of the difficulties they have had. The amount that a large firm can build up in payment arrears will be much more limited if subcontractors can ask for their money within 20 days, instead of what has happened in the past, where debts have remained outstanding for many months while work is still being undertaken or completed.

I note that more legislation will probably be needed to address this particular issue, but we have made some progress. I look forward to seeing some in-practice progress as this legislation is brought into play.

Mr STENSHOLT (Burwood) — I am happy to rise in support of the Building and Construction Industry Security of Payment Bill. Like others before me, I regard this as a very positive bill.

Until now many subcontractors and contractors in the building construction industry — and there are many in my electorate as indeed there are in all our electorates — have had very little redress at all in trying to chase up overdue payments. A lot of small subcontractors are individual operators, be they bricklayers or carpenters. Often the husband does the work and the wife chases up the bills. When overdue payments are owed to a family business and the money does not come in, bills may not get paid, school fees may not get paid and perhaps children do not get fed. For such small operators, having some security of payment and having appropriate avenues of redress are important.

Up until now their only recourse was to go to the courts, and approaching a court is not always easy. Like me, many honourable members have had representations made to them by small contractors about their frustration at trying to get payments from other people, and often their frustration is quite palpable. They are just small business people — —

An honourable member interjected.

Mr STENSHOLT — I look after small business people in my electorate, believe you me. I am attuned to their needs and have a strong relationship with them.

Courts and lawyers are expensive. Some of the representations made to me indicate that any sort of court appearance can cost up to $1000 a day by the time they have a meeting with and instruct a solicitor and the solicitor appears in court for them. They may also need to subpoena people and provide documents, which all costs a lot of money. Having to pay daily appearance money of $1000 a day is not unusual.

What often happens is that the other party, which may be a lot bigger than the subcontractor, sends a lawyer along and asks for an adjournment. For a small business person an adjournment means another day and another $1000, just because the other people were not ready, did not have enough papers or needed some more time. They then might just give up because the amount of the debt owed to them — often less than $5000 — means it is unrealistic to go to court too many times. Three days at $1000 a day can use up the money you are trying to recoup.

Sometimes small business people might try to wait it out and take many months trying to recover the money. In very unfortunate cases contractors have lost their businesses. Some have had to mortgage their houses, and some have actually lost them because they have had to sell up. And even worse than that, the stress they have been under causes so much tension that the family can split — all because of debts they are owed. Trying to recover from a personal situation like that, let alone the economic destruction involved, is very difficult for such people. This is the result of consultation and discussions with people in the industry and delivers on a promise we made before the last election.

I commend the task force, which was headed by the parliamentary secretary, the honourable member for Mitcham. His electorate is very near mine and we share a number of small business people, contractors and subcontractors and so on, so I am sure he has had similar representations and seen similar problems and suffering. I was pleased that the task force put forward a whole range of recommendations. It looked at other jurisdictions, particularly New South Wales, and tried to synchronise with the New South Wales legislation — and it also, wherever possible, tried to take the protection provisions a little further than that state had. The task force came up with about 30 recommendations, many of which appear as provisions in the bill.

The bill creates the right to get periodic payments and includes a default clause requiring payments to be made every four weeks in default of anything else being put into an agreement in a contract.

As other speakers have mentioned, clause 5 sets out the type of work covered by the legislation, and the definition is quite comprehensive. Definitions relating

to goods and services are detailed in clause 6, which covers the provision of labour, architectural design, surveying and quantity surveying. Remember, it includes not just bricklayers but also architects, engineers, surveyors, interior and exterior decorators, and even landscape advisers and people offering other technical services. The idea is to cover the whole range of construction work involved in the total process of building a home to the final finishing stage.

As I have mentioned already, part 2 deals with the rights to progress payments and part 3 deals with the process for recovering progress payments. An interesting thing that has already been alluded to is the fact that, for a subcontractor, it is not just a matter of seeking recovery of payment from the immediate contractor above, but indeed a subcontractor is able to reach beyond that to the primary contractor — the bill uses the word 'principal' — and require the principal to seek redress from the party in between. Indeed, depending on the chain there may be more than one party involved.

Part 3, division 2, deals with adjudication of disputes. Disputes often occur where difficulties have arisen under contracts or where there is a lack of contract detail, and they need to be resolved. The bill aims to put into place a quick adjudication process. Where it is not specified and if there is a problem the adjudicators are able to be called on to intervene. Obviously they need to be suitably qualified people and nominated by the Building Commission.

I am very much in favour of the use of adjudication because it is appropriate not just in matters involving contractors and subcontractors but also in cases involving building owners. I am sure honourable members have had representations made to them where building owners have had problems over very poor work. The ability to seek redress through an intermediary process rather than through the courts is very necessary, particularly for claims involving small amounts of up to $30 000. I commend a streamlined adjudication process, which is particularly necessary in building disputes between contractors and subcontractors. After adjudication certain amounts have to be lodged as security.

Following adjudication the bill provides protection for the adjudicators from being sued. It is part of the process that will ensure a quick process which is easier to understand and implement rather than going through lengthy processes through the court.

I am pleased that this bill has received wide support from independent contractors, industry bodies and tradespeople as well as the unions. As previously mentioned, the honourable member for Mitcham has undertaken a considerable consultation process. When you get into these difficult areas where you are trying to negotiate agreements between people who have varying interests it is important that such consultations are productive. I am pleased that that has occurred in this instance.

I was disappointed that we were unable to achieve such legislation under the previous government. The previous government sought to have a kind of voluntary code, but it was not sufficient. It has taken a Labor government to act for and look after the interests of small contractors and subcontractors — small businesses. It is at the heart and the interests of the Labor government to look after the small business people and ensure that their interests are protected in ways exactly like those we have before the house tonight.

It is important that appropriate consultation takes place in seeking to reflect the views of small business. As a member of Parliament I take seriously the need to speak constantly to small business people in my electorate. I talk to the traders organisations who include subcontractors from a wide field, whether they be surveyors, building consultants, architects, bricklayers, carpenters and builders. I am very much a part of the traders and business groups in my electorate. I have been disappointed that the need for this legislation has not been recognised by the department up until now.

The very comprehensive provisions, particularly regarding adjudication, which include the way trust accounts are meant to be kept and the way — —

The ACTING SPEAKER (Mr Jasper) — Order! I remind the honourable member for Geelong that he should recognise the Chair when he passes in front of it.

Mr STENSHOLT — Thank you, Honourable Speaker. I was going to talk about the consequences of not complying with the adjudicator's determination. I am not sure whether this is the case with your determination, Sir, but here we are talking about the adjudicator in respect of the Building and Construction Industry Security of Payment Bill.

Clause 27 sets out the extensive provisions for ensuring payment. The bill provides a great service to the many contractors in the various parts of the building and construction industry and great protection to make sure they get paid on time for the construction work they undertake. It also applies to interior decorating work,

architectural work and other services across the board. This is an excellent bill, and I commend it to the house.

Mr McINTOSH (Kew) — The purpose and object of the bill is very commendable and the opposition supports it. Essentially the bill seeks to grapple with a very complex issue and provides security of payments for contractors and subcontractors for the supply of both goods and services in the building industry. Most importantly, while the broad parameter of the bill is supported by the opposition, a number of matters have been raised by opposition speakers in relation to it. As many speakers have said, the devil is in the detail.

There is no doubt that the government entered into a process of consultation with many industry leaders, and there is almost unanimity on both sides of the equation — both those providing the services and those taking the services — that the object and purpose of providing security of payment is a step in the right direction. It also seeks essentially to adopt into Victoria the law of New South Wales, which was, as I understand it, passed in 1996 and has had some four years in operation. Similar legislation is either proposed or has been passed in Queensland and Western Australia as well as in the United Kingdom and Canada. There is no doubt that modern trends would suggest that the other states and territories in Australia will also pass similar legislation, because the problems that underscore the bill have some operation in those places and will need to be addressed there.

Many honourable members have today spoken passionately about the problems associated with small contractors and subcontractors being left in the lurch by a principal contractor who goes out of business or who, for whatever reasons, decides not to pay or disputes payment. Small operators who are working on a very tight margin could find that situation makes the difference between survival and going out of business completely, with the consequent loss to their employees and the principals of the firms.

The objects of the legislation can be supported, but there are real queries about the process the government has gone through in getting to this point. It has adopted a piece of legislation essentially as a role model from New South Wales and imported that into Victoria, notwithstanding that the industry itself is aware of substantial discrepancies in the New South Wales legislation that will need to be addressed in due course. I understand from correspondence from the Housing Industry Association Ltd (HIA) that there are current proposals to substantially amend the New South Wales legislation.

One of the issues that the HIA has raised in its correspondence with the government is that perhaps there should be a little caution in passing the bill and in dealing with or enabling those particular amendments to be adopted in Victoria, because in many respects they should be given some opportunity to be reviewed in light of what is happening in New South Wales, even if the government simply entered into a dialogue with the government of New South Wales. When one considers they can talk about the Snowy and Murray rivers, surely they could enter into a dialogue about the building industry and determine what the amendments may or may not be, and introduce those consequential amendments into this bill.

The HIA is critical of the government in the sense that while it entered into the process of participating in the task force chaired by the honourable member for Mitcham, it is very critical about the fact that it was not given any form of exposure draft of the bill in advance through which some of its concerns could be dealt with appropriately. It is a matter that even the honourable member for Gippsland West raised in her contribution and is something over which the government should hang its head in shame — that there is all the goodwill from the industry to see the passage of the bill, yet it is not prepared to consult with the industry or to take the industry into its confidence to deal with the drafting and actual detail of the bill in a number of ways.

I shall also deal with some of the principal points raised by the HIA and other honourable members in their contributions to the debate tonight. There are probably about four matters that are of genuine concern in relation to the bill and its operation. The first is that through clause 7 domestic building contracts — that is, between the owner and principal contractor — are excluded from the operation of the legislation. My reading of the bill is that if a contractor contracts down the line, those subcontracts can be dealt with under the operation of this legislation.

But there is a genuine query as to whether that is exactly and precisely what is meant — that is, whether the principal contract as well as the subcontracts would be excluded from the operation of the legislation. Having said that, I remind honourable members that now we will have a dual system for dispute resolution. That probably sticks out in a dramatic fashion as underpinning one of the major deficiencies in the bill.

With a domestic building contract the process for dispute resolution requires the builder or the owner to seek redress in the Victorian Civil and Administrative Tribunal. That redress must be dealt with by the VCAT process. That process was adopted by the previous

government and seems to be working efficiently and effectively, but it is a turgid and long process for dealing with those matters. Any payments schedules that may operate under domestic building contracts would still have to be dealt with through the normal litigious process in VCAT.

Alternatively, on my reading of the bill, if there are subcontractors — this is something which should be clarified — the subcontractors dealing with the builder in a domestic building contract will be able to avail themselves of the provisions of the bill and obtain some form of security of payment or an adjudication in relation to the subcontract, notwithstanding that the builder in dealing with the owner would have to go through the processes set out in VCAT.

I would have thought this was an opportunity for the government to unify the whole of the process, whether it be in relation to domestic building contracts or building contracts generally, to deal with a major problem universally and not exclude one substantial section of the industry from the operation of the bill. It is a substantial not a minor section of the industry.

As I understand it, domestic building, renovations, swimming pools and landscape gardening, which are caught under the Domestic Building Contracts Act, represent about $1 billion of turnover in this state. It is a substantial part of the building industry that underpins the whole of the industry in the state, yet it is excluded from the operation of the bill. That is a substantial deficiency and should be clarified. Perhaps in the government's haste to introduce the legislation and in its not consulting with the industry these matters have not necessarily been addressed in an appropriate way.

I turn to the process of adjudication, a matter that is raised by the Housing Industry Association fairly and squarely. One of the principal problems at this stage is that while you get an adjudication, essentially it does not provide an outcome, because if there is an adjudication for some form of payment made the only way that can be enforced is in a normal court of law. As I understand it there are several New South Wales Supreme Court cases on this matter — I have not read them, I am quoting from the Housing Industry Association correspondence — where it has been determined that proof of the debt is still required to enforce that debt in a court of law.

That means the debt can be subject to the normal defences of set-off or of some form of counterclaim that can be mounted by one of the parties. That would then require a long and turgid process, perhaps through the common-law courts themselves, in enforcing that debt. Essentially you have to go through the process again to establish the adjudication of an amount of payment, and that adjudication would still have to be proved in a court of law, with all the defences available.

What the Housing Industry Association has raised, which the government should take on board, is whether an adjudication in the situation where there is no reply from a respondent could be interpreted as a debt that is payable without any prejudice to the rights to enforce that in the normal way in the common-law courts.

The other matter that troubles me in relation to the adjudication process itself — I know it is supposed to be a quick and expeditious process to determine an amount of money that would be payable on a time payment or a schedule of payments — is that there is no formal appeal process from that process. Of course there would be an opportunity to appeal that to the Supreme Court in the normal way, and that would necessarily mean a long and turgid process in the Supreme Court of issuing the prerogative writs to get that determined because of the absence of any formal appeal process.

Debate interrupted pursuant to sessional orders.

ADJOURNMENT

The DEPUTY SPEAKER — Order! Under sessional orders the time for the adjournment of the house has arrived. The question is that the house do now adjourn.

Wheelchairs: research funding

Mrs ELLIOTT (Mooroolbark) — I ask the Minister for Transport to give serious consideration to funding an initiative by Scope (Vic), which is the former Spastic Society. In December 2001 the Bracks government established the wheelchair safety task force after some accidents of quite awful horror where people were trapped in their wheelchairs trying to cross at level crossings. One was in Nunawading quite close to my electorate and one of my constituents was a friend of a young man who died. He graphically described to me how awful that accident was, undoubtedly for him but also for the young man's family.

The government gave the wheelchair safety task force a range of matters to look into, one of which was wheelchair design. Scope has an arm called TREC — the Rehabilitation Equipment Centre — headed up by Mr Harold Lubansky, who I believe is a former engineer. They have designed a wheelchair which has an extra castor wheel. I do not quite understand the

mechanics of it, but it stops free-moving wheels on wheelchairs from getting stuck in tram lines and train lines at crossings. The prototype of the wheelchair is being developed.

I wrote to the Minister for Transport quite recently and to the wheelchair safety task force drawing their attention to this initiative. Scope is seeking $200 000 for research into developing this wheelchair and $50 000 for standards testing. I do not imagine that the government would have the money to fully fund this project, and undoubtedly Scope will be looking for other backers, but I think it would be an example of goodwill on behalf of the minister and the government if they were able to provide some of the funding for this worthwhile initiative.

I notice in a press release of last Friday about the task force's report that the minister has granted $100 000 for research to investigate engineering issues at level crossings. If he could match that with some funding for the development of this wheelchair, if the prototype was successful it would stop the sorts of horrible accidents which have occurred previously at railway crossings.

Housing: Bendigo

Ms ALLAN (Bendigo East) — The action I seek from the Minister for Housing is that she address issues to do with affordable housing in Bendigo. I raise this issue in the context of the Bracks government's very strong philosophical commitment to public housing that has been articulated in a number of ways around the state. The Bracks government, with the minister, has committed $95.4 million for affordable social housing projects in Victoria. It is important to note that this is the first new money in a decade that has been allocated to public housing. The Bracks government has also allocated $304 million over two years to upgrade and redevelop existing public housing stock. We have seen the release of the Victorian homeless strategy and an increase in the budget for homeless services by 30 per cent — proud achievements for the Minister for Housing.

We also have some examples in Bendigo where we have seen the $6.5 million redevelopment of the Long Gully housing estate, work on which is about to be undertaken from June this year. That is an exciting redevelopment for those people in that community. Through the social housing innovations project $1.6 million has been allocated for the YMCA to put together a youth hostel in central Bendigo as part of the youth precinct that has been developed in partnership with the City of Greater Bendigo and the state government. That is a fantastic outcome for young people in Bendigo.

We must look at what the previous government did in this area. Firstly, under the previous government there was no allocation of new money to public housing. It tried to flog off inner city public housing estates and restricted access to public housing for the working poor — which is why as she trots around the state the honourable member for Caulfield has a very hard job of trying to convince people that she cares about housing issues. She and her colleagues have a difficult task when the weight of evidence is clearly to the contrary.

The evidence shows that the Bracks government cares about people in public housing and that it has backed up that commitment with a great financial boost in the area. That comes on the back of seven years of neglect by the previous government, which the honourable member for Caulfield was part of, and she is now trying — very hard I must say — to convince people that she cares about public housing.

Clearly the government and the minister have a very good and proud record in this area. There has been a great boost to funding, particularly in Bendigo at Long Gully and the youth resource centre, which will have the hostel attached to it. It is a fantastic boost for housing in my electorate of Bendigo East.

Bridges: Bena

Mr RYAN (Leader of the National Party) — The matter I raise for consideration by the Minister for Transport relates to the Bena–Kongwak Road road-over-rail bridge and road alignment project within the municipality of South Gippsland.

The difficulty is that the local Bena community, a small township about 6.5 kilometres west of Korumburra, has been concerned for a number of years about the potential for a serious accident at the road-over-rail bridge on the Bena–Kongwak Road. The main cause of concern is that the bridge has a single-traffic lane, which is accompanied by the further difficulty of poor visibility on the approaches. The bridge carries an average of 500 vehicles per day, with 8 per cent of those being heavy vehicles, including milk tankers.

As honourable members are no doubt aware, the area is near the centre of the wonderful South Gippsland dairy industry, and many of the vehicles which go over the bridge on a daily basis are related to that great industry. That is more particularly so in the busier times of the season, as evidenced by the road traffic counts which have been taken by the municipality.

Two options are available to resolve the current difficulties. One is a cheaper and, not surprisingly, less preferred alternative. The preliminary and pre-design cost for that aspect of the project is about $516 000. There is a preference for an alternative form of project which would cost about $850 000.

The South Gippsland Shire Council has agreed to contribute $190 000 towards the cost of the project in either form, and Victrack has agreed to contribute a further $100 000. The question is where the balance of the funding is to be derived from, and it is that issue on which I seek the assistance of the minister.

If the preferred option were adopted there would be a shortfall of some $560 000. That being the better way by far to address this issue for longer term purposes, I ask the minister and the government to give consideration to contributing an amount up to, or ideally the full amount of, $560 000.

The community has pursued this issue over a period of time. I am conscious that the minister recently made an announcement that the government will help the tourism railway in the area. However, this is an issue of great concern. The bridge project has to be dealt with; the community not only wants it done but must have it done in the interests of safety. Therefore, I would ask that the government, and particularly the minister, be prepared to contribute.

Real estate agents: trust funds

Ms ALLEN (Benalla) — I raise with the Minister for Consumer Affairs the very important issue of real estate licensee trust funds. I want the minister to take action to ensure that country Victorians not only in my electorate of Benalla but particularly throughout the north-east are not disadvantaged in any way by the actions of real estate agents who act in dishonourable ways. Many people in rural Victoria live on incomes of under $25 000 per annum and find it very difficult to find not only reasonably priced accommodation but long-term rentals.

When they are paid the first four weeks bond, real estate agents are required by law to place the bond money into a trust account so that those moneys are secured and able to be repaid to the tenants when they vacate the properties. Bond money is security for both the landlords and the tenants in case of damage to the property or failure to pay rent. The moneys handled by agents for appropriate sales are similarly required by law to be placed in trust accounts. The agents should not at any time misuse that money for personal use or for other matters, nor should the agents fail to file an annual return.

Tenants and home buyers should be able to deal with real estate agents at any time and expect fully professional service and be able to trust them to handle the moneys transacted without fear of being ripped off. The beautiful north-east has many rural properties and homes for sale, and many a city visitor has moved to the area to enjoy freedom from city pressures and to find an alternative lifestyle. Having been born and raised in country Victoria in the pretty little country town of Alexandra I know how wonderful it is to grow up in a country lifestyle, and I have recently bought an attractive two-bedroom home on 7 acres just 15 minutes from Benalla. My real estate agent was wonderful; however, some real estate agents act in the most unethical and unscrupulous manner.

When people go into transactions of this kind they do so in the belief that they will not only get professional service but that their moneys will be fully secured, will not be misused and will be repaid whenever the call is due. I know that right across Victoria there have been many occasions when real estate agents have not acted in a professional manner, and it is about time that we looked seriously at unethical real estate agents and did something about it.

I ask the minister to advise the house of what action she is taking to ensure that people in the north-east who are having dealings with real estate agents are protected and can do business in good faith and in honesty.

Courtenay Gardens Primary School

Mr HONEYWOOD (Warrandyte) — I ask the Minister for Education to take action in relation to Courtenay Gardens Primary School. I have a letter from the school council president, and indeed I have been lobbied by the hardworking local member, the honourable member for Cranbourne. The school council president has written to me as follows:.

> Please find enclosed a school council letter that many in our school community forwarded to the Minister for Education and Training, Ms Lynne Kosky.
>
> We now seek your support in raising this issue/bureaucratic nightmare in order for our children to be housed in decent facilities which are built in a timely manner.

This primary school has 844 students. It is located in one of the highest growth areas of Victoria, and this government has not once, not twice, but three times over the last two and a half years made announcements about the same six new classrooms being built. Two

and a half years down the track nothing has happened. Indeed the school council states, and I quote:

> As a member of the Courtenay Gardens Primary School community I am completely frustrated and disappointed at the continual delays to the new building project which is supposed to give our 844 children — the largest primary school in the eastern half of Victoria and the fifth largest primary school in the state — six new classrooms.
>
> … Our community has fought long and hard to upgrade the standard of classrooms from 25 relocatable classrooms and 10 permanent to 16 permanent classrooms and 19 relocatable classrooms. Over the years the school community has poured hundreds of thousands of dollars of its own funds into providing the school with basic necessities. These include shade areas, sufficient staffroom space and a computer room …
>
> The Courtenay Gardens Primary School community is justifiably proud of all that we have achieved in such a short time. Two years ago, when the announcement was finally made —

by the then education minister for six new classrooms —

> the entire community was extremely pleased … That initial pleasure has now completely dissipated and led to much anger amongst the community as our children continue to 'make do' in relocatables.
>
> This project has been mentioned in the press on three separate occasions —

by the state government —

> outlining the funding given by your government. The project was slated to go to tender at the end of January and now as we head into April there is still no word on when it will start.

The Bracks government has made:

> repeated promises of a commitment to education but it all seems to be just words.

We know that for sure!

Will this be another supposedly funded project that is a false promise? I call on the minister to act on her three separate announcements and provide these kiddies with a hope for the future.

Trucks: Yarraville

Mr MILDENHALL (Footscray) — I raise for the attention of the Minister for Transport the need to implement an enforcement effort for the recently announced curfew on through-trucks at night and on weekends in Francis Street, Yarraville. This announcement of a curfew was a major breakthrough, following the announcement of a curfew in Somerville Road, the considerable work by Vicroads on an educational program to convince and inform trucking operators that it is in fact cheaper and quicker to use the West Gate Freeway instead of Francis Street, Yarraville, and the continued monitoring and research program on the diesel issue by the Environment Protection Authority.

It stands in dramatic contrast to the feeble efforts of the former coalition, which did absolutely nothing. It smoothed out the roads so the trucks could go faster and the road could attract more trucks. Then the shadow minister, the honourable member for Mordialloc, turned up for a public meeting in Yarraville — —

Honourable members interjecting.

The DEPUTY SPEAKER — Order! The Deputy Leader of the Opposition!

Mr MILDENHALL — The shadow minister said, 'You know, the problem with using City Link is that the camber is built the wrong way for the trucks', and I thought, 'I wonder who built that? I wonder who designed and approved that?'. The honourable member then said they ought to change City Link. That is bright! No wonder he is known as the Einstein of the opposition ranks with suggestions like that.

The need for enforcement action and the outline of the detail of that action has never been greater. Because of those years of inaction by the coalition there is a great degree of cynicism in the local community. We need to outline the enforcement effort. It is being fuelled by political candidates in the area assisted by the opposition and the Greens; by Michelle Finey and by John Westbury, who is standing at the next state election, with assistance from the Liberal Party. We need to find a legitimate balance between the needs of the business community and those of the residents. It is an issue that was neglected by the previous government and this government is getting it right. Therefore I ask the minister to outline some measures to the house.

McKinnon Basketball Association

Mrs PEULICH (Bentleigh) — I raise for the Minister for Education and Training a matter relating to a new policy initiative that was announced on the weekend, which I read about in the *Sunday Herald Sun* of 21 April. The article, headed 'School for all in class revolution', states:

> Victoria's schools are facing a 'cradle-to-work' revolution under a radical education blueprint being pursued by the state government.

It further talks about community use of facilities such as halls and pools, medical centres and the like, and of

course that is commonsense for anyone who knows how much money they cost.

The article also mentions some $17 million devoted to two projects. It was quite unusual because first thing on Monday morning I received a flood of telephone calls from very concerned parents and coaches involved with the McKinnon Basketball Association. On Friday afternoon they had been instructed via the principal of Brighton Secondary College, who has been totally professional all the way, to immediately stop using their basketball stadium, the school's hall, for their basketball competition, including the forthcoming competition on Saturday and Sunday of last weekend, affecting some 500 children.

This is a classic example of the left hand not knowing what the right hand is doing. I was going to say it happened before the ink on the policy dried but I presume it happened the other way around and the department had no idea of this new policy.

I received a letter from a Dr Mark Mackie, a veterinarian in Bentleigh, calling on me to make representations to the Minister for Education and Training to take immediate action to intervene to negotiate a venue or to provide $100 000 — which would be a paltry amount in comparison to the $17 million — for the building of a sound attenuation wall at Brighton to ensure that this basketball competition with its 500 children and their families, coaches, supporters and volunteers can continue. I call on the minister to take immediate action.

Bridges: Sunbury

Ms BEATTIE (Tullamarine) — I ask the Minister for Transport to take steps to ease traffic problems in Sunbury. I need to paint a picture for opposition members, who probably have not been north of the Yarra very much, although I understand the opposition leader was in Sunbury some time ago and may know a little bit about this issue.

This issue has been a problem for about seven years, but the Liberal Party did nothing about it. Sunbury is split in half by the Melbourne–Bendigo train line, and there is development on each side of the line. There are two crossings on that line: one is known as Station Street and the other is known as the Macedon Street bridge. Station Street is a council road, but the Macedon Street bridge belongs to the state. I seek the duplication of that bridge — and the Deputy Speaker will know that I have raised this issue in the house before — because motorists using the bridge to reach schools on either side — Salesian College, Our Lady of Mount Carmel, Sunbury Primary School on the Melbourne side, and Sunbury Secondary College, Kismet Park, St Anne's, Sunbury West Primary School and several other schools on the other side — create a traffic jam at least twice a day. Cars are almost at a standstill and there is nowhere for them to go.

The honourable member for Gisborne is familiar with this problem because she once worked at Salesian College and many of her constituents and their children travel to this school. I have been talking to her and she agrees that duplication of the bridge would alleviate this problem. It is a very old bluestone bridge and has some historic value, as the Leader of the Opposition may have noticed in his fleeting visit to Sunbury. I would be keen therefore to ensure that any duplication fitted in with that and that the historic bridge be retained. Of course it will not be long before we have those very fast trains going up to Bendigo and that will improve transport to the Sunbury area. One thing the government did deliver on was the — —

Honourable members interjecting.

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

Roads: speed limits

Mr LUPTON (Knox) — I raise a matter for the Minister for Transport in relation to the 50-kilometre-an-hour speed limit in residential areas. I notice that whilst the government is talking about the number of accidents having decreased, the Victoria Police indicate that motorists are more likely to break the speed limit in these residential areas than they are in high-speed areas. The cities of Manningham and Knox have instituted on a trial basis the placing on the side of rubbish bins a sticker which indicates a 50-kilometre-an-hour speed limit in local residential streets. The cost of these reflective stickers works out at 50 cents each, and I suggest that if the government did something about it the cost could be reduced dramatically.

I ask the Minister for Transport to investigate the possibility of supplying these reflective stickers to be placed on the sides of rubbish bins in residential streets so that at least on one day of the week and during the night these signs displaying the speed that should be observed will be visible to motorists.

The cities of Monash and Manningham indicate it is going to cost them probably $1 to put each sign on, so I suggest that the minister suggest to the people that they put their own signs on the bins. I ask the minister to investigate that as a matter of urgency.

Tourism: Grampians region

Mr HELPER (Ripon) — I raise a matter for the Minister for Tourism. The action I ask of the minister is that he continue the excellent support that he and the Bracks government have shown to the Grampians region's tourism industry.

We in our region are very proud of the tourism attractions in the Grampians. We have magnificent heritage towns and award-winning wineries. I encourage honourable members on both sides of the chamber to partake in tastings in the wineries in my electorate and in the adjoining electorate of Wimmera. One of the fantastic wineries is Montara at Ararat.

We have some fantastic fishing and boating opportunities — all we need is a little bit of rain to fill up our reservoirs. We have contemporary cafes, restaurants and many fine eateries throughout the area. We have splendid art galleries, and of course the superb national park with its unique flora and fauna. We have many other attractions, including beautiful botanical gardens.

Dr Napthine interjected.

Mr HELPER — J ward, as the Leader of the Opposition interjects, and many other attractions. We are very proud and wish to promote these attractions very much, and that is why we seek and continue to seek the support of the Bracks government to promote our region. There has been some excellent promotional work done in the region to the extent that from the December 2000 figures we have domestic visitors numbering some 610 000 overnight visitors — far more than would go to Brighton, I suspect — and the total expenditure of domestic visitors is worth $133 million to our region.

Of those visitors 42 per cent are from Melbourne; 47 per cent are on holidays; and another 19 per cent are on business. International visitors number 40 000, with a total expenditure of $5.9 million. It is a fantastic destination for daytrippers, and a million daytrip visitors have taken advantage of our beautiful attractions in the area. Again, they have left behind $75 million, which has greatly boosted our economy.

Victorian Eyecare Service: response times

Dr NAPTHINE (Leader of the Opposition) — I wish to raise a matter for the Minister for Health. The action I seek is for the minister to speed up the response from the Victorian Eyecare Service to people in need across Victoria. The web site of the Victorian Eyecare Service says:

> Victorian Eyecare Service provides eye care at low cost to pensioners and others of limited means who live in country Victoria.
>
> …
>
> The cost of glasses and contact lenses is subsidised by the Victorian government so you have to pay only a part of the cost.

That is highly commendable, but under the Bracks Labor government there is real difficulty in actually getting access to that service.

I raise the issue of a constituent from Portland who is a pensioner and who needed urgent eye surgery. She went to the public health system and was told she had to wait many months for that very urgent surgery but that that would be inadvisable in her condition. She then went to a private hospital and paid $1537 out of her own funds because she could not get a public hospital bed under the Bracks Labor government. On top of that she said, 'What I need now as a follow-up to that surgery is new eye glasses, and of course the Victorian Eyecare Service will look after me in terms of that'. But when she applied in February to the Victorian Eyecare Service she got a letter back dated 1 March. It says:

> We have received your application for a claim form to obtain subsidy for the cost of glasses through Victorian Eyecare Service (VES). Your name has been placed on the waiting list due to the limited funds available.
>
> Your position in the waiting list will allow us to issue you with a claim form only after 14 May 2002 … Please do not post the confirmation return slip before this date.

So she is on a waiting list to get on a waiting list! That is what happens under the Bracks Labor government: she is told that under the Victorian Eyecare Service she can go on the waiting list, so she should fill in a claim form on 14 May and not apply before then so that, after 14 May, she can go on the real waiting list! So she is on the Clayton's waiting list until then. Eleven weeks later — —

The DEPUTY SPEAKER — Order! The honourable member's time has expired and the time for raising matters on the adjournment debate has also expired.

Responses

Ms PIKE (Minister for Housing) — The honourable member for Bendigo East raised the matter of affordable housing in her community. I want to thank her for requesting action from me in this regard.

Through the social housing innovations partnership program the government has been able to deliver

genuine growth to housing in the honourable member's community. In fact right across Victoria the additional $94.5 million that the Bracks government has contributed has been partnered by additional resources to genuinely expand the amount of funding available. On top of that there is a particular project that we have recently announced in the Bendigo area — that is, a partnership with the Bendigo YMCA and — —

Ms Asher interjected.

Ms PIKE — Get on the big picture, Louise!

The DEPUTY SPEAKER — Order! The minister, to continue!

Ms PIKE — Thank you, Madam Deputy Speaker. I just find it enormously amusing that the Deputy Leader of the Opposition has spent the last period of time commenting on my article of clothing. It shows that the concern the opposition has for the very serious matter of affordable housing is very shallow, and that is disappointing. The residents of Bendigo are genuinely concerned about this issue and will see that not only is the Deputy Leader of the Opposition engaged in a charade in terms of her concerns — —

Honourable members interjecting.

The DEPUTY SPEAKER — Order! There is too much audible conversation! I ask the minister to return to her answer.

Ms PIKE — Of course the Deputy Leader of the Opposition is joined by the honourable member for Caulfield, who has been moving around the Bendigo region trying to raise the issue of housing. I am very surprised she has the temerity even to speak on this issue, given the record of the Kennett government that she was a part of.

The Kennett government placed no additional funding in the housing budget over and above what was provided in the commonwealth–state housing agreement. It had a very interesting strategy for dealing with demand in housing. First of all, by 1998 it had let the waiting lists in housing blow out beyond belief. Secondly, its way of tackling the blow-out and trying to reduce the demand for affordable housing was to shut the door and to make it so enormously difficult for people to apply for public housing that they did not do so.

One of the terrific initiatives on top of the additional resources that the Bracks government has put in has been to do away with the market rent test, which was a way of shutting the door and keeping people out of the public housing waiting system. This particular test was notoriously demeaning, requiring five written rejections from real estate agents. In doing away with it the Bracks government has introduced a fairer and more transparent system so that people can apply for public housing if they are genuinely eligible.

Not only is the government putting additional resources into public housing, but it is also spending enormous amounts of money renovating those houses. That will improve the facilities available to communities and ensure that the housing provided to people is not substandard, as it has sometimes been in the past, but is renewed and appropriate. The Bracks government has also increased funding to homelessness services by 30 per cent.

I can assure the honourable member for Bendigo East that the Bracks government is putting additional resources into housing and delivering some very great benefits to her community.

Mr BATCHELOR (Minister for Transport) — The honourable member for Mooroolbark raised with me a request that the government provide money to Scope (Vic) to assist in a research program that it has commenced to find a design solution for the problem of wheelchairs being stuck in the flange gap in rail and tram tracks. The request follows a report to me by the wheelchair safety task force that was set up following a death at a rail crossing in Nunawading. The death was a real tragedy to members of the disability community and they have approached me to try to identify the problems that gave rise to this incident and the more general difficulties of wheelchairs and the risks wheelchair users face in travelling across level crossings.

At this stage I cannot accommodate the honourable member's request because the decision of the government was to accept the recommendations of the task force. There were in excess of 20 recommendations and the government will accept all of them. Some are within our jurisdiction and some will require the government to advance the recommendations in other jurisdictions, primarily at the national level. The recommendations included a 24-hour 1800 number for people in the general community to report problems and faults at level crossings. This is a reporting line, not an emergency help line, which would be the traditional 000 number.

Other recommendations called for additional research to be carried out and the government has indicated it will make $100 000 available for research into the investigation of engineering issues and the development

of maintenance standards and protocols for level crossings so the tasks that the research grant is required to carry out are more than just the design features of a less risky wheelchair. However, I will take that matter up with Scope.

Scope has been a terrific organisation in looking after the needs and the issues of wheelchair users and has been very helpful in the work carried out by the wheelchair safety task force. I will take that up with Scope and see how they can be assisted in further development of their wheelchair design. I am particularly interested in it, and I thank the honourable member for Mooroolbark for bringing that to my attention, although I have heard of it through other avenues. I will take that up and see what we can do.

The Leader of the National Party raised the issue of the Bena–Kongwak Road bridge over the railway line. Interestingly I was in the area on Monday and took the opportunity to have a look at it. It is, as he described, a single-lane bridge. It does have very difficult approach problems on both sides. I can fully understand the issues that have been raised, not only by the Leader of the National Party but by the honourable member for Gippsland West and the local council.

I point out, however, that because this is a local road it is the responsibility of the local shire; and because the road goes over a railway line, the actual bridge component of it is maintained by Victrack. As part of the negotiations that have been taking place for some time, as the Leader of the National Party has indicated, Victrack is prepared to contribute $100 000 to the cost of building an alternative bridge with an alternative alignment. The difficulty for the South Gippsland community and the shire is that there are two design concepts, both of which exceed in cost the contributions which Victrack and the local council are prepared to make.

The preference, as expressed locally and, interestingly, by Victrack, is for the concrete structure, because that is a better type of bridge in the long run. The current bridge is has only a single lane, and if it were to be replaced by a concrete structure, presumably the shire would look at its road alignment. It would also provide the opportunity to build a better structure for the long term and get a better outcome in terms of the long-range maintenance costs for all concerned.

Together with the local council Victrack is to examine the figures to see whether the cost estimates that have been provided thus far are accurate. Victrack thinks it might be possible to build a concrete bridge for a lower cost — that might be helpful — and it is prepared to carry out its own investigations. As I said, Victrack is prepared to contribute $100 000 towards that, but I would point out to the South Gippsland community that this is the responsibility of the local council.

Given that it probably has $2 million or $3 million, or $3 million or $4 million — I am not sure — from the federal Roads to Recovery program, this would be an ideal opportunity for the council to use that money. After all, local roads are jointly funded by local councils from their rates, and the state government looks after the arterial road network and does not generally fund local roads. So it might be appropriate to work with the council to access a design which, whilst being of the preferred concrete type, would be of a lower cost, and to provide access to the shortfall from the Roads to Recovery program.

The honourable member for Footscray raised with me the issue of trucks in Yarraville, and on Francis Street in particular. He identified the terrific work the government has done in implementing, in early April, a truck curfew on through trucks at night and during parts of the weekend, and on the work that Vicroads has done since that time on enforcement. Vicroads, with the police, has conducted regular patrols and will continue to do that to enforce the curfew. The curfew is beginning to have a positive effect. A number of trucks have been intercepted and drivers requested to identify their purpose for being in Francis Street during the curfew period. Of those vehicles that have been intercepted, 26 were issued with curfew infringement notices, and the Victoria Police has also issued 14 formal warning notices to truck drivers found to be breaching the conditions of the new curfew.

This curfew was introduced for through traffic in response directly to requests from the local residents. We have also been requested by the local residents and the council to carry out an enforcement regime, and that is being undertaken and is beginning to have an impact.

I also point out to the local community that, as a result of looking at the storage of containers and other related transport issues, the Patrick Corporation is establishing at East Swanson Dock container storage facilities for about 12 500 containers. Once this is complete it will have a huge impact on the number of containers travelling through Yarraville and the western suburbs, and it will be of great benefit to the local community.

As the honourable member for Footscray also mentioned, the government has recently launched the Freeway Truck Travel Benefit program. We are aiming to educate truck drivers to use the City Link rather than the local residential streets as a way of getting through

access. It is clearly quicker, and when a proper cost-benefit analysis is taken it shows that it actually saves the truck drivers an enormous amount of time.

The honourable member for Footscray also pointed out the very mischievous and misleading political campaign being run by Michelle Finey and John Westbury, aided and assisted by members of the Liberal Party. The people of the western suburbs and Yarraville need to alert themselves that this local issue is being worked through with the local members — the honourable members for Williamstown and Footscray — and the government to achieve a community outcome, and it risks being hijacked by the political likes of John Westbury and his friends from the Liberal Party such as the honourable member for Mordialloc.

This is of great concern to me because the government is prepared to work with the local community to get a satisfactory outcome. It has implemented this curfew and is taking other long-term measures to identify planning requirements for the location of container parks. We are encouraging the establishment of container depots closer to the port and have launched the Inner West Integrated Transport Study to look at area-wide issues of transport and the location of those types of issues. It is very disappointing that people such as Michelle Finey and John Westbury would try to cause a division among the local community in siding with the Liberal Party.

Liberal Party members, through the honourable member for Mordialloc, arrive out there with the *Melway* resting on their knees. They do not know where Yarraville is, and they go out there and try to stir up trouble.

The Labor Party said it would work to assist the people of Yarraville, and it is doing that. The Liberal Party has not been of any assistance whatsoever. John Westbury has already declared his intention to stand as a political candidate, and Michelle Finey has stood as a political candidate in the past. When the people of the west understand that Michelle Finey and John Westbury are standing as Liberal Party stooges trying to — —

Mr Leigh — On a point of order, Madam Deputy Speaker, this minister is well known for stretching the truth. Those two people are local people, and to try and talk about them the way the minister is doing when they have no defence is an absolute outrage. They are not associated with us at all.

The DEPUTY SPEAKER — Order! That was a point in debate, not a point of order.

Mr BATCHELOR — Worse than that, there is a group that has got together and put out a publication headed ‘No choice Francis Street: blockade to go ahead’. It is a newsletter purportedly coming from some group called the Yarraville Residents Traffic Group. This newsletter is full of lies, half-truths and mistakes. It seriously overstates the number of trucks in Francis Street. In this leaflet this group says there are 12 000 trucks travelling along Francis Street each day. That is an absolute lie: it is not true — it could not be further from the truth. It is an overstatement of about 50 per cent: there are 6000 to 8000 trucks, not 12 000.

Elsewhere in this fabrication this group indicates that when announcing this curfew the government made a commitment that it would be banning petrol tankers from going through. With a Mobil refinery as one of the local industrial organisations it is impossible to ban tankers if they are there for local purposes. The government’s position has been clear all the way through: we need to find a balance. The local residents were prepared to work with the government until there was external interference from the Liberal Party aided and abetted by its cohorts John Westbury and Michelle Finey.

I question the need for a blockade to go ahead on 29 April, because these people will be protesting against this initiative. The government has taken positive steps to remove through trucks at night and for parts of the weekends and John Westbury is trying to organise people to protest against this initiative. It does not make any sense whatsoever.

The honourable member for Tullamarine raised a matter in relation to the Macedon Street bridge, a matter that she and the honourable member for Gisborne have been working on for some time. It is in Macedon Street, Sunbury, connecting Horne and Evans streets. It generates a traffic congestion problem, particularly in the morning and afternoon peaks. These members have asked that this section of the road, the bridge over the railway line, be duplicated.

It is a length of about 220 metres. It would require the relocation of some existing services and landscaping along the median strip and the roadside, but it would provide an extra lane over the railway bridge to overcome the traffic problems. This duplication would improve safety, reduce delays and increase traffic flow consistent with the adjacent four-lane sections of the roadway. I will take that up with Vicroads. I appreciate the hard work of the honourable members for Gisborne and Tullamarine. They have represented this area very well, and the government will take a look at that issue.

An honourable member interjected.

Mr BATCHELOR — Someone interjects, 'Bring back Bernie Finn'. What a disaster that would be! Bernie Finn, the former member for Tullamarine, and the Liberal Party had seven years to fix this up, and they did nothing. The Liberal Party did nothing to assist Sunbury, and the prospect of bringing Bernie Finn back makes most members of this chamber physically ill.

The honourable member for Knox raised with me an initiative that the Manningham and Monash city councils were undertaking to support the reduction of residential speed limits from 60 kilometres per hour to 50 kilometres per hour. As I understand it, these two councils are putting stickers on the sides of rubbish bins in residential streets. As he indicated, this really only provides the advertisement, if you like, during the nights and hours of the day when the rubbish bins are out on the streets.

Before the government can consider this matter any further it will await the results of the trial that is currently under way. We will then carry out an assessment and get back to the honourable member for Knox.

Mr Leigh interjected.

Mr BATCHELOR — Interestingly the shadow Minister for Transport is indicating that he does not want the government to assist him this way. Notwithstanding that, the honourable member for Knox has a longstanding interest in road safety and will take this matter up even if his own party — the Liberal Party — has no interest in road safety anymore.

Ms KOSKY (Minister for Education and Training) — The honourable member for Warrandyte raised the matter of capital works at the Courtenay Gardens Primary School. While that comes under the responsibility of the Minister for Education Services, I will respond in this house.

Mr Honeywood interjected.

Ms KOSKY — I said I will respond in this house. I can understand why the honourable member is raising the matter of capital facilities with the Bracks government, because in fact it has spent over $254 million on capital works over the last two years. One in three schools in this state has had capital works, which is quite different from what occurred under the previous government.

The honourable member for Warrandyte made the comment that the allocation of funding for capital works had been announced three times. That is correct, because, as the honourable member would or should understand, there is a master plan, there is a full plan and there is a budget allocation, and each of those has been announced. They are the three occasions on which there has been a response.

As I understand it, there have been some delays in it coming in within budget. The operations manager from the department met with the principal of the school several weeks ago, and I understand that the issue has been resolved amicably and that it is now ready to go to tender.

The government has increased funding over and above what was announced within the budget allocation. If the honourable member would care to give me — —

Mr Honeywood — On a point of order, Madam Deputy Speaker, the minister is clearly reading verbatim from extensive notes. If she could table those notes, that would be greatly appreciated.

The DEPUTY SPEAKER — Order! Is the minister quoting or is she reading from notes?

Ms KOSKY — I am actually reading from very brief notes.

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

Ms KOSKY — He could have them if he liked. If the honourable member would care to provide me with the letter he quoted quite extensively in the house earlier this evening, then I would be happy to respond directly to the principal and provide the school with the most up-to-date information available so it can move ahead with its capital works.

I understand that matters have been resolved amicably, and I hope that the intervention of the honourable member for Warrandyte has not delayed the process for the school, or, indeed, the children — as opposed to the kiddies.

The honourable member for Bentleigh raised a matter for my attention, and I did not catch the name of the school.

Mrs Peulich — The McKinnon Basketball Association — —

The DEPUTY SPEAKER — Order! There will be no conversation across the table between the minister and the honourable member for Bentleigh.

Ms KOSKY — I understand the honourable member for Bentleigh raised a matter relating to the McKinnon Basketball Association and a basketball facility that was being provided, I am assuming, at a school.

Mrs Peulich — Brighton Secondary College.

Ms KOSKY — At Brighton Secondary College.

As I understand it, she is asking for $100 000 extra for sound attenuation. The local council may be able to assist with that because when we have joint facilities they are generally jointly funded. I can understand why the honourable member would be coming to the Bracks government for assistance on this matter because there would certainly not have been assistance available under the previous government. If she cares to give me the details, obviously we will respond to it.

Mrs Peulich — On a point of order, Madam Deputy Speaker, the minister's department threw this group off on Friday and the minister made a new policy announcement on Sunday. I am asking her to take whatever action is necessary to ensure that 500 kids get to compete in their competition on Sunday.

The DEPUTY SPEAKER — Order! There is no point of order. The honourable member is just repeating her question.

Mrs Peulich interjected.

The DEPUTY SPEAKER — Order! The honourable member for Bentleigh has had her turn.

Mr PANDAZOPOULOS (Minister for Tourism) — I thank the honourable member for Ripon for his ongoing support for tourism in his area and for the work he does for me chairing the Government Friends of Tourism group. He is doing a wonderful job in that role.

He raised the issue of the ongoing support the state government provides to the Grampians campaign committee through Tourism Victoria. He is right, there has been a lot more focus by this government compared to the previous government on regional tourism. We understand that if tourism is to grow we need better recognition of our regions not only around Victoria but interstate and overseas to ensure that visitors travel beyond Melbourne.

Because of the extra money made available as part of the tourism rescue package the Grampians campaign committee has had the opportunity to be a bit more innovative and to fund a number of things it might not have been able to fund as part of its marketing plans in the past.

Late last year as part of the round 1 funding of the regional cooperative marketing program $20 000 was provided to support a Grampians campaign committee marketing campaign. I am pleased to announce tonight to the honourable member that as part of round 2 funding another $15 000 has been made available, increasing this year's funding to the Grampians campaign committee to $110 000, which is 8 per cent of all money going to campaign committees.

The focus of that $15 000, which will be matched by the tourism industry to make a $30 000 campaign, will be what we call the rocks campaign. Many people know only about one big rock in Australia. What we are trying to build on is the idea that the Grampians are Victoria's rock. The activities include touring around the rocks, for example, which is what many people do.

We have the great southern touring route that has also received money as part of the tourism rescue package, and that also runs through the Grampians region. It builds on the very well known food and wine theme in the area. With the honourable member I recently had the pleasure of launching this year's Grampians Gourmet Festival at the botanic gardens. We have announced two years in a row another $15 000 of marketing from the events funding, so the Grampians are certainly getting some good coverage from this government.

I noticed some free advertising being provided for us by the Minister for Transport: one of the City Circle trams is going around Melbourne with a Grampians Gourmet Festival sign on it, which is great.

This money, as I said, will build on the $20 000 provided last year for magazine advertisements that have been developed for the Melbourne and Adelaide markets. It builds in quite well with the area's reputation as an ecotourism destination and a nature-based tourism destination.

I am sure the campaign committee will be able to build towards even better things and continue to improve the great profile the Grampians have. There is great tourism product out there and it is a great tourism route. I thank the honourable member for his work and look forward to joining him at the Grampians Gourmet Festival on the first weekend in May.

Ms CAMPBELL (Minister for Consumer Affairs) — The honourable member for Benalla raised a matter relating to ethical practices in the real estate

industry, particularly in the north-east region of the state.

For most consumers buying a house is their greatest expenditure, and it is important that real estate agencies act ethically in their relationships with people who are purchasing homes, acting as vendors or renting property. Estate agents are charged with the responsible task of putting deposits and bonds into trust funds. I take this matter very seriously, and I believe it is absolutely essential that estate agents put that money into appropriate accounts and lodge tenants bonds with the Residential Tenancies Bond Authority.

In March I had a case involving a particular agency in the north-east of Victoria. I point out that a statewide inspection program operates as part of an ongoing consumer affairs investigation into estate agencies. I advise the honourable member for Benalla that as at April 520 agencies had been inspected. The reports of these inspections have generated over 50 follow-up investigations — and one of them was in the north-east in Rutherglen.

The Rutherglen real estate agency voluntarily attended the consumer affairs office and advised investigators that it had a past deficiency in its estate agent's trust fund, which is a very serious matter. The investigation also revealed that the Business Licensing Authority had earlier cancelled the agency's licence due to the licensee's failure to lodge an annual return — again, a very significant issue.

I froze the accounts of that Rutherglen real estate agency after it was shown that it had had its licence cancelled and had a deficiency in its estate agents trust fund. That matter has been reported to the appropriate authorities. I am happy to advise the honourable member that I am continuing these investigations, not only in the north-east but also in the metropolitan area. Again in March an inspection program involving R. G. Woodard Pty Ltd identified potential breaches. That agency was placed into external administration and its licence cancelled.

The honourable member for Benalla can rest assured that the north-east is being covered in these inspections. We expect ethical behaviour all over the state, be it in the metropolitan area, the north-east or anywhere else.

The matter raised for the attention of the Minister for Health by the Leader of the Opposition relating to the Victorian Eyecare Service will be responded to by the minister, who I am sure will be pleased to report that there has been a substantial funding increase in that area since the Bracks Labor government was elected.

The DEPUTY SPEAKER — Order! The house stands adjourned.

House adjourned 11.09 p.m.