PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-FIFTH PARLIAMENT

FIRST SESSION

31 March 2004

(extract from Book 2)

Internet: www.parliament.vic.gov.au/downloadhansard

By authority of the Victorian Government Printer

The Governor

JOHN LANDY, AC, MBE

The Lieutenant-Governor

Lady SOUTHEY, AM

The Ministry

Premier and Minister for Multicultural Affairs	The Hon. S. P. Bracks, MP
Deputy Premier, Minister for Environment, Minister for Water and Minister for Victorian Communities	The Hon. J. W. Thwaites, MP
Minister for Finance and Minister for Consumer Affairs	The Hon. J. Lenders, MLC
Minister for Education Services and Minister for Employment and Youth Affairs	The Hon. J. M. Allan, MP
Minister for Transport and Minister for Major Projects	The Hon. P. Batchelor, MP
Minister for Local Government and Minister for Housing	The Hon. C. C. Broad, MLC
Treasurer, Minister for Innovation and Minister for State and Regional Development	The Hon. J. M. Brumby, MP
Minister for Agriculture	The Hon. R. G. Cameron, MP
Minister for Planning, Minister for the Arts and Minister for Women's Affairs	The Hon. M. E. Delahunty, MP
Minister for Community Services	The Hon. S. M. Garbutt, MP
Minister for Police and Emergency Services and Minister for Corrections	The Hon. A. Haermeyer, MP
Minister for Manufacturing and Export and Minister for Financial Services Industry	The Hon. T. J. Holding, MP
Attorney-General, Minister for Industrial Relations and Minister for Workcover	The Hon. R. J. Hulls, MP
Minister for Aged Care and Minister for Aboriginal Affairs	The Hon. Gavin Jennings, MLC
Minister for Education and Training	The Hon. L. J. Kosky, MP
Minister for Sport and Recreation and Minister for Commonwealth Games	The Hon. J. M. Madden, MLC
Minister for Gaming, Minister for Racing, Minister for Tourism and Minister assisting the Premier on Multicultural Affairs	The Hon. J. Pandazopoulos, MP
Minister for Health	The Hon. B. J. Pike, MP
Minister for Energy Industries and Minister for Resources	The Hon. T. C. Theophanous, MLC
Minister for Small Business and Minister for Information and Communication Technology	The Hon. M. R. Thomson, MLC
Cabinet Secretary	Mr R. W. Wynne, MP

Heads of Parliamentary Departments

Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

Council — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

Hansard — Chief Reporter: Ms C. J. Williams

Library — Librarian: Ms G. Dunston

Joint Services — Director, Corporate Services: Mr S. N. Aird
Director, Infrastructure Services: Mr G. C. Spurr

MEMBERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-FIFTH PARLIAMENT — FIRST SESSION

Speaker: The Hon. JUDY MADDIGAN

Deputy Speaker and Chair of Committees: Mr P. J. LONEY

Temporary Chairs of Committees: Ms Barker, Ms Campbell, Mr Delahunty, Mr Ingram, Mr Jasper, Mr Kotsiras, Ms Lindell, Mr Nardella, Mr Plowman, Mr Savage, Mr Seitz, Mr Smith and Mr Thompson

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

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

Leader of the Parliamentary Liberal Party and Leader of the Opposition:
Mr R. K. B. DOYLE

Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition:
The Hon. P. N. HONEYWOOD

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

Deputy Leader of the Parliamentary National Party:
Mr P. L. WALSH

Member	District	Party	Member	District	Party
Allan, Ms Jacinta Marie	Bendigo East	ALP	Languiller, Mr Telmo Ramon	Derrimut	ALP
Andrews, Mr Daniel Michael	Mulgrave	ALP	Leighton, Mr Michael Andrew	Preston	ALP
Asher, Ms Louise	Brighton	LP	Lim, Mr Hong	Clayton	ALP
Baillieu, Mr Edward Norman	Hawthorn	LP	Lindell, Ms Jennifer Margaret	Carrum	ALP
Barker, Ms Ann Patricia	Oakleigh	ALP	Lobato, Ms Tamara Louise	Gembrook	ALP
Batchelor, Mr Peter	Thomastown	ALP	Lockwood, Mr Peter John	Bayswater	ALP
Beard, Ms Dympna Anne	Kilsyth	ALP	Loney, Mr Peter James	Lara	ALP
Beattie, Ms Elizabeth Jean	Yuroke	ALP	Lupton, Mr Anthony Gerard	Prahran	ALP
Bracks, Mr Stephen Phillip	Williamstown	ALP	McIntosh, Mr Andrew John	Kew	LP
Brumby, Mr John Mansfield	Broadmeadows	ALP	McTaggart, Ms Heather	Evelyn	ALP
Buchanan, Ms Rosalyn	Hastings	ALP	Maddigan, Mrs Judith Marilyn	Essendon	ALP
Cameron, Mr Robert Graham	Bendigo West	ALP	Marshall, Ms Kirstie	Forest Hill	ALP
Campbell, Ms Christine Mary	Pascoe Vale	ALP	Maughan, Mr Noel John	Rodney	NP
Carli, Mr Carlo	Brunswick	ALP	Maxfield, Mr Ian John	Narracan	ALP
Clark, Mr Robert William	Box Hill	LP	Merlino, Mr James	Monbulk	ALP
Cooper, Mr Robert Fitzgerald	Mornington	LP	Mildenhall, Mr Bruce Allan	Footscray	ALP
Crutchfield, Mr Michael Paul	South Barwon	ALP	Morand, Ms Maxine Veronica	Mount Waverley	ALP
D'Ambrosio, Ms Liliana	Mill Park	ALP	Mulder, Mr Terence Wynn	Polwarth	LP
Delahunty, Mr Hugh Francis	Lowan	NP	Munt, Ms Janice Ruth	Mordialloc	ALP
Delahunty, Ms Mary Elizabeth	Northcote	ALP	Napthine, Dr Denis Vincent	South-West Coast	LP
Dixon, Mr Martin Francis	Nepean	LP	Nardella, Mr Donato Antonio	Melton	ALP
Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Neville, Ms Lisa Mary	Bellarine	ALP
Doyle, Robert Keith Bennett	Malvern	LP	Overington, Ms Karen Marie	Ballarat West	ALP
Duncan, Ms Joanne Therese	Macedon	ALP	Pandazopoulos, Mr John	Dandenong	ALP
Eckstein, Ms Anne Lore	Ferntree Gully	ALP	Perera, Mr Jude	Cranbourne	ALP
Garbutt, Ms Sherryl Maree	Bundoora	ALP	Perton, Mr Victor John	Doncaster	LP
Gillett, Ms Mary Jane	Tarneit	ALP	Pike, Ms Bronwyn Jane	Melbourne	ALP
Green, Ms Danielle Louise	Yan Yean	ALP	Plowman, Mr Antony Fulton	Benambra	LP
Haermeyer, Mr André	Kororoit	ALP	Powell, Mrs Elizabeth Jeanette	Shepparton	NP
Hardman, Mr Benedict Paul	Seymour	ALP	Robinson, Mr Anthony Gerard	Mitcham	ALP
Harkness, Mr Alistair Ross	Frankston	ALP	Ryan, Mr Peter Julian	Gippsland South	NP
Helper, Mr Jochen	Ripon	ALP	Savage, Mr Russell Irwin	Mildura	Ind
Herbert, Mr Steven Ralph	Eltham	ALP	Seitz, Mr George	Keilor	ALP
Holding, Mr Timothy James	Lyndhurst	ALP	Shardey, Mrs Helen Jean	Caulfield	LP
Honeywood, Mr Phillip Neville	Warrandyte	LP	Smith, Mr Kenneth Maurice	Bass	LP
Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Stensholt, Mr Robert Einar	Burwood	ALP
Hudson, Mr Robert John	Bentleigh	ALP	Sykes, Dr William Everett	Benalla	NP
Hulls, Mr Rob Justin	Niddrie	ALP	Thompson, Mr Murray Hamilton Ross	Sandringham	LP
Ingram, Mr Craig	Gippsland East	Ind	Thwaites, Mr Johnstone William	Albert Park	ALP
Jasper, Mr Kenneth Stephen	Murray Valley	NP	Trezise, Mr Ian Douglas	Geelong	ALP
Jenkins, Mr Brendan James	Morwell	ALP	Walsh, Mr Peter Lindsay	Swan Hill	NP
Kosky, Ms Lynne Janice	Altona	ALP	Wells, Mr Kimberley Arthur	Scoresby	LP
Kotsiras, Mr Nicholas	Bulleen	LP	Wilson, Mr Dale Lester	Narre Warren South	ALP
Langdon, Mr Craig Anthony Cuffe	Ivanhoe	ALP	Wynne, Mr Richard William	Richmond	ALP

CONTENTS

WEDNESDAY, 31 MARCH 2004

QUESTIONS WITHOUT NOTICE
- *Central City Studios: tender* 381, 384, 385
- *Council of Australian Governments: meeting* 381
- *Agriculture: genetically modified crops* 382
- *Deer Park bypass: funding* 383
- *Murray River: management* 384
- *Commonwealth Grants Commission: state funding report* 385
- *Mitcham–Frankston freeway: tolls* 386
- *Aged care: funding* 386

DISTINGUISHED VISITOR 386

ACTING PUBLIC ADVOCATE 387

BUSINESS OF THE HOUSE
- *Division list* 387
- *Standing orders* 393
- *Program* 398

OMBUDSMAN 387

CONTROL OF GENETICALLY MODIFIED CROPS BILL
- *Introduction and first reading* 387

HEALTH SERVICES (SUPPORTED RESIDENTIAL SERVICES) BILL
- *Introduction and first reading* 387

CRIMES (ASSUMED IDENTITIES) BILL
- *Introduction and first reading* 387

CRIMES (CONTROLLED OPERATIONS) BILL
- *Introduction and first reading* 388

SURVEILLANCE DEVICES (AMENDMENT) BILL
- *Introduction and first reading* 388

HERITAGE (FURTHER AMENDMENT) BILL
- *Introduction and first reading* 388

LAND (MISCELLANEOUS) BILL
- *Introduction and first reading* 388

TRANSFER OF LAND (ELECTRONIC TRANSACTIONS) BILL
- *Introduction and first reading* 388

LAND TAX (AMENDMENT) BILL
- *Introduction and first reading* 389

PETITIONS
- *Fishing: commercial netting* 389
- *Thomson and Macalister rivers: environmental flows* 389
- *Planning: rural zones* 389
- *Baxter-Tooradin–Fultons–Hawkins roads, Baxter: safety* 389
- *Bowls: single-gender events* 390
- *Hazardous waste: Pittong* 390
- *Central Health Interpreter Service: future* 390
- *Water: entitlements* 390
- *Planning: urban growth boundary* 390
- *Old Geelong Road–Graham Court, Hoppers Crossing: traffic lights* 391
- *Taxis: multipurpose program* 391

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
- *Alert Digest No. 2* 391

DOCUMENTS 392

APPROPRIATION MESSAGES 393

JOINT SITTING OF PARLIAMENT
- *Senate vacancy* 393, 408, 428, 451

ROAD SAFETY COMMITTEE
- *Crashes involving roadside objects* 394
- *Country road toll* 394

RURAL AND REGIONAL SERVICES AND DEVELOPMENT COMMITTEE
- *Country football* 394

STANDING ORDERS COMMITTEE
- *Membership* 394

MADRID: TERRORIST ATTACK 394

MONETARY UNITS BILL
- *Second reading* 399

LIMITATION OF ACTIONS (AMENDMENT) BILL
- *Second reading* 408

ROAD MANAGEMENT BILL
- *Second reading* 412, 435

MARINE (AMENDMENT) BILL
- *Second reading* 422, 423

PETROLEUM (SUBMERGED LANDS) (AMENDMENT) BILL
- *Second reading* 428

ADJOURNMENT
- *Rail: Warrnambool platform* 441
- *Ethnic communities: event funding* 441
- *Heathcote-Rochester–Bendigo-Murchison roads: black spot funding* 442
- *Sri Lanka: flood relief fund* 442
- *Victorian Civil and Administrative Tribunal: planning decision* 443
- *On Luck Chinese nursing home* 443
- *Rail: Cranbourne–Leongatha track line* 444
- *Irabina Childhood Autism Services: funding* 444
- *Schools: head lice* 445
- *Bali bombings: memorial* 445
- *Responses* 446

Wednesday, 31 March 2004

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

QUESTIONS WITHOUT NOTICE

Central City Studios: tender

Mr DOYLE (Leader of the Opposition) — My question is to the Premier. Given that probity auditors were not present at every meeting between the government and Central City Studios — as they should have been — and given that there were 13 changes to the tender, including making the land freehold to satisfy Central City Studios' loan requirements, will the Premier now order a full and independent inquiry into all aspects of this corrupt deal?

Mr BRACKS (Premier) — I thank the Leader of the Opposition for his question. I want to congratulate a couple of people in the house — firstly, the Minister for the Arts for having the foresight to commission a review of the film and television industry in Victoria to make sure that we are on the front foot to fill what has previously been a gap in this state by having a film studio established; and secondly, the Minister for State and Regional Development and Treasurer, who saw through the development of the studio.

It is very pleasing to note that we are currently commissioning works for that studio. Two works have already been commissioned: one to start in May, a Delta Goodrem film; and one which is already in place featuring Jimeoin. This matter has already been the subject of several reports and documents that have been released, and I am satisfied that all the appropriate procedures have been followed.

Council of Australian Governments: meeting

Mr MILDENHALL (Footscray) — Can the Premier advise the house on the current state of negotiations with the federal government on issues relating to the Council of Australian Governments (COAG) and what needs to be done to ensure that Victorians get a fair share of federal taxes?

Mr BRACKS (Premier) — I thank the member for Footscray for his question. There is a very simple answer to the question, and that is for the Prime Minister to hold a COAG meeting this year. We know there is a meeting of the Council of Australian Governments — between the Prime Minister, the premiers and the territory leaders — scheduled for May of this year. As of the end of March, which is the time you would expect to see work being done on agendas and preparations being made in readiness for a COAG meeting, we are yet to see any evidence, firstly, of a meeting and, secondly, of any work on some of the critical issues that need to be dealt with together by the Prime Minister, the premiers and the territory leaders.

There are several matters which we know have been held over for further discussions at COAG meetings which we in Victoria and the other states are desperate to pursue. One is health, of course. The Prime Minister at the last COAG meeting indicated he was committed to reform of the health system, but we are yet to see any evidence of a commitment or preparation work to undertake that, through COAG and up through the ministerial councils.

It was interesting to note that last week — I think it was last week; members might remind me of the date — a former Premier in this place, Jeff Kennett, recommended such an examination, such a review and such an overhaul of the health system in Victoria. He said what was needed was a complete audit of the health system funded by federal and state governments so we can have more coherence, more support and more cooperation than what we have had in the past. I welcome the fact that the former Premier has echoed the very calls that the federal Labor Party has made for some time.

Every state and territory government can see that health is an issue, the public can see that health is an issue and the former Premier can see that health is an issue, and we would like to stand up for Victoria in that forum. There is only group in this place that is not prepared to stand up for Victoria and call for such an examination — that is, the current Liberal Party opposition.

On the issue of water, I indicate also that at a recent Murray-Darling Basin Ministerial Council meeting the water minister put forward a strong case for the national water initiative, the Living Murray, to get a hurry on, get those projects up and running and get support for that. Again that is a matter that we dealt with at the last COAG meeting, and Victoria was one of the leaders at that meeting in committing some funds and resources, alongside South Australia, New South Wales and the commonwealth, to that project. We want to see it up and running, and the only way we can get that up and running is to have a COAG meeting to reinforce those matters which we have in principle agreed to and which this government supports as well.

On the issue of taxation, the member for Footscray mentioned taxation, and we know that we continue to

get a raw deal in Victoria. Similarly New South Wales is getting a raw deal, but we have had some progress already. I am grateful to the Treasurer for taking a case to the last ministerial council meeting of treasurers to win a position whereby we could have a review of the GST distribution to the states and territories, but that is a matter that needs to be on the COAG agenda because only the first ministers can ultimately decide those matters in the future.

On the issue of child care, we want more child-care places, including a lift of the cap on out-of-school hours child care, and the only way we can progress that is through a COAG meeting.

I will be writing to the Prime Minister to reaffirm our wish, our desire and our commitment to have a constructive relationship with the Council of Australian Governments and the commonwealth. I will also be writing to the other state and territory leaders reaffirming our wish to have the meeting as scheduled in May. There is no reason for the Prime Minister not to go ahead with the meeting; just because this happens to be a federal election year is no reason at all to suspend the reform process, to suspend the normal workings of government and to not seek cooperation and agreement. I would have thought it is needed more now than it has been in the past. I certainly call in this house on the Prime Minister to have the COAG meeting as recommended in May, and I will be seeking support from other leaders on that position.

Agriculture: genetically modified crops

Mr RYAN (Leader of The Nationals) — My question is directed to the Minister for Innovation. I refer to the government's decision to establish a four-year moratorium on genetically modified (GM) canola, and I ask: does the minister agree with this decision?

Mr BRUMBY (Minister for Innovation) — I want to thank the Leader of The Nationals for his question. This is a decision which the government reached after considerable debate. When we went to the election in 2002 the Premier had announced a 12-month moratorium in relation to this matter. He extended that by a further 12 months to look at all the available evidence in relation to the impact on export markets; and then following the proper consideration in government, the Premier announced our decision. The decision has been made and the decision has been announced, and the Minister for Agriculture, as the minister responsible, will be introducing legislation into Parliament to give effect to this matter. The government has a policy on this matter. I do not know what the policy of the Liberal Party is on this matter. I do know — —

Mr Ryan — On a point of order on the issue of relevance, Speaker, the query was directed to the minister's — —

Mr Stensholt interjected.

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

Mr Ryan — On the question of relevance, Speaker, the question was directed to the minister's personal point of view as to this decision, and I ask you — —

Honourable members interjecting.

Mr Ryan — That was the question, Speaker: what is the minister's — —

Honourable members interjecting.

The SPEAKER — Order! I ask the house to allow the member to raise his point of order without that level of interjection.

Mr Ryan — The question was directed towards the minister's personal perspective in relation to this issue, and I ask him to answer the question.

Mr Thwaites — On the point of order, Speaker, if that is the intent of the question, it is clearly out of order. It is not a question relevant to government administration, and I ask you to rule it out of order.

Dr Napthine — On the point of order, Speaker, clearly the Leader of The Nationals was seeking the view of the minister on the matter in his capacity as Minister for Innovation. Therefore the question is entirely in order.

The SPEAKER — Order! Despite various views being put in relation to the point of order, the original question was in order, if not the later interpretation of it.

Mr BRUMBY — I have been busy answering the question, and I thought I was doing a reasonable job doing that. I certainly have a personal view about the Liberal Party not having a policy on this issue. My personal view is that it is pretty ordinary that it does not have a policy on this issue.

Mr Perton — I would have thought it was evident — —

The SPEAKER — Order! If the member for Doncaster wishes to raise a point of order, he should say what the point of order is; he should not launch into an attack.

Mr Perton — The evident point of order is that the minister is debating the question, and I would have thought that was obvious.

The SPEAKER — Order! The tone of the member for Doncaster is disrespectful. I will not hear his point of order.

Mr BRUMBY — I am proud to support and proud to publicise the Bracks government's record on biotechnology, because it is a record which is second to none. It is a great record. There is more of the industry in this state than there is anywhere else in Australia; and if you look at biotechnology and if you look at the whole area of genomic research, you will see that the decision which has been announced relates to a very small part of a much larger mosaic. Obviously I do not comment on cabinet deliberations. I support the decisions of the government, and I have done that today.

Deer Park bypass: funding

Mr NARDELLA (Melton) — My question is to the Minister for Transport. Can the minister advise the house of the government's efforts to secure funding for the Deer Park bypass as a national highway and for other significant roads, and has the government considered alternative funding proposals?

Mr BATCHELOR (Minister for Transport) — The Deer Park bypass is a very much needed piece of economic infrastructure for Victoria, as members on this side of the house acknowledge, and I thought I heard some acknowledgements on the other side of the house. It is one of those pieces of economic infrastructure that should have been built a long time ago. The bypass is part of the national highway, and as such it is the responsibility of the federal government to fund it. Notwithstanding that, on this side of politics in Victoria we have been asking the federal government to support it. To date the federal government has refused to meet its obligations. The Liberal Party would prefer to have Victorian taxpayers money spent on building roads in Queensland and New South Wales. That is what the federal government does.

We have proposed as part of the Auslink program that the Deer Park bypass be funded 100 per cent by the commonwealth as a national highway project, as it should be. We have considered and we have rejected the alternative proposals that the commonwealth should only contribute 50 per cent of the project costs as put forward by the Leader of the Opposition. This is what the Leader of the Opposition told the Victorian Transport Association at its conference earlier this month. He confirmed to everybody there what everybody else in Victoria already knew — that he is a Liberal first and a Victorian last. In effect the Leader of the Opposition has urged the Howard government to withdraw from its obligations to fund 100 per cent of the Deer Park bypass and only fund half of it.

Everybody knows that Victorians pay 25 per cent of fuel taxes to the commonwealth but only get 15 per cent of those taxes back here. The remainder of that money goes to building roads in Queensland and in New South Wales. It means that Victoria is not getting its fair share. That extra money could be going to other important pieces of economic infrastructure in Victoria like the Calder Highway duplication, picking up the balance of the Pakenham bypass, the Geelong bypass and perhaps the Mitcham–Frankston freeway. With this large list of projects that are eligible and suitable for a commonwealth contribution, it is little wonder that the Leader of the Opposition recently announced that if it were ever to be elected, he would not be removing the tolls from the Mitcham–Frankston freeway, and would not tear up the contract.

Mr Plowman — On a point of order, Speaker, the new standing order 109 referring to keeping to the subject does not allow the Minister for Transport to relate his comments to all those other roads in question. The question after all was related specifically to the Deer Park bypass as a national freeway, or to other means of funding it, but not related to other highways in Victoria. I ask you to bring him back to the question.

Mr BATCHELOR — There are two issues I seek to raise with you, Speaker, in relation to this point of order. Firstly, the member for Benambra has misremembered the question, and I think that is an important issue in identifying what the substance of the question was. The substance related not only to the Deer Park bypass but to other major road projects, and I was asked to consider those in relation to alternative policies that have been put forward not only to the Deer Park bypass but to the other road projects.

In that context I was talking about other major road projects and what their funding arrangements would be in relation to a state contribution and a federal contribution, which is entirely within the ambit of the question asked.

The second point I wish to make, since the member for Benambra raised the matter, relates to the new standing orders. Standing order 58, paragraph 2, states:

> Subject to paragraph (1) … a minister will have discretion to determine the content of any answer.

That is exactly what I was doing within the confines and constructs of the question asked. I was answering the question in accordance with the new standing orders. The Leader of the Opposition says I can say anything I like. No, that is not the case; but these new standing orders certainly provide a much broader range of opportunities for the minister to answer questions fully, and along with my colleagues I intend to do that.

The SPEAKER — Order! Ministers do not have the opportunity to answer questions in any way they like; they have to follow the standing orders. In this case the member asked the minister to talk about funding for the Deer Park bypass and other significant roads and to consider alternative funding proposals. I find that his answer relates to the question, so I do not uphold the point of order.

Mr BATCHELOR — In conclusion I thank you, Speaker, for that ruling under the new standing orders, and I also thank the Leader of the Opposition for acknowledging that tolls will be the funding stream for the Mitcham–Frankston freeway. We have — —

Honourable members interjecting.

Mr Smith interjected.

The SPEAKER — Order! The member for Bass! The level of interjection is too high, and I ask members to be — —

Mr Smith interjected.

The SPEAKER — Order! I advise the member for Bass to sit there very quietly!

Mr BATCHELOR — We have commenced this project; we will deliver this project. But we wish the federal government would contribute to it and to other road projects here in Victoria, and we wish that the Liberal Party and the Leader of the Opposition would stand behind Victoria rather than standing behind New South Wales and Queensland.

Central City Studios: tender

Mr DOYLE (Leader of the Opposition) — During the tender process for Central City Studios one bidder secretly approached the government seeking changes, including that the land be freehold, that their bank be given certain concessions, and that the financial security arrangements be altered. I ask why the government agreed to each of these concessions, which only benefited one particular bidder — the ultimately successful consortium?

Mr BRACKS (Premier) — First of all I thank the Leader of the Opposition for his question. As I indicated in the previous answer, all negotiations with Central City Studios were conducted with a probity auditor in place. The process was later thoroughly reviewed by the Auditor-General, as well in the report he commissioned. This project has delivered and will deliver enormous benefits to Victoria. We will re-establish ourselves as a film centre in Australia. Already we are seeing that happening with some of the commissioned films and television projects which are on site for the studios at the Docklands.

Murray River: management

Mr HOWARD (Ballarat East) — My question is to the Deputy Premier and Minister for Environment. Can the minister outline to the house the status of the Living Murray initiative, which aims to restore the health of the River Murray?

Mr THWAITES (Minister for Environment) — I thank the member for his question. The Bracks government has a clear plan to restore environmental flows to the River Murray. Unfortunately the River Murray remains under threat because the Howard government is delaying action that will restore those environmental flows. Last year the Premier led the way by committing $115 million from Victoria as part of the $500 million Living Murray initiative — a plan, I might say, that was not supported at the time by the Leader of the Opposition. Last week I presented to the Murray-Darling Basin Commission a plan on behalf of Victoria that would see real action immediately to restore those flows. It was in fact a three-point plan, but they are all very good points.

We in Victoria want to get on with the job of delivering real flows. Under this plan Victoria and New South Wales would immediately start on projects that will see real environmental benefits for the Murray. We indicated that we could achieve around 100 gigalitres — that is, 100 billion litres — of extra flow for the Murray. We want to get on with those projects because the Murray needs them, but we do need the green light from the commonwealth as part of the Living Murray initiative. We do not want to be put in the position where the commonwealth fails to tick this off now and then squibs on its promises later, as we have seen in other areas. Any excuse to let — —

Honourable members interjecting.

Mr THWAITES — The other side will look for any excuse to let the Howard government off the hook.

Honourable members interjecting.

Mr THWAITES — Any excuse at all — and they are doing it again!

What we see, unfortunately, is that the commonwealth has refused to act now, and it wants to keep talking. It wants to talk for more and more months, and at the same time it is throwing up obstacles. It is refusing to commit to having another meeting of the Council of Australian Governments, which is needed to advance the process further. It is quite clear that the commonwealth does not want to deal with this issue prior to the federal election. That can be for only one reason — that is, that it does not want to clearly commit real dollars and real water to the river.

We are ready to get on with the job. We are ready now. You have to ask: why the delay? Why are we not seeing real action that the river needs now? We are committed, just as we are right across the state now where we have got on with the job, whether it be improving stressed rivers, our Water for Growth program, the farm dams legislation, cleaning up the Gippsland Lakes, rebates in Melbourne or the fact that we have been able to reduce water consumption in Melbourne by more than 10 per cent. We are getting on with it, but the commonwealth is continuing to delay. I call upon the commonwealth to immediately agree to this plan, which will see real benefit for the river.

Central City Studios: tender

Ms ASHER (Brighton) — Can the Premier explain how it could be proper for the Treasurer to meet with one of the bidders for the Central City Studios deal during the tender process, and can the Premier explain why the tender was then changed for that particular bidder?

Mr BRACKS (Premier) — I thank the member for Brighton for her question. Could I go to the probity auditors who were charged with the responsibility of examining the arrangements for the tender for the studio in its final details. In fact, the probity auditors — Acumen Alliance was the company employed — made this comment:

> … in all material aspects and based upon the probity frameworks the procurement process recommending [CCS as] the preferred tenderer has been undertaken in accordance with the Victorian Government Purchasing Board policy probity and guidelines …

They also said — and this is material:

> … the contract negotiation … had been properly conducted …

At every step of the way the probity auditors indicated that the proper guidelines had been followed. Further, Blake Dawson Waldron gave the legal okay for the negotiations.

The government is very proud that it has a great studio in place attracting film and television. We support an increased role and production capacity for television and film in Victoria. There is only one group which does not support film and television in Victoria, one group which has been opposed to the film studio from the start, and that is the Liberal Party, which would like to drive film and television away from this state.

Commonwealth Grants Commission: state funding report

Mr LUPTON (Prahran) — My question is to the Treasurer. Will the Treasurer inform the house of the outcome of the recent treasurers conference with respect to commonwealth grants distribution?

Mr BRUMBY (Treasurer) — I thank the member for Prahran for his question and his keen interest in commonwealth-state financial relations. Last Friday the state treasurers met with the federal Treasurer, Peter Costello, at the treasurers conference. As part of that conference we had to deliberate on the Commonwealth Grants Commission report on relativities for the next triennial period. In Victoria's case I think it is important to point out that the way the relativities works represents a net financial loss for the state. It is important to put on the record that in the next year Victorians will pay $8.5 billion in GST and we will get back from Canberra just $7 billion from the GST. If you do the arithmetic, $8.5 billion minus $7 billion is $1.5 billion lost to Victoria. That is a rip-off for Victorians.

Dr Napthine interjected.

Mr BRUMBY — I will tell the member where it goes!

Dr Napthine — It goes to your Labor mates!

The SPEAKER — Order! The member for South-West Coast — —

Honourable members interjecting.

The SPEAKER — Order! I remind the house that when the Chair stands it is customary for members to

come to order. If they do not do so they are removed under standing order 124. In relation to the member for South-West Coast, I ask him not to interject in that manner; if he had not been interjecting in such a voracious manner he would have seen that the Speaker was standing.

Mr BRUMBY — This translates to $275 for every man, woman and child in Victoria being transferred away from the state. Our view has long been that we do not mind helping out needier states like Tasmania and South Australia and the Northern Territory, but we object to Victorian taxpayers money being used to subsidise wealthier states like Queensland and Western Australia and the Australian Capital Territory. The federal Treasurer accepted the grants commission report despite our opposition to it. However, what I was able to achieve — by a margin of five votes to three — was an undertaking that over the next 12 months this system of relativities, its scope and its scale will be reviewed.

Mr Ryan interjected.

Mr BRUMBY — Let me say that Queensland did not vote in favour of it.

This has been a problem for Victoria for some time. A former Treasurer said this about the grants commission:

> It is time for a reassessment of this pseudoscience of grants commission assessments.
>
> They represent examining the entrails of a chicken and are based on subjective analysis masquerading as science. They have no place in modern Australia.

That is true, but Mr Stockdale was never able to achieve a review of the system. We have been able to achieve that review.

There will be a joint sitting of the Parliament later today at which we will consider a senator-elect for Victoria, one Mr Mitch Fifield. Should he be successful in being nominated by Victoria then obviously one of his first tasks in Canberra as a senator representing Victoria could be to make sure that we get a fair deal from the Commonwealth Grants Commission in the future. Let us see if he is up to the job.

Mitcham–Frankston freeway: tolls

Mr MULDER (Polwarth) — My question is to the Premier. The cost of the Scoresby freeway has gone up by $200 million. Won't the tolls on the Scoresby have to cover this cost blow-out?

Mr BRACKS (Premier) — I think it was widely canvassed when this matter was raised in the press that clearly the improvements that the consortium was seeking would increase the volume of traffic on the Scoresby freeway.

Let me go to some of the details of the Mitcham–Frankston freeway, why it is different from Melbourne City Link and why the consortium has an inbuilt incentive to encourage more cars onto the road. Firstly, it is not an existing highway, it is a complete new highway. Secondly, it does not cause, as Melbourne City Link caused, the closure of other roads in order to flow onto City Link itself. Therefore it is a competitive environment and any competition that they can employ in the consortium bids to get more cars onto the road will mean a bigger volume, better returns and a better outcome for taxpayers. If the shadow transport minister does not understand that, frankly, he does not understand his portfolio.

Questions interrupted.

DISTINGUISHED VISITOR

The SPEAKER — Order! Before calling the next question I welcome to the public gallery the Consul General of Spain, Mr Federico Palomera Güez. Welcome.

Questions resumed.

Aged care: funding

Ms ECKSTEIN (Ferntree Gully) — My question is for the Minister for Health. Will the minister advise the house about the state of aged care and acute services funding and the impact of that on aged care services in Victoria? What should be done to improve the situation.

Ms PIKE (Minister for Health) — I thank the member for her question. Members may have seen an article in this morning's media concerning the proposed provision of additional aged care beds from the commonwealth for Australia. We have seen the article, but we have had no communication from the commonwealth about this alleged aged care bed provision; we only know what we have read in the paper. Let me say that additional aged care beds would be very welcome in Victoria, because we know that according to the commonwealth's planning benchmarks Victoria is around 4000 beds short. The shortage of those aged care beds is having a huge impact on many facets of our community, not the least being our public hospitals. Currently there are over

500 elderly Victorians who have been assessed as eligible for nursing home beds who are in costly service provision within our acute hospitals. In fact, that is around $140 million per year of funding that we could have to contribute to the running of our public hospitals.

The other thing that is missing from the leaked announcement in the media today is how the capital is to be found to build the facilities to house these additional aged care beds. The only hint we have, and people need to be very aware of this, is that the commonwealth may remove the cap on daily fees for nursing home residents. The potential is that there will be a huge rise in daily fees for nursing home residents just to fund the capital. Capital is a huge problem. The current level of funding provided by the commonwealth for existing aged care beds is so inadequate that people in both the for-profit sector and the not-for-profit sector cannot accumulate enough funds to replace or rebuild aged care facilities.

We also know, of course, that the recurrent funding is so inadequate that our own rural hospitals are having to cross-subsidise their aged care beds with the funding that the state provides for our acute beds. We might have a certain measure of warmth about leaked potential budget gifts from the commonwealth that we read about in the paper today, but what is lacking is the detail. There may be more beds, but how do you pay for them? Is the recurrent funding adequate? Where are you going to put the beds? There are too many unanswered questions, and still, of course, the state is picking up the lion's share of responsibility for caring for our elderly people here in Victoria.

ACTING PUBLIC ADVOCATE

The SPEAKER — Order! I wish to advise that on 6 February 2004 I administered to David Raymond Sykes, the Acting Public Advocate, the oath required by schedule 3 of the Guardianship and Administration Act 1986.

BUSINESS OF THE HOUSE

Division list

The SPEAKER — Order! I wish to inform the house that in the division which took place in the house on Wednesday, 3 March 2004, on the amendment to sessional order 19, the member for Ivanhoe was present as a teller but was not recorded by the tellers for the ayes. The total of the ayes is therefore 61 instead of 60. The Clerk will make the necessary correction in the division list.

OMBUDSMAN

The SPEAKER — Order! In relation to the Ombudsman, I wish advise that on 26 March 2004 I administered to George Eugene Pascal Brouwer, the Ombudsman, the oath required by section 10 of the Ombudsman's Act 1973.

CONTROL OF GENETICALLY MODIFIED CROPS BILL

Introduction and first reading

Mr CAMERON (Minister for Agriculture) introduced a bill to provide for the designation of areas of the state for the purpose of preserving for marketing purposes the identity of crops as genetically modified or non-genetically modified and for other purposes.

Read first time.

HEALTH SERVICES (SUPPORTED RESIDENTIAL SERVICES) BILL

Introduction and first reading

Ms PIKE (Minister for Health) introduced a bill to amend the Health Services Act 1988 and for other purposes.

Read first time.

CRIMES (ASSUMED IDENTITIES) BILL

Introduction and first reading

Mr HULLS (Attorney-General) — I move:

That I have leave to bring in a bill to provide for the lawful acquisition and use of assumed identities for law enforcement purposes and the recognition of things done in relation to assumed identities in other jurisdictions and for other purposes.

Mr McINTOSH (Kew) — I ask the minister for a brief explanation of this bill.

Mr HULLS (Attorney-General) — This bill, the next one, and the one after that are all part of a package to ensure that there is greater consistency in Victoria and also consistency around the nation in relation to the

cross-border operations of, in particular, organised crime.

Motion agreed to.

Read first time.

CRIMES (CONTROLLED OPERATIONS) BILL

Introduction and first reading

Mr HULLS (Attorney-General) — I move:

That I have leave to bring in a bill to provide for the lawful conduct of controlled operations for law enforcement purposes, including operations conducted in Victoria and interstate, to provide for mutual recognition of controlled operations authorised in other jurisdictions, to amend the Fisheries Act 1995, the Wildlife Act 1975, and other acts and for other purposes.

Mr McINTOSH (Kew) — I ask the minister to provide a brief explanation of the bill.

Mr HULLS (Attorney-General) — This bill, the one before it and the next one are all part of a package to ensure there is better consistency within both Victoria and other states so that organised crime can be better dealt with.

Motion agreed to.

Read first time.

SURVEILLANCE DEVICES (AMENDMENT) BILL

Introduction and first reading

Mr HULLS (Attorney-General) introduced a bill to amend the Surveillance Devices Act 1999 with respect to warrants and emergency authorisations for the use of surveillance devices, to recognise warrants and emergency authorisations issued in other jurisdictions, and for other purposes.

Read first time.

HERITAGE (FURTHER AMENDMENT) BILL

Introduction and first reading

Ms DELAHUNTY (Minister for Planning) — I move:

That I have leave to bring in a bill to further amend the Heritage Act 1995 and for other purposes.

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

Ms DELAHUNTY (Minister for Planning) — This amendment will make changes to the Heritage Act so we can define objects under the act, so we can, following a reasonable request, stop the clock, and so we can order restitution following inappropriate damage to a heritage location.

Motion agreed to.

Read first time.

LAND (MISCELLANEOUS) BILL

Introduction and first reading

Ms DELAHUNTY (Minister for Planning) — I move:

That I have leave to bring in a bill to revoke the reservations and Crown grants relating to certain land, to amend the Melbourne Cricket Ground Act 1933 to provide for the reservation of a stratum of land, to consequentially amend the Melbourne Cricket Ground Trust Act 1989 and for other purposes.

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

Ms DELAHUNTY (Minister for Planning) — As the member should know, from time to time we revoke reservations and Crown grants, and this is one of those occasions. It relates to the Melbourne Cricket Ground and also to land along Birrarung Marr.

Motion agreed to.

Read first time.

TRANSFER OF LAND (ELECTRONIC TRANSACTIONS) BILL

Introduction and first reading

Ms DELAHUNTY (Minister for Planning) introduced a bill to amend the Transfer of Land Act 1958 to provide for the lodgment and registration of electronic instruments and to amend the Instruments Act 1958 and the Property Law Act 1958 and for other purposes.

Read first time.

LAND TAX (AMENDMENT) BILL

Introduction and first reading

Mr BRUMBY (Treasurer) — I move:

That I have leave to bring in a bill to amend the Land Tax Act 1958 and the Valuation of Land Act 1960 and for other purposes.

Mr CLARK (Box Hill) — I ask the Treasurer to give a brief explanation of the bill.

Mr BRUMBY (Treasurer) — I am happy to do that. These amendments to these acts will give effect to an announcement that I made on behalf of the government last week in relation to the suspension of the smelter reduction amount from 1 July and the payment in the future of that amount from consolidated revenue. As part of those arrangements I also announced that I would be making amendments to the Land Tax Act 1958 to enable the taxation of certain electricity industry easements, and it is those amendments which give effect to this.

Motion agreed to.

Read first time.

PETITIONS

Following petitions presented to house:

Fishing: commercial netting

To the Legislative Assembly of Victoria:

The petition of recreational fishers in the state of Victoria draws [to] the attention of the house:

That the continued commercial netting activities in Victorian bays, inlets and the Gippsland Lakes is detrimental to the long-term viability of fish stocks due to the by-catch issues and continuing damage to the marine environment.

Prayer

The petitioners therefore request that:

We, the undersigned, being recreational fishers in the state of Victoria, support the VRFish policies on commercial netting and request that the Legislative Assembly of Victoria takes action to phase out commercial netting activities in Victorian bays, inlets and the Gippsland Lakes.

By Mr HARKNESS (Frankston) (31 signatures)

Thomson and Macalister rivers: environmental flows

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

The humble petition of the undersigned citizens of the state of Victoria expresses concern at the potential adverse impact of proposals to increase environmental flows in the Thomson and Macalister river systems on irrigators and the whole East Gippsland community.

Your petitioners therefore pray that the government ensure any increased environmental flows for these river systems is sourced from proven water savings, generated from government-funded investments to improve efficiency of water delivery systems or other water sources. There must be no adverse impact on irrigators' existing entitlements, which includes water rights, sales water and licensed volumes.

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

By Mr RYAN (Gippsland South) (1822 signatures)

Planning: rural zones

To the Legislative Assembly of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the house that the government's proposed new rural planning zones are inadequate and should be rejected.

Prayer

The petitioners therefore request that the Legislative Assembly of Victoria urges the government to withdraw and redraft the new rural planning zones and introduce a planning system that:

(i) strikes a fairer balance between the need to preserve prime agricultural land and acknowledgement of the rights of landowners

(ii) does not impinge on a landowner's rights to retire with dignity

(iii) encourages young people to take up farming; and

(iv) gives local government flexibility in the determination of subdivisions and use of rural land

By Mr RYAN (Gippsland South) (108 signatures)

Baxter-Tooradin–Fultons–Hawkins roads, Baxter: safety

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

The humble petition of the undersigned citizens of Victoria sheweth that we are gravely concerned about the extreme danger of the intersection of Baxter-Tooradin Road, Fultons Road with Hawkins Road in Baxter.

Your petitioners therefore pray that urgent action be taken to make this black spot intersection safer before any lives are lost or serious injury occurs at this location.

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

By Ms BUCHANAN (Hastings) (85 signatures)

Bowls: single-gender events

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

The humble petition of the undersigned citizens of the state of Victoria sheweth: current legislation pertaining to the Equal Opportunity Act prevents single-gender or open events from being conducted by bowls clubs or associations.

Your petitioners therefore pray that the legislation pertaining to the Equal Opportunity Act be amended so as to enable lawn bowls clubs and associations to conduct events designated as single-gender events and/or mixed gender events whenever desired and appropriate and that when appropriate all these events continue in the same form to the state championship level.

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

By Mr DIXON (Nepean) (1308 signatures)

Hazardous waste: Pittong

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

The petition of certain citizens in the state of Victoria draws to the attention of the Assembly:

The proposed plans to locate a toxic waste disposal facility at Pittong.

The close locality of the proposed toxic waste disposal facility to the townships of Linton and Skipton.

We therefore pray that the Assembly takes urgent steps to ensure that the proposed toxic waste disposal facility at Pittong does not proceed and urges the state government to consider other locations.

By Mr HELPER (Ripon) (9104 signatures) and Mr HONEYWOOD (Warrandyte) (106 signatures)

Central Health Interpreter Service: future

To the Legislative Assembly of Victoria:

The petition of members of the Victorian community draws to the attention of the house the importance of having interpreters and translators with NAATI level 3 and specialists in health be available on a continuing basis within the health service, such as hospitals, Hospital in the Homes or other community services.

Prayer

The petitioners therefore request that the Legislative Assembly of Victoria urge the health minister and the government to reverse the decision to close the Central Health Interpreter Service and that the existing Central Health Interpreter Service, which has been operating for over 20 years, be maintained.

By Mr THOMPSON (Sandringham) (48 signatures)

Water: entitlements

To the Legislative Assembly of Victoria:

The petition of the residents of Victoria draws to the attention of the house that the future prosperity of the state of Victoria's irrigated agriculture and of the state's major export sector is under threat.

Prayer

The petitioners therefore request that the Legislative Assembly of Victoria take urgent action to ensure:

Non-landholders should not be allowed to enter the water market.

Water entitlements should remain linked to land.

Domestic and stock water entitlements stay with land.

Water allocated for the environment has the same legal status as other entitlement holders and share water under the same constraints.

If structural adjustment is required to achieve greater environmental benefits for the broader community, adequate compensation is paid to affected landholders, businesses and communities.

Sales water is not to be capped at 130 per cent, as this will significantly affect the future prosperity of irrigated agriculture and the state.

Investment in infrastructure is allocated to save water for the environment.

Irrigators do not bear the sole responsibility of paying the whole cost of storage of water for tourism purposes or costs associated with environmental storage and flows.

Taxpayers money is expended on saving water rather than buying water from irrigators.

Water delivery infrastructure is audited and is in good condition before full cost recovery is implemented.

The current water pricing process through water service committees should remain.

Government does not introduce an increase in water pricing to reflect the scarcity of the resource without adequate compensation to irrigators and the communities affected.

By Mrs POWELL (Shepparton) (253 signatures)

Planning: urban growth boundary

To the Legislative Assembly of Victoria:

Planning amendment to urban growth boundary C27.

This petition of materially impacted stakeholders of Ironbark Road, Diamond Creek, and Pioneer Road, Yarrambat, in the Shire of Nillumbik, Victoria, draw to the very urgent attention of the house (Legislative Assembly) that our lands have been inequitably and inappropriately excluded from the new urban

growth boundary Melbourne 2030. Our lands were gazetted by the Governor in Council in the 1970s as an extension to both the Plenty Yarrambat Urban District and Waterworks Trust.

'It is our experience that the extension of the water supply system (and the extension of the trust district) and the method of payment was usually applied to land zoned for urban development and … it would be normal for the trust district to only cover areas that have a compatible urban zone under the planning scheme, (David Fairbairn, 30/12/2002, Consulting Engineer and Town Planner, BE, M.Eng.Sci., Dip. TRP, MIE Aust).

We understand our lands had legally maintained their urban status and had been legislated growth for the approximate past 30 years (until the new Parliament acts of green wedge legislation and new urban growth boundary).

Prayer

We petition the Legislative Assembly, as an urgent priority, to administer a duty of care and trust, to correct the new urban growth boundary (UGB) to include our lands within its borders.

This will protect the valuable urban infrastructure, and we understand the associated development and infrastructure rights, that has been paid for directly and/or indirectly by private land owners. It will enable correction of major snowballing planning and infrastructure irregularities and inequities and what appears to be errors in the zoning translation of these lands with the new Nillumbik planning scheme, associated Diamond Creek urban growth review, gazetted in 2000, and 2030 urban growth boundary. This correction is urgently required before any further damaging translation to inappropriate proposed new green wedge and conservation zones and before approval of neighbouring Shire [of] Whittlesea amendments C26, C30 and C45 by planning minister Mary Delahunty or her delegates.

We continue to object to any erosion what so ever to any of our established urban infrastructure, including all planned urban capacity and returned if any of it has already been redirected or eroded, despite our continual objections. We believe it is unconscionable to back-zone our lands to prevent utilisation of what has been paid and planned for, and with the result of there being financial gain to other parties (to our exclusion). It is not a just cause to exclude our land from the UGB, as new planning directions and new green wedge objectives can still be achieved in the overall development plans of any subdivision or urban area within the UGB.

By Mrs POWELL (Shepparton) (6 signatures)

Old Geelong Road–Graham Court, Hoppers Crossing: traffic lights

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

The humble petition of the undersigned citizens of the state of Victoria sheweth a dangerous intersection at Old Geelong Road and Graham Court, Hoppers Crossing, Victoria 3029. Your petitioners therefore pray that traffic lights be installed at this intersection and for the unsealed service road to be sealed.

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

By Ms GILLETT (Tarneit) (212 signatures)

Taxis: multipurpose program

To the Legislative Assembly of Victoria:

The petition of the residents of Victoria draws to the attention of the house the proposed changes to the multipurpose taxi program. Our main concern is the detrimental effect the $550 annual cap will have on our disabled in all categories except, the exempt wheelchair bound. Many disabled are also elderly and to limit their concession to $10.57 per week in real terms limits their concession to an average of one trip per week or less, which we feel is an unfair burden on our most needy. All holders of the taxi card have had to meet the strict guidelines required to obtain the card and many require the subsidy to afford trips to the doctor, shopping, collect their pension and even attend the local seniors club.

Prayer

The petitioners therefore request that the Legislative Assembly of Victoria rescind the proposed changes and maintain the current level of subsidy.

By Mr HONEYWOOD (Warrandyte) (1404 signatures)

Tabled.

Ordered that petitions presented by member for Gippsland South be considered next day on motion of Mr RYAN (Gippsland South).

Ordered that petitions presented by member for Warrandyte be considered next day on motion of Mr HONEYWOOD (Warrandyte).

Ordered that petition presented by member for Ripon be considered next day on motion of Mr HELPER (Ripon).

Ordered that petitions presented by member for Shepparton be considered next day on motion of Mrs POWELL (Shepparton).

Ordered that petition presented by member for Hastings be considered next day on motion of Ms BUCHANAN (Hastings).

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Alert Digest No. 2

Ms D'AMBROSIO (Mill Park) presented *Alert Digest* No. 2 of 2004 on:

Commonwealth Games Arrangements (Further Amendment) Bill
Corrections (Further Amendment) Bill
Estate Agents and Travel Agents Acts (Amendment) Bill
Limitation of Actions (Amendment) Bill
Marine (Amendment) Bill
Monetary Units Bill
Petroleum (Submerged Lands) (Amendment) Bill
Road Management Bill
Professional Standards Bill

together with appendices.

Tabled.

Ordered to be printed.

DOCUMENTS

Tabled by Clerk:

Environment and Natural Resources Committee — Inquiry on the Impact and Trends in Soil Acidity, together with appendices and minutes of evidence — Ordered to be tabled and the report and appendices to be printed.

Public Accounts and Estimates Committee — Responses of the Treasurer on the action taken with respect to the recommendations made by the Public Accounts and Estimates Committee's Reports on the 2000–2001 Budget Outcomes, 2002–2003 Budget Estimates and 2003–2004 Budget Estimates — Ordered to be tabled.

Altona Memorial Park — Report for the year 2002, together with an explanation for the delay in tabling

Anderson's Creek Cemetery Trust — Report for the year 2002, together with an explanation for the delay in tabling

Ballaarat General Cemeteries Trust — Report for the year 2002, together with an explanation for the delay in tabling

Bendigo Cemeteries Trust — Report for the year 2002, together with an explanation for the delay in tabling

Cheltenham and Regional Cemeteries Trust — Report for the year 2002, together with an explanation for the delay in tabling

Fawkner Crematorium and Memorial Park — Report for the year 2002, together with an explanation for the delay in tabling

Financial Management Act 1994 — Report from the Minister for Environment that he had not received the 2002–2003 Annual Reports together with an explanation for the delay in tabling of the:

Falls Creek Alpine Resort Management Board

Mt Baw Baw Alpine Resort Management Board

Mt Buller Alpine Resort Management Board

Mr Stirling Alpine Resort Management Board

Geelong Cemeteries Trust — Report for the year 2002, together with an explanation for the delay in tabling

Keilor Cemetery Trust — Report for the year 2002, together with an explanation for the delay in tabling

Lake Mountain Alpine Resort Management Board — Report for the year ended 31 October 2003

Lilydale Memorial Park and Cemetery — Report for the year 2002, together with an explanation for the delay in tabling

Mildura Cemetery Trust — Report for the year 2002, together with an explanation for the delay in tabling

Mount Hotham Alpine Resort Management Board — Report for the year ended 31 October 2003

Murray-Darling Basin Commission — Report for the year 2001–02

National Environment Protection Council — Report for the year 2002–03

Necropolis Springvale — Report for the year 2002, together with an explanation for the delay in tabling

Parliamentary Committees Act 2003 — Response of the Minister for State and Regional Development on the action taken with respect to the recommendations made by the Economic Development Committee's Inquiry into Export Opportunities for Victorian Rural Industries

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

Ararat Planning Scheme — No C6

Ballarat Planning Scheme — No C67 Part 1

Bass Coast Planning Scheme — No C33

Bayside Planning Scheme — No C2 Part 2

Brimbank Planning Scheme — Nos C52, C56

Cardinia Planning Scheme — Nos C13 Part 2, C20, C34 Part 2, C53

Glen Eira Planning Scheme — Nos C28, C29

Greater Geelong Planning Scheme — Nos C35, C90

Greater Shepparton Planning Scheme — Nos C43, C45

Hobsons Bay Planning Scheme — No C21

Hume Planning Scheme — Nos C31, C49

Macedon Ranges Planning Scheme — No C29

Manningham Planning Scheme — No C39

Maribyrnong Planning Scheme — Nos C17, Part 1, C30

Mildura Planning Scheme — No C24 Part 1

Mitchell Planning Scheme — Nos C15 Part 2, C33

Moira Planning Scheme — No C13

Monash Planning Scheme — No C50

Warrnambool Planning Scheme — No C27

West Wimmera Planning Scheme — No C5

Whitehorse Planning Scheme — No C44

Wyndham Planning Scheme — No C30

Yarra Planning Scheme — Nos C40, C44

Preston Cemetery Trust — Report for the year 2002, together with an explanation for the delay in tabling

Project Development and Construction Management Act 1994 — Orders in Council under ss 6 and 8 respectively and a Statement under s 9 of reasons for making a Nomination Order (three papers)

Rural Finance Act 1988 — Direction by the Treasurer to the Rural Finance Corporation to administer a Financial Assistance Scheme to the Shires of Latrobe, Wellington and East Gippsland excluding Macalister Irrigation District

Snowy Hydro Limited — Report for the period 29 June 2002 to 28 June 2003

Statutory Rules under the following Acts:

Fisheries Act 1995 — SR No 22

Health Services Act 1988 — SR No 19

Prevention of Cruelty to Animals Act 1986 — SR 23

Subordinate Legislation Act 1994 — SR Nos 17, 18

Survey Co-ordination Act 1958 — SR No 21

Wildlife Act 1975 — SR No 20

Subordinate Legislation Act 1994:

Minister's exemption certificates in relation to Statutory Rule Nos 17, 18

Minister's exemption certificate in relation to Statutory Rule No 20

Templestowe Cemetery Trust — Report for the year 2002, together with an explanation for the delay in tabling

Wyndham Cemetery Trust — Report for the year 2002, together with an explanation for the delay in tabling.

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

Child Employment Act 2003 — Whole Act on 12 June 2004 (*Gazette* S61, 15 March 2004)

Federal Courts (Consequential Amendments) Act 2000 — Sections 22 and 23 on 8 March 2004 (*Gazette* G10, 4 March 2004)

Non-Emergency Patient Transport Act 2003 — Sections 1, 2, 65, 66 and 67 on 25 March 2004 (*Gazette* G13, 25 March 2004).

APPROPRIATION MESSAGES

Message read recommending appropriations for:

Commonwealth Games Arrangements (Further Amendment) Bill
Corrections (Further Amendment) Bill
Estate Agents and Travel Agents Acts (Amendment) Bill
Marine (Amendment) Bill
Road Management Bill

JOINT SITTING OF PARLIAMENT

Senate vacancy

The SPEAKER — Order! I have received the following message from the Governor.

The Governor transmits to the Legislative Assembly a copy of a dispatch which has been received from the Honourable the President of the Senate notifying that a vacancy has happened in the representation of the State of Victoria in the Senate of the commonwealth of Australia.

Mr BATCHELOR (Minister for Transport) — I move:

That this house meets the Legislative Council for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston and proposes that the time and place of such meeting be the Legislative Assembly chamber on Wednesday, 31 March 2004 at 6.15 p.m.

Motion agreed to.

Ordered that message be sent to Council acquainting them with resolution.

BUSINESS OF THE HOUSE

Standing orders

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

That so much of standing orders be suspended today so as to allow —

1. Statements by members, a matter of public importance and statements on parliamentary committee reports to be omitted from the order of business today;

2. For the purposes of the cycle of grievance debates and discussions on a matter of public importance under standing orders 37, 38 and 39, the ability to propose a matter of public importance for consideration today will not be considered as having arisen, so that the cycle

starting from the next sitting week and lasting for the remainder of the sitting period will be:

government-proposed matter of public importance

non-government-proposed matter of public importance

grievance debate.

Motion agreed to.

ROAD SAFETY COMMITTEE

Crashes involving roadside objects

Country road toll

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

That the resolution of the house of 3 June 2003 providing that the Road Safety Committee be required to present its reports, upon crashes involving roadside objects and the country road toll, to the Parliament no later than 31 March 2004, be amended so far as to require the reports be presented to the Parliament no later than 31 March 2005.

Motion agreed to.

RURAL AND REGIONAL SERVICES AND DEVELOPMENT COMMITTEE

Country football

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

That the resolution of the house of 3 June 2003 providing that the Rural and Regional Services and Development Committee be required to present its report, on the impact on life in rural and regional Victoria of Australian Rules Football, to the Parliament no later than 31 March 2004, be amended so far as to require the report be presented to the Parliament no later than 30 September 2004.

Motion agreed to.

STANDING ORDERS COMMITTEE

Membership

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

That Mr Perton be discharged from attendance on the Standing Orders Committee and that Mr Plowman be appointed in his place.

Motion agreed to.

MADRID: TERRORIST ATTACK

Mr BRACKS (Premier) — By leave, I move:

That the following resolution be agreed to by this house —

We, the Legislative Assembly of Victoria, offer our deepest and sincere condolences to the families of the victims of the Spanish terrorist bombings and the survivors of this brutal atrocity and join the people of Victoria in expressing shock and outrage at this senseless waste of life.

All Victorians will join together to convey our deepest sympathies to the people of Spain in the wake of the terrorist bombings that claimed around 200 innocent lives in Madrid.

It is profoundly disturbing — and profoundly disappointing — that we join together again to grieve for more victims of another terrorism outrage. The toll from the Madrid attack was of the same scale as the Bali bombings, making these two incidents the deadliest terrorist attacks in the Western world since 11 September 2001.

Once again the world woke up to horrific images of senseless carnage and shattered lives. Once again innocent people were the targets of terrorist perpetrators. And once again the world shakes its head in utter disbelief that anyone could cause these events to happen.

The Victorian government condemns in the strongest possible terms the perpetrators of this inhumane crime. Terrorist attacks can never be justified under any circumstances, and they will never be tolerated by any decent democratic society, and, of course, that is certainly the case in Australia, particularly Victoria.

On behalf of the Victorian government and all members of the house I also extend my deepest condolences to the victims' families and friends, and also on behalf of the Victorian people to the Spanish people.

Our thoughts and prayers are with them at this sad time. I am sure all Victorians were moved by the show of support by the millions of Spanish people who took to the streets to demonstrate their outrage and affirm their solidarity to one another at a time of enormous grief and turmoil.

Due to my absence while I was overseas at the time of the attack the Deputy Premier met with the Spanish Consul General to personally pass on the government's condolences. He also attended a requiem mass held by the Spanish community to share the grief of the Spanish and Spanish-speaking community here in Victoria.

Speaker, you have already acknowledged the presence in the house today of the Consul General of Spain, Mr Federico Palomera Güez. I extend the welcome of the Victorian government and members of this house to him today and thank him for his presence. I also extend a welcome to Mr Antonio Ros, president of the Council of Spanish Residents, which represents a wide number of people in Victoria who have immigrated from Spain to settle in our state. We also thank him for his presence here today.

It is my belief that we must honour the memory of lives lost by ensuring we do everything possible to protect our citizens in Australia, including Victoria, from a terrorist attack. No-one is immune from terrorism. That was the horrific reminder left by the attacks in Madrid, Bali and New York. But we must do everything we can to be prepared and make sure that we have every capability to resist and turn back terrorism if it arrives on our shores.

The Victorian government has worked with the commonwealth to support moves to strengthen our national counter-terrorism capabilities. In the past 18 months our government has committed over $100 million of extra resources to improve Victoria's capabilities to prevent and respond to any potential terrorism attack.

We have strengthened our own capabilities to detect and prevent terrorist activity, and we have given our emergency services the tools they need to respond to any terrorist attack. We have introduced counter-terrorism legislation to create new offences relating to sabotage, and we have provided new powers to Victoria Police. The Victorian government has also taken several measures to protect critical infrastructure and iconic buildings in the event of any attack.

The recent national counter-terrorism exercise held just over one week ago across Australia, and in particular in Victoria, South Australia, Tasmania and the Northern Territory, was a simulated exercise called Mercury 04. Victorian ministers and agencies participated, helping to test and strengthen those measures. I can indicate to the house that there was great satisfaction with that test among all the authorities in the territory, state and commonwealth governments, and we are happier now in the knowledge that these measures will work more effectively if required in the future. Whilst those exercises test the logistics of responding to a terrorist attack, we know we can never truly be totally prepared for the human realities of an atrocity such as that experienced by the people of Madrid. Nothing can prepare any community for those occurrences.

After the Bali bombings I said that a fitting tribute to honour the memory of those who died would be for all Victorians to reaffirm their commitment to a free, tolerant and compassionate world. That is also true following the dreadful, horrific and unjustified terrorist attacks in Madrid. We must continue to oppose terrorism, prejudice and extremism wherever they occur and wherever they exist. We must also ensure we do not let events like the Madrid bombings change the things we hold dear — our freedom, our values and our diverse and multicultural community, which is one of our great strengths.

I commend the motion to the Parliament. On behalf of all Victorians I strongly condemn this act of terrorism and again convey our deepest sympathies to the people of Spain and to the Spanish communities living in Victoria and across the world. Today we in the Parliament stand together to express our grief, to rededicate our efforts to defeat terrorism and to renew our hope for a more peaceful world.

Mr DOYLE (Leader of the Opposition) — I join the Premier in debating this motion, feeling great sadness at its necessity. I also wish to join the Premier in welcoming Mr Federico Palomera Güez, the Consul General of Spain, and Mr Antonio Ros, who is the president of the Council of Spanish Residents. I also welcome other members of our Spanish community who are in the house today. I also thank the member for Sandringham for attending on behalf of the Liberal Party the very moving memorial service which followed the Madrid terrorist attack.

On the morning of 11 March 2004 the world witnessed another shocking terrorist attack on the day-to-day lives of innocent citizens. That morning Islamic extremists unleashed a coordinated series of bomb attacks on the Madrid commuter train system during the peak period. There was a series of 10 explosions on board four trains. These trains were taking ordinary workers to their jobs in central Madrid. The callous nature of these bombings has saddened and angered the global community. Over 190 people have been confirmed dead as a result, and 1800 people were injured. The victims came from all over the world — from Romania, Ecuador, Peru, Poland, Columbia, Honduras, Cuba, Chile, France and the Dominican Republic — as well as from Spain. The Madrid train bombings were the worst terrorist strike in Spanish history. This was also the deadliest terrorist strike in Europe since the Lockerbie bombing.

In the aftermath of this devastating attack over 12 million people turned out not only to protest against the atrocity but to honour the dead through

remembrance. The Prime Minister of Australia, John Howard, said the attack was an unforgivable act of villainy. Today I join the Premier, my colleagues and all Victorians in condemning this heinous attack and all other terrorist outrages.

These bombings are a targeted attack on freedom. Their repercussions are far reaching and global. The Madrid bombing was not just an attack on the Spanish people, it was an attack on all of us who believe in democracy, diversity and liberty. It joins a catalogue of infamy which includes the September 11 and Bali bombings.

I take this opportunity to express our heartfelt compassion and sympathy for the Madrid victims and the Spanish people. Victorians and Australians are thinking of the families and loved ones of the victims who are suffering as a result of this terrorist action. Melbourne is home to over 4500 Spaniards, and I say to them, 'The Victorian people are with you at this time'.

Since September 11 and the Bali bombings I have personally thought deeply about the brutal fact of terrorism and its innocent targets. What can we do? What must we do? How do we react to the abhorrent, the callous and the inhuman reality of terrorism? Until the Bali bombings terrorism was an atrocity which happened to other people in other places; since Bali, we have come to understand that we are all in this together. We grieve for the Spanish people and the Madrid victims, because we have felt their pain. We have been there.

Again I speak personally about the conclusions I have reached following the September 11 and Bali bombings. It is a natural thing to try to make sense of the senseless, but I have concluded that it is useless to try to understand the why of these outrages. Unless you can get into the twisted mind of the terrorist, how can you ever really know why? What we do know is that terrorism is an attack on all of us, not because of anything we have done but because of who we are.

I also know this: we are at war with terrorism, and we must not blink and must not waiver. This war is different from any we have fought before. The free people of the world must stand shoulder to shoulder. Our every reaction is being watched, and our reaction — our message — must be unequivocal. The signal we send must be that we will not flinch, and that message must come from us all. It is not just the proper concern of the world's superpowers or the latest victims in Madrid, or the commonwealth of Australia or the Parliament of Victoria; it is the concern of all of us — every citizen. Terrorism must be confronted and defeated. We have no choice: all people of goodwill must unite against this spectre.

That is why this motion is important. It is an expression of our implacable opposition to terrorism and our steadfast refusal to capitulate to its atrocious expression through violence and suffering.

Mr RYAN (Leader of The Nationals) — I too recognise the presence in this place today of Mr Palomera and Mr Ros in their respective representative capacities.

This was a crime against humanity of the most appalling standard; and worse still, it was the slaughter of innocents. It happened in circumstances where those who perpetrated it did so in support of a cause which we all struggle to understand. True it is that I can stand here and recite the sorts of mantras we hear about these people, but nevertheless I am the first to say I do not understand it. Even given that, I can never understand the justifications which are put before us by these people to satisfy the questions that people in the civilised world ask about how this could possibly be so. By any standards, these people are homicidal maniacs.

These attacks, which occurred on 11 March, involved the explosion of 10 bombs on four trains in the rush hour, spanning a period of 6 minutes. They were perpetrated upon commuters on those trains — a mixture of people whose greatest sin that day was that they had left their homes to go to work or go to school or otherwise go about their normal daily activities, only to have this terrible event occur to them. The fact is that the crime was executed with absolute clinical precision. The only deficiency was that one of the backpacks which had been set to go off through the use of a mobile phone failed to detonate. For all that, 190 people were killed and 1800 people were injured — an absolutely murderous tally.

So far 10 people have been charged, and the leader of this group appears to have been a former Moroccan by the name of Jamal Zougam. Behind it all is said to be the dark mask of al-Qaeda.

I think it is important when having regard to this motion and motions of a similar ilk — and the tragedy is we have had too many of them in this place — to have regard to some of the specific human outcomes in relation to this terrible event. In the *Guardian* newspaper the next morning an article was published recounting the experiences of some of those who were caught up in it. I quote from that article:

> Fourteen-year-old Sara Pedro was preparing for school when she heard the explosion on the track. 'I looked out of the

> window in front of our house and then the second blast occurred', she said.
>
> 'We hid. When we looked out again, there were bodies lying on the ground and people wandering around with blood all over them. We threw out blankets to help them. My sister went down and had to pick her way through the bodies. I've taken a tranquilliser now. One of the train doors was blown through a neighbour's window'.
>
> …
>
> Rescuers counted at least 67 bodies strewn across the platforms. One body was blown onto the station's roof. The two blasts were in separate directions, apparently designed to kill people on both platforms and beyond. One explosion ripped through a 15-foot-high brick wall, gouging out a vast hole 10 foot across. Corpses were entangled in the shredded metal wreckage of carriages.
>
> 'It looked like a platform of death', firefighter Juan Redondo said. 'I've never seen anything like it before. The recovery of the bodies was very difficult. We didn't know what to pick up'.
>
> Beatriz Martin, a doctor who tended to victims at El Pozo, said, 'On many bodies we could hear the person's mobile phones ringing as we carted them away'.

They are absolutely appalling stories, and there were more of course, and so it is that the hearts of all of us in this place go out to the Spanish people and to those who represent them.

The fact of it is though that we are all in this. The very reason we have this motion before the house today is because this government to its credit and those of us who are parliamentarians at large recognise that to be the case. We do not have motions before this house, for example, when disasters occur in other parts of the world as a result of natural circumstances. The recent terrible events in Iran following the earthquake where thousands lost their lives are an example of that sort of disaster, yet we do not have a motion of this nature before the house when those events occur. Why? Because in this instance the singular difference is that we understand collectively that we are all in this. Matters that give rise to how we are in it and why we are in it or otherwise, in the practical, hard-headed world in which we live, do not matter two damns. We are all in this. We have seen September 11; we have seen Bali, and now we have seen this. We were always in this, and we are in it now. The fact of the matter is that this is a direct attack upon our freedoms, as the Premier has indicated, and it is a direct attack upon our democracy.

What do we take out of this tragic event that we in Victoria can use, if you like, for the purpose of the way ahead? It seems to me our first task is to do as we are doing — mutually support this important motion. It is very important on behalf of the people of Victoria to reflect to the people of Spain — to those who represent them in our great state — the fact that we jointly with them mourn the loss of their citizens. So it is on behalf of the National Party in this place that I offer that support.

The second task is that we must stand firm. This has a lot about it of the schoolyard bully, and trite though the example might be, the principles remain exactly the same: if we show weakness of any sort in the face of this, it will be noted in the places where these idiots hide. If we show any tendency to duck the head at a time when the pressure is on around the world, it will be noted all right, and it will be noted to our loss. I believe it is imperative therefore that as an Australian nation we stand firm and hold the line in whatever forums and theatres around the globe. I say again in the context of this debate that it appears to me not to matter at all as to what anybody's view is on how or why we became engaged in where we are; the fact is that we have got what we have got, and we have to deal with it. We were always in this, and this tragic event, in which the Spanish happen in this instance to have been given the sharp end of the stick, is another reminder to us of the fact that we must hold firm.

The third point to arise out of this is that we must be vigilant and continue to be so in the state of Victoria. We as a party have offered support to the Victorian government in its endeavours to make sure that we keep activity of this nature out of this state. We will continue to do that; I know all parliamentarians share that basic goal. It is a time for us to be additionally vigilant when the people who perpetrate these appalling tragedies can be seen to be conducting themselves in the way they do. I conclude where I commenced — by offering to the people of Spain the heartfelt sympathies of the Victorian Nationals.

Mr LANGUILLER (Derrimut) — I too wish to acknowledge the Consul General of Spain, Senor Federico Palomera Güez, Senor Antonio Ros, president of the Council of Spanish Residents in Australia, and Rafaela Lopez, the former secretary-general of the council, who are in the gallery.

Today I stand side by side with the Premier and with government and opposition members in expressing my deepest condolences to the families of the more than 200 Spanish men and women and those of other nations, including Bulgarians, South Americans and Moroccans, in the wake of the terrorist rail bombs in Madrid.

We extend our deepest sympathies to King Juan Carlos I, the Spanish people and Spanish communities

in Australia. Given that time constraints will preclude other government members from speaking on this motion, with your and their permission and indulgence, Deputy Speaker, I shall also take the liberty of speaking on their behalf. I am confident they absolutely share our feelings and sentiments.

We strongly condemn all acts of terrorism regardless of their nature or motivation. The Spanish people were not intimidated by the act of barbarism. Immediately after the event thousands of them went to the rescue of the victims in the Madrid atrocity. Only a few hours later millions and millions of people took to the streets in a demonstration of anger and condemnation of the terrorist attack. A lot has been said and speculated about the election in Spain, only three days after the massacre in Madrid. That is a topic for another time and another forum, but there should be no doubt that there has been an unequivocal determination on the part of the people and government of Spain to combat terrorism within and outside Spanish territory. Unfortunately it is pertinent to remember that the struggle against terrorism in Spain over the last three decades amounted to the loss of lives three times that of the tragedies of New York and Bali.

Thursday, 11 March, was a day of courage; Friday, 12 March, was a day of solidarity; and Sunday, the day of the election, was a day of democracy, when more than 26 million people showed the determination to fight fundamentalism and terrorism by voting in numbers historically unprecedented in Spain. We stand together with the people of Spain in upholding the rule of law, democracy and civil liberties as fundamental features of both our nations. The Australian and Spanish people are united and determined to use all available instruments and powers as provided by the rule of law to fight terrorism in all its manifestations.

Contacts between Spain and Australia go back centuries, according to the Spanish-Australian scholar Rafaela Lopez. It has been written that it was the Spanish explorer of the Southern Seas, Captain Pedro Fernandez de Quiros, who in 1606 named the great southern land Austrialia del Espiritu Santo in honour of King Phillip III, Regent of Spain at the time and a member of the House of Austria. It was believed that Austrialia was an extension of Austria and that eventually the first 'i' was dropped and the name became Australia. Be that as it may, since that time, the Spanish community in Australia has been part of a democratic and multicultural Australian way of life.

We must continue to fight terrorism in all its forms. To win the hearts and minds of the absolute majority of people who have little to do with extremism we should also invest in job creation, education and health. We should especially support the religious leaders in the Arab and Moslem countries who have taken a brave stand in the front line against extremism and fundamentalism. Democratic, developed and rich nations have a special responsibility in this historic task.

Deputy Speaker, with your permission I will conclude my remarks speaking in Spanish.

Es con profundo dolor que trasmito mi sincero pésame por la muerte de mas de 200 victimas y aproximadamente 1500 heridos, como resultado del acto terrorista, ocurrido el 11 de Marzo en Madrid.

Acompañen mis profundos sentimientos a las familias de los hombres, mujeres y niños asesinados por este infame y cobarde acto terrorista.

Hago manifiesto mi fuerte condena contra esta barbarie y expreso mi compromiso como legislador, a fortalecer los esfuerzos nacionales e internacionales para combatir estas infames acciones.

Reitero mi solidaridad mas expedita hacia todo el pueblo español y a la comunidad española en Australia, asegurándoles que no estan solos en el sufrimiento por la tragedia de Madrid, ni tampoco estarán solos en la búsqueda de justicia y paz.

Concuerdo con el Rey Juan Carlos I, quien en nombre del pueblo espanol manifesto unidad, firmeza y serenidad en la lucha contra el terrorismo con todos los instrumentos que proporciona el Estado de Derecho.

Deputy Speaker, our deepest sympathies and prayers are today with the Spanish people. I also commend the Spanish and Latin-American community in Victoria. In a display of support, and with absolute contempt for and in condemnation of terrorism, today and during this week they are holding an arts exhibition in Queens Hall. How pertinent and how proper it is to challenge terrorism with this display of art, creativity and love.

Motion agreed to in silence, honourable members showing unanimous agreement by standing in their places.

BUSINESS OF THE HOUSE

Program

Mr BATCHELOR (Minister for Transport) — I move:

> That pursuant to sessional order 94 the orders of the day, government business, relating to the following bills be

considered and completed by 6.00 p.m. on Thursday, 1 April 2004:

Limitation of Actions (Amendment) Bill

Marine (Amendment) Bill

Monetary Units Bill

Petroleum (Submerged Lands) (Amendment) Bill.

Road Management Bill

Motion agreed to.

MONETARY UNITS BILL

Second reading

Debate resumed from 4 March; motion of Mr BRUMBY (Treasurer).

Mr CLARK (Box Hill) — The opposition strenuously opposes this bill for two reasons. The first is that it is an attack on fundamental constitutional principles of responsible government — principles that date back to the Bill of Rights of 1689. The second is that it is yet another unjustified burden being imposed on Victorian businesses and families by a cash-strapped government that is desperate for more revenue to cover its spending blow-outs.

There are two fundamental principles of the Westminster system of responsible government. The first is that governments may not levy charges on the people without the consent of Parliament. The second is that governments may not expend public moneys or other resources without the consent of Parliament. In the absence of these two principles the government of the day, if it so chooses, can defy elections, can ignore the passage of no-confidence votes, can ignore anything else that is said in Parliament and can remain in office indefinitely. The power of Parliament to exercise financial control over the executive is fundamental to parliamentary democracy.

The principles I have referred to have become enshrined in our constitutional system over many centuries. Originally Parliament simply gave to monarchs grants for life of various customary taxes and then approved special taxes or charges in times of special need, such as war. However, as government's need for funds increased, monarchs increasingly had to come to Parliament for approval of additional taxation. King Charles I tried to defy the requirement of parliamentary approval for the imposition of charges on the people and to levy taxes by royal prerogative.

Mr Batchelor interjected.

Mr CLARK — His right to do so was rejected by Parliament and, as the Leader of the House refers to, eventually it cost him his head. When the monarchy was restored, Charles II did not seek to raise revenue without parliamentary approval, but his successor, James II, did. For this and other reasons James II was driven into exile in 1688 in the so-called Glorious Revolution. When William III and Mary II ascended the throne they assented in 1689 to the enactment of the Bill of Rights, one of the key provisions of which was as follows:

> That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

Ever since that time it has been accepted practice that each and every impost of taxation on the people must be approved by Parliament. In parallel with and following on from the development of this principle, it has also become established that the expenditure of public resources is under the control of Parliament and resources cannot be used other than for the purposes and in the amounts that are approved by Parliament.

Yet in the bill before us now the government is going a long way towards dispensing with the first of the two principles that I have described. Under the bill the Bracks government is given the power to increase government fees and charges by an unlimited amount each year, and at the same time it is expressly excluding any right of Parliament to disallow those increases. The fees that are involved in this bill are likely to affect almost every aspect of Victorians' lives, such as motor registration fees; driver licences; learner permits; traffic fines; fishing licences; boat registrations; birth, death and marriage certificates; and business registration fees.

The bill purports to provide for the annual indexation of fees, charges and fines in line with inflation, but in fact it sets no limit whatsoever on the amount of the annual increase which the Treasurer may impose under it. The government is thus seeking for itself the power to increase fees by any amount it likes and to turn fees for service into unashamed revenue-raising devices. To make sure its power to do so is unfettered it is specifically excluding any right of Parliament to either review or disallow the increases it imposes.

At present, under the Subordinate Legislation Act 1994, it is required that most increases in government fees and charges be scrutinised by the all-party Scrutiny of Acts and Regulations Committee and that any such increases can be disallowed by the Parliament. However, under the bill increases made by the Treasurer are not subject to such scrutiny and possible

disallowance. To put the matter beyond any shade of doubt, clause 12 provides:

> Nothing in the Subordinate Legislation Act 1994 applies to the fixing of —
>
> (a) a fee or penalty unit in accordance with section 5 or 11; or
>
> (b) an annual rate in accordance with section 5 or 11.

So the bill proposes to give back to the government the very power that was taken away from executive government by the Bill of Rights in 1689 — namely, to levy money by use of the prerogative power. In this case, if the bill is passed, the government will do that by simply publishing a notice in the *Government Gazette* and as a result of that simple publication of a notice set across the board state government fees and charges at any level the government sees fit, subject to any regulation the government may choose to pass to exclude specific fees and charges, which regulation itself is not subject to review under the Subordinate Legislation Act.

The government cannot say that the measures in this bill have nothing to do with taxation or with imposts on the people, as are governed by the principles in the Bill of Rights. The government cannot say that these are simply fees for service that fall outside that principle. That is for two reasons. First of all, many of the fees involved in this legislation are already revenue raisers for the government rather than simply fees for service. Secondly, the power that the government is seeking from Parliament under this bill is a power that will enable it to turn any fee that is currently a fee for service into a measure of taxation by increasing that fee beyond any level needed for cost recovery. Nor can the government argue that it is legitimate for Parliament to give away any control over the level of fees and charges on the grounds that the power over expenditure is enough to keep the government of the day under control. If the government were to argue that it would need to come out and say so explicitly, because it would be proposing to dispense with one of the two fundamental constitutional principles that I have referred to. Of course that argument, even if the government did mount it explicitly, would not stand up to scrutiny.

This legislation denies the Parliament any right of veto over particular increases, as I have referred to. It was not so long ago that the government in Victoria was a minority government. If the government had tried at that time to impose any outrageous fee increase the members of the opposition parties and the Independent members could have vetoed that increase. Under this bill that will no longer be possible in future. Even if the government lacks a majority on the floor of this chamber for a particular increase in a fee or charge, this chamber, which should be the chamber which forms government, will be powerless to do anything about it. That argument goes to the issue of power.

There is a second element involved in this — that is, the issue of accountability. The issue of power relates to government versus Parliament; the issue of accountability relates to government against the people. On this score what this legislation means is that the government can avoid democratic scrutiny of the increases in fees and charges it chooses to impose.

One of the great strengths of parliamentary democracy, even under the system of party government, is that even when the government party has the majority in both houses of Parliament the government must still stand up in a forum that consists of all of the representatives of the people — the opposition, the third party and the Independent members as well as the government members — and publicly justify its decisions. All of this shows why any argument that this legislation is not a problem on the grounds that it complies with the letter of the law because the Parliament is giving this power to the executive by an act of Parliament would be nonsense. If the government were to pursue that line of argument in defence of this legislation, the question would then be: why should not the government simply convene Parliament once each year to pass the budget and then have the government of the day given power by parliamentary resolution or other authorisation simply to do everything else it wishes to do by decree published in the *Government Gazette*?

If we were to take the argument that there is no harm done by the delegation of taxation rights as proposed by this legislation, then the proposition that I have put forward would follow logically. Yet we know that would be a complete abrogation of the parliamentary system of democracy. It would mean the government would no longer be open to scrutiny and accountability for what it does.

The fact is that despite all the lip-service to openness, accountability and democracy, this government wants to avoid parliamentary scrutiny whenever it can. Deputy Speaker, you might have thought that the violation of principle and constitutional history that is being perpetrated by this bill is a result of sheer ignorance or oversight on the part of the government. I have to say that I am becoming increasingly convinced that the absence of any parliamentary checks and balances in the legislation is a calculated and deliberate decision on the part of the Treasurer and that the

government's back bench is either too ignorant, too dull or too compliant to stand in his way.

In support of that conclusion I refer to the Tasmanian Fee Units Act 1997. I am sure that act came to the attention of the Treasurer and his advisers in preparing this legislation. The Tasmanian government at the time understood that this was the first such piece of legislation being introduced in Australia. The Tasmanian legislation, providing for the indexation of fees and charges, contains a number of safeguards that are conspicuously absent from the Victorian bill. Firstly, the Tasmanian legislation limits any fee increases to the amount of increases in the consumer price index as explicitly defined in the legislation. Secondly, it requires a notice of every fee increase occurring under the legislation be published in the *Government Gazette*. Thirdly, it expressly gives Parliament the power to disallow any fee increase, not only to disallow the percentage rate of increase across the board but to disallow any individual increase promulgated under the legislation.

The Tasmanian bill was brought in by a Liberal government and supported by the then Labor opposition. The speech by the then Labor opposition in support of the bill was given by the member for Denison and leader of the Tasmanian opposition, as he then was, Mr Jim Bacon, who went on to become Premier of Tasmania, and I assume on the Labor side of politics a highly regarded Premier of Tasmania. What Jim Bacon said in indicating the Labor opposition's support for the legislation was the following:

> The other particular issue was in relation to parliamentary accountability and disallowance provisions because of course currently with the Subordinate Legislation Committee and the rights of members of both houses it is possible for the Parliament to refuse or disallow an increase — any specific increase — but of course that is protected in the bill and still remains. So in our view that means it has been confirmed and I think it is clear in the bill and in the second-reading speech that the role of the committee and the Parliament is not diminished by this legislation and we have taken comfort in that.

What greater difference could there be between the Tasmanian legislation and this legislation that the Bracks government, having this Tasmanian model as a precedent, as the first piece of legislation of this sort in Australia, did not include in the Victorian legislation any of those safeguards in the Tasmanian legislation to which I have referred? It is almost inescapable to reach any conclusion other than that the Treasurer knew of the Tasmanian model and explicitly decided to ignore it. Of course that conclusion is buttressed by the way this legislation came before the house.

The bill had its second-reading speech at around 1 o'clock in the morning on the Friday of the grand prix weekend. It was one of a trifecta of bills that received their second-reading speeches at that time, all of which related to financial matters. The second of the trifecta was a bill to divert to government purposes the funds in the Estate Agents Guarantee Fund that previously had been accumulated for the protection of real estate consumers and for the raising of standards in the industry. The third measure in the trifecta was the Limitation of Actions (Amendment) Bill, which proposes further restrictions on the right of taxpayers to take refunds of taxation from the government. All of those bills had their second-reading speeches around 1 o'clock that morning after the Leader of the House, as is well known, was invited by the opposition to have those second-reading speeches earlier in the day. Furthermore the Treasurer gave a short one-page speech in support of the bill. It was a speech that gave no detail whatsoever of what fees and charges were to be increased and subsequent to the second reading the government has repeatedly refused to make public or to make available to the opposition a full list of the increases it intends to make under this legislation.

The outrage of this legislation can be illustrated by a simple analogy. If any commonwealth government of any political persuasion were to seek authority from the commonwealth Parliament to set the rates of income tax applying in this country simply by publishing a notice in the *Government Gazette* and to vary the rate of income tax by publishing a further such notice, there would be justifiable outrage. Yet the Bracks government is moving down exactly that path through the legislation that is currently before the house and is doing so without either realising or caring about the violation of the constitutional principles involved.

Opposition to this legislation is based on a second ground as well. Even if the bill did not violate constitutional principles, even if it had all the checks and balances that are present in the Tasmanian legislation, and even if the government publicly disclosed what fees and charges it intended to increase, the opposition would oppose the indexation under this legislation as bad policy. At a time when all other sections of the community are under pressure to hold down charges, to raise their productivity and to remain competitive, how can the government alone claim the luxury of increasing all its fees and charges across the board automatically and without justification?

Courtesy of the federal Liberal government, Australians are no longer in an era of high inflation when perhaps a measure such as the current one may be justified as the only practical way to respond to constantly rising

prices. Instead we are in an era of very moderate inflation and an era where it is far more reasonable and expected that increases in prices are justified on a case-by-case basis. It need hardly be said that if every section of the community were to seek to increase its charges and prices at the rate of the consumer price index (CPI) and on top of that there were additional price increases due to particular circumstances, the CPI would continually spiral upwards.

In any diverse economy you have to expect some prices, indeed close to half of all prices or beyond, would remain below the level of the CPI in terms of percentage increase simply because the CPI represents an average. Yet the government says 'No, we want to pre-empt that. We don't want to be held to account justifying a CPI increase. We don't want to be put under any pressure to try to improve our productivity to moderate the cost of our delivery of services and therefore hold down the fees and charges that we impose. Across the board we will increase them all by the CPI'. That is particularly outrageous in the case of a government that has already doubled its stamp duty collections and its land tax collections and increased its revenue across the board by 30 per cent since it came to office, from 1998–99 to 2003–04, on the budget update figures, and increased its revenue from regulatory fees and fines by 57 per cent over the same period.

These are not token amounts that are involved with this bill. On the government's own admission in last year's budget papers, it estimated it would raise $56 million from fee, fine and charge increases in 2003–04 and would raise $81 million in 2004–05. Despite the best efforts of the government to conceal the extent of the increases which it is imposing under this measure, the truth is slowly coming out. I commend our daily media — in particular the *Age* and the *Herald Sun* — for their diligence in extracting bit by bit and from their own hard work and research many of the fees and charges that are going to be increased under this legislation.

When one looks at the statutory rules that have been adopted in recent times, simply through counting them based on those that refer to fees or charges in their titles, and looking at those statutory rules that have been made in 2003 and 2004, one can see the range of the increase. On my quick count we had 36 such fee regulations in 2003, with a further two of them made in 2004, and that is not counting those fee regulations that are designated simply as extension-of-operation regulations. What they consist of runs virtually the entire gamut of the alphabet, starting with the Administration and Probate (Deposit of Wills) (Fees) (Amendment) Regulations, the Associations Incorporation (Fees) Regulations, the Chattel Securities (Fees) Regulations, the Cooperatives (Fees) Regulations, the Country Fire Authority (Charges) Regulations, the County Court (Bailiff's Fees) Regulations, the County Court (Court Fees) (Amendment) Order, the Drugs, Poisons and Controlled Substances (Fees) Regulations and the Environment Protection (Fees) (Amendment) Regulations — and the list goes on. Further down the 2003 list we have the Pharmacists (Interim Fees) Regulations, the Plumbing (Fees) (Amendment) Regulations, the Police (Charges) (Amendment) Regulations and, last but not least, the Victorian Civil and Administrative Tribunal (Fees) (Amendment) Regulations.

These imposts range over every facet of Victorians' lives. They go far beyond the mere covering of fees for services. They are a prime revenue generator, and are intended to be so, for a government that is increasingly desperate for funds. Victorians in many walks of life are going to be paying the price for the government's profligacy, for its inability to keep its spending within its own budgets. Of course this is going to be an impost not only on families but also on Victorian businesses that are struggling to remain competitive in a difficult climate — businesses that, in order to preserve and hopefully create jobs and to afford and justify investment, need to keep their prices and charges as sharply honed as possible. They are going to have to pick up the tab for a government that expects that it alone can have the luxury of making unjustified across-the-board increases. Already, despite the government's best attempts to suppress knowledge in the broader community of what it is up to, business groups are starting to react to what is happening.

I refer in particular to correspondence that I have received from the Property Council of Australia and from the Victorian Employers Chamber of Commerce and Industry. I quote in part from a letter addressed to me, dated 26 March 2004, from Ms Jennifer Cunich, the executive director of the Property Council of Australia. She states:

> We are concerned such system has the potential to be inflationary, with every year adding to the previous, and no guarantee in the bill the increased charges will stop at a CPI adjustment.
>
> We believe governments have a responsibility to make a full assessment of each fee, penalty or charge and then determine the appropriate level for costs recovery. A government should make the case to the community for any proposed increased charge. It should not have an inflexible and automatic right to increase fees, charges and penalties.

The property council also states:

> The second issue is the lack of detail currently before the Parliament. We have seen no list of the fees, charges or penalties this bill applies to. We think the government should be making a stronger case to supply the policy decision behind this bill and one step towards doing that is to release the detail of what fees and penalties will be annually increased.

The Victorian Employers Chamber of Commerce and Industry, in a letter to me dated 23 March 2003 — I think they mean '2004' — and signed by Neil Coulson, chief executive officer, said:

> It is highly likely that this measure will adversely affect Victorian business. As such, we consider offsetting business tax cuts should be introduced in the forthcoming budget.
>
> Any increase in business costs, whether from taxes, fees, fines or charges, has the effect of reducing business competitiveness, potentially reducing profit margins and/or adding to inflationary pressures. With these issues in mind, we remain opposed to the bill in its present form.

That is from the peak employer body in this state and gives a loud and clear message to the government that it is opposed to this legislation and that it is going to have an adverse effect on the competitiveness of Victorian business. If the government does not listen to that message, it is hard to think what message it will ever listen to.

As I said earlier, it is not just business that is being hit by this. Ordinary individual Victorians and their families are going to have to pay in many aspects of their daily lives. Perhaps one of the prime illustrations of the hypocrisy of the government in seeking to justify this legislation on the basis that it is simply smoothing the way, evening out the flow and being fair to all can be seen if you ask whether or not at the same time as the government is indexing the imposts that it imposes on its citizens it is also doing something about indexing the benefits that it pays to its citizens. Strangely we do not have before the house a bill to increase the benefits that the government pays to citizens. It seems to be all right for the government to justify the principle of indexation in order to get the money in, but we have seen no similar application of the principle in terms of the benefits that some of the most needy Victorians receive from the government.

For all of these reasons, the opposition is vigorously opposed to this bill. It violates fundamental constitutional principles over which civil wars and revolutions have taken place — one of the two principles that are vital safeguards of the system of responsible and democratic government that we enjoy. On top of that this is a continued impost on Victorians who are already struggling under massive increases in stamp duty, land tax and other charges that have been levied on them by the Bracks government, and the government has established no justification whatsoever for the measures contained in this bill.

Mr RYAN (Leader of The Nationals) — It is a sure sign the government is in trouble in relation to a given piece of legislation when the second-reading speech that brings it before the house is one page in length. We have become accustomed over the last almost five years of having political commentary interwoven with legislative intent in the course of multi-page second-reading speeches that can take up to an hour to make their way into the *Hansard*. Here we have four paragraphs topped and tailed by a single line, the outcome of which is to introduce legislation which has an absolutely profound effect upon Victorian communities.

I can utterly assure the house that if the Treasurer felt that there was any flag-waving in this which would benefit the interests of the government, this second-reading speech would have been copious in content. As opposed to that, we have before us a second-reading speech which is the complete antithesis of the usual, in that, as I say, it is one page in length. In addition to that, of course, as the member for Box Hill has observed, it was read out in the early hours of the morning at a time when most Victorians would have been tucked away in bed. So having refused the opportunity to second-read the speech during the course of the day, it was done in the dead of night.

The Nationals are opposed to the bill. We see it as an absolute assault upon the families of Victoria and the businesses that operate in the state. It is particularly inequitable in that it applies to government in the favourable sense of adding to the coffers, whereas it does nothing at all by way of a positive outcome for the citizens that this government is supposed to be governing for. Rather it represents a means of taking more money out of their pockets, be they associated with families or business activities or otherwise.

The fundamental flaw in it all, of course, is that the Labor Party simply cannot manage money. That is an historical fact, and we are seeing it played out here again. What is being done per favour of this legislation is an attempt to bolster an otherwise terrible state of affairs in relation to Victoria's finances and to do it out of the back of the hand in a very surreptitious manner.

If the bill passes — and the reality of politics is that it will — the Labor Party will be in the happy position of being able to introduce additional fees and fines on 1 July each year. That will see the cost to Victorians of those things being ramped up in a way that is beyond

parliamentary scrutiny, and I will return to that point in a moment.

The basic point is that Labor cannot manage money, and that is relevant in the extreme to this legislation. I have before me the *Report of the Auditor-General on the Finances of the State of Victoria, 2002–2003*, and in the context of this debate some of those findings are very pertinent. Under the summary of major findings on page 4 there appears the following, under one of the dot points:

> The major sources of increased revenue in 2002–03 were taxation ($484 million) mainly reflecting the continuing impact of favourable property conditions, investment income ($672 million), grants from the commonwealth government ($214 million) and revenues from fees and fines ($140 million). These positive influences were offset by reduced gas sales revenues ($340 million) and increased expenditure on employee entitlements ($701 million), WorkCover claims ($440 million) and general supplies and services ($506 million).

An additional $701 million was expended on employee entitlements in the one year under consideration by the Auditor-General. It says further:

> The key factors contributing to the increase in state revenues in the year were higher investment earnings and increased taxation collections — in particular, stamp duty on property transactions.

I pause here to say that, as we know, the government is absolutely swimming in stamp duty revenue. I think I am right in saying that it will be about $2.3 billion this financial year — an extraordinary amount of income for a government — yet it is still whingeing about all sorts of peripheral issues pertaining to the split up of the GST under the commonwealth formula.

There is the further line under the revenue heading which says:

> Revenue from fines totalled $376.3 million in 2002–03, an increase of $104.7 million, or 39 per cent over the amount collected in the previous year.

That is an absolutely staggering amount of money. It says further:

> Government business enterprises such as the water bodies and public financial corporations paid dividends of $580 million into the consolidated fund during 2002–03, some $174 million higher than the budget estimate for the year. These additional dividends were a major contributor to the net surplus of $236 million achieved by the general government sector.

Of course there is the observation to be made that the $236 million was a skint amount of money. The government just got over the line by way of some shady tricks that subsequently materialised in documentation such as that produced by the Auditor-General. That report therefore sets out the background.

I suppose the most compelling aspect of the report by the Auditor-General is contained within the overview. That is referred to in the body of the report itself, because it says:

> While there has been a 21 per cent growth in state revenues over the five-year period 1999 to 2003, expenditure levels have increased at a greater rate, at 35 per cent. The level of expenditure is not only growing in nominal terms, but in the last financial year it increased marginally faster than the growth in the Victorian economy. Any downturn in the economic cycle and further expenditure pressures, including wage growth, beyond those anticipated will place pressures on the states finances.

Finally it says:

> The trends in the state's finances demonstrate a continuing need for vigilance by the government to ensure that public sector activity and program levels remain sustainable in the longer term.

They are just a few snippets from what I think should be compulsory reading for the people of Victoria if they want to see a proper, clinical examination of the performance of the government in relation to the management of the state's finances. The fact is that Labor simply cannot manage money. It has an appalling history in that regard, and now we are travelling down the same road.

As part of that process we have before us the legislation now under consideration, which will see the introduction of the notion of fee units. This will run in tandem with the established notion of penalty units, and the government intends that these fee units and penalty units will automatically increase according to the formula which the legislation establishes. It amounts to automatic indexation, and of course it is a flawed process. As the honourable member for Box Hill has already pointed out, legislation of a similar ilk that was passed in Tasmania has been the subject of commentary by many; and the honourable member read into *Hansard* the comments of the former Tasmanian Premier, the Honourable Jim Bacon, at the time the legislation was under consideration in that state.

I pause to say in an apolitical way that one's heart goes out to Jim Bacon. He is a fine man who has served his state very well over a long time. It is a tragedy to see events unfold such as they have recently and to hear commentary such as that from Mr Bacon. One is aware, as one must be, of the impending difficulties which he faces over the course of the next year or two.

But to return to the debate, this bill is a cop-out, because what the government is doing is imposing these increases in fees and fines without any justification in the sense of allowing any objective examination of whether they are justified or not. It is doing so in an environment where it wants to remove itself from the public scrutiny which should properly apply in relation to matters of this nature. They should be put out into the public domain so that people have the opportunity to comment on them. The government of the day, regardless of its persuasion, ought to have the good grace to put them out into the public arena and allow comment to flow. We are going to have the complete opposite of that. Each year this skulduggery will apply and the government will slip these changes in and award the increases to itself without proper examination.

It is also interesting to have regard to views expressed in the most recent *Alert Digest*, which was tabled today by the chair of the illustrious Scrutiny of Acts and Regulations Committee. After going through the preamble to its considerations it says at the top of page 14 of the report:

> The committee resolved to seek clarification from the Treasurer concerning the factors that will or may be taken into account in striking an appropriate annual rate for the determination of the value of a fee and penalty unit for any given financial year — for example, whether the consumer price index of the commonwealth is to be used as the annual rate or some other objectively ascertainable index is to apply to the fixing of such an annual rate for the purposes of clause 5.

It says further:

> In respect of section 17(a)(vi) of the act —

that is, the Scrutiny of Acts and Regulations Act, which deals with inappropriate delegations of legislative power —

> the committee is concerned that if the annual rate is not an objectively ascertainable annual rate it may be characterised as a form of taxation which is a legislative function to be retained by the Parliament and not one to be delegated to the executive.

It says further:

> In respect to section 17 (a) (vii) of the act —

that is, the Scrutiny of Acts and Regulations Act, which deals with insufficiently subjecting the exercise of legislative power to parliamentary scrutiny —

> the committee is concerned that if the annual rage is not objectively ascertainable this may insufficiently subject the exercise of legislative power subject to scrutiny or disallowance by the Parliament or scrutiny by the committee.

It says finally:

> Pending the minister's response the committee draws attention to the provision.

I had the great honour of chairing the Scrutiny of Acts and Regulations Committee for a period of almost four years. I deemed it a great honour, and the time I spent in the service of that committee is something I cherish. But when you run that committee you have your head on the block most days of the week if you are going to produce a report that is critical of the government. With due respect to Mr Jeff Kennett — I saw him yesterday at that remarkable occasion which was the funeral of Sir Rupert Hamer, and what a fantastic day it was, even allowing for the tragedy surrounding it, that being the loss of a great man — I cannot help even to this day reflecting upon the era when I chaired the Scrutiny of Acts and Regulations Committee. The reality is that if the committee is going to produce a report which is critical of the government of the day, bearing in mind the fact that the committee has the numbers, then its members have to be prepared to stand their ground in the face of a fair bit of heat.

For that committee to have produced a report in these terms is quite an extraordinary thing. It does not happen very often in the life of a Parliament that the Scrutiny of Acts and Regulations Committee produces a report of this nature. More power to its arm! If this committee, which I believe is pivotal to the way the Parliament functions — that is, as opposed to the way the executive functions — is able to do its job, then more power to its arm that its members have produced this report. I will be very interested to see what the Treasurer has to say by way of response, because the fact is that the committee is right. What it has flagged is absolutely right — that is, that this government by using its numbers is circumventing the proper processes of the Parliament in an endeavour to introduce fees and fines, or should I say the way in which they are increased, and they are one and the same when you come to think of it. It is going to go about that in a way which enables it to avoid the proper operations of the Parliament. All of this is being done by a government which so often trumpets the fact that it is being open, honest and accountable.

Here is a piece of legislation that has been deliberately designed to circumvent the operation of Parliament. Why do I say deliberately? Because the member for Box Hill was right when he made the distinction between the legislation we have before us and the legislation in Tasmania. The Tasmanian legislation preserved the capacity of the Parliament to be involved in the way in which this legislation was passed and

continues to operate. With due respect to the member for Box Hill, it is apparent to me that this government knew of the Tasmanian legislation at the time it drafted the legislation now under debate. Of course it knew of the Tasmanian legislation! Wherever it got the idea from in the first place — and it may have been from Tasmania — what it actively and purposely determined to do was remove from Parliament its proper role in the examination of an issue which can be surely no more fundamental to the people of Victoria.

If it is a truism that politics at large is beyond the radar of most people, the one exception — if you are going nominate one — is where people are going to pay a financial penalty because of the activities of the government of the day. This government knows that. What it has done is bring legislation to this house which is going to achieve that result. People will remember this legislation and the surreptitious way in which it is intended to operate, and the government will pay a price in the fullness of time.

The consumer price index (CPI) provisions are said to be the basis and rationale behind this legislation. It is a dirty circle, because if you have the CPI and you apply it to basics such as these fees and fines, that in itself becomes a means of ratcheting up the CPI. It becomes an eternal circle; it becomes a dog chasing its tail. You now have a situation where this government is actively going to enter that circle by implementing the processes set out in this legislation.

There are other ironies in this legislation that are deserving of comment. We are at a point in Victoria's history where the delivery of health services across this state, particularly in country Victoria, is fast approaching a situation where the health system will be on its knees in a situation where this government continues to apply 1.5 per cent productivity cuts to the financing of those services. What do we have instead? We have this government that palpably cannot control its own spending — that was the subject of an extraordinary report by the Auditor-General in November last year and is in turn the subject of an extraordinary report by the Scrutiny of Acts and Regulations Committee — lining its own miserable pockets at a cost to Victorian families and businesses and at the same time taking 1.5 per cent annually out of the budgets of our hospital and health services around the state. It is doing this while also belting the boards of management of those organisations because it says they cannot manage their budgets appropriately.

How two faced can you get? Is it any wonder that the people of Victoria are appalled by this conduct in the manner which is set out in the letters that have been read into *Hansard* by the honourable member for Box Hill. Those letters are from the leading business groups, that being the first line of awareness, and I am sure it will eventually seep into people's minds. It is going to be terrific to see the confusion that reigns across the whole community as the calculations are made year by year to find out what the amount actually means. For example, a penalty unit is $100 at the moment. Under the scheme set out in this legislation if the CPI is set at 2.5 per cent the penalty unit will go up to $102.50, and the bill says it can be rounded up to 10 cents. That is fine! I just cannot wait to see what happens in the court system as the years go by when people like those whom I used to represent in the courts try to work out how much they have been fined and are told by a magistrate they will have to cop 10, 15, 18 or 25 penalty units — whatever the relevant legislation provides for. The situation is similar in relation to fees.

There is another side to all of this. To this day, as I stand here in this place, no-one even knows — certainly on this side of the house anyway — how many fines and fees this applies to. This government has never told the people of Victoria how many hundreds — or is it thousands? — of fees or fines that this applies to. I cannot wait to see what will happen in the public arena as there is an awareness of this hypocrisy through the way this legislation is intended to take effect.

For all those reasons The Nationals oppose this legislation. At the time the budget was introduced last year we opposed this aspect of it. We did not oppose the budget — that would be an extraordinary thing to do — because there were some elements in it which we thought were good initiatives, but we have always opposed this element of it. It is a miserable thing for a government to do, and its reputation in such things is becoming increasingly miserable.

I finish where I started, I suppose, by saying that the basic flaw in all of this is that Labor cannot manage money. It is swimming in cash here in Victoria, the likes of which we have never seen before in our history. Income is up 21 per cent over four years, expenditure is up 35 per cent over the same period, and now it is going to steal more money from Victorians per favour of this legislative stealth.

Mr STENSHOLT (Burwood) — I rise to support the Monetary Units Bill, which establishes a new scheme for the annual indexation of fees and penalties which are payable, obviously, to the public purse. It basically establishes a scheme of indexation which was announced on 6 May 2003 as part of the 2003–04 budget. It was announced that we would be moving to a policy of having automatic indexation of fees and fines

which would be implemented over a period of two years. It was set out last May, so it has taken the shadow Treasurer some 10 months to catch up with it and come out and oppose indexation. When we had a bit of a debate then he did not bring up the idea of beheading kings et cetera, yet 10 months later he has decided that this is a concerning issue.

The bill establishes a new scheme to provide for the annual indexation of fees and penalties payable from 1 July 2004. The sorts of fees involved are, for example, motor vehicle and driver licences; boating and fishing licences; court fees; police fees, charges and fines; business names and registration fees; environment protection licences; and firearms permits. That basically covers the list of fees and fines administered by the Department of Justice, the Department of Sustainability Environment, the Department of Primary Industries, the Department of Infrastructure. The indexation of fees and fines administered by other departments will commence progressively from 1 July 2004 as specific regulations are changed.

A list of fees and fines set by acts showing the indexation that will apply from 1 July 2004 is provided in schedule 1 of the bill. The ones which have been increased as a result of the 2003–04 budget have been advertised by each department — in accordance with normal processes, I might add — in the *Government Gazette* over the past 12 months. I urge the member for Box Hill to check out the *Government Gazette* and schedule 1 of the bill. A list of fees and fines to be applied from 1 July 2004 will be set out in omnibus regulations prepared under the provisions of this bill. As new fees and fines are introduced indexation will also be applied as appropriate and will be advertised in the *Government Gazette*.

A number of fees, fines and penalties will not be automatically indexed: those which are less than $10 and those to the value of less than 0.1 of a penalty unit, which is also $10; fees and penalties subject to price determination regimes established under the Essential Services Commission Act; fees and penalties set by corporatised or privatised entities; and fees and penalties subject to national agreements or regimes — an example of this in the bill is the Petroleum (Submerged Lands) Act, which is covered by a national regime and so is not automatically indexed. Other fees and penalties which will not automatically be indexed are those set by self-funding statutory authorities.

One of the rationales for this, as was noted in the budget last year, is that in the past some fees and fines increased every year and some increased every couple of years, but some had been forgotten for a long time until suddenly, maybe 10 years later, it was decided that it would be better if they were increased because they had not changed. That led to lumpiness in the system in that fees were increased quite dramatically on a number of occasions and if you looked at a graph you could see that a big lump had grown because of a very large increase to catch up after a number of years. The costs of government increase regularly, and it is good governance to organise revenue in a manner that provides a sensible scheme that gives some assurance and avoids the large imposts which might occur every 5 or 10 years. It is sensible fiscal management.

I completely disagree with the views of the Leader of The Nationals, which is what I think they call themselves now. This government is managing Victoria's finances very well indeed, thank you very much! The Bracks Labor government has a proud record of managing Victoria's finances. It set itself the object of having a surplus of at least $100 million each year, and we have achieved that and are continuing to achieve that. Indeed the Leader of The Nationals also asked, 'What is the money being spent on?'. You cannot have it both ways. You cannot complain, saying, 'By the way, there is too much money', and then say, 'They're not really spending the money on certain things'.

Then we have the silliness of the Leader of the Opposition, who says he wants to spend billions of dollars and then has to withdraw the statement a few days later. We are spending that money according to the terms of the budget. We are spending it wisely, we are spending it well and we are spending it for the benefit of all Victorians. We are spending it on an extra 4000 nurses; we are spending it on an extra 4000 teachers; we are spending it on extra police — we have well over 1000 police, and more to come; we are spending it on the 40 per cent of schools throughout Victoria which have been upgraded; we are spending it on new police stations in many electorates and regions right throughout Victoria; we are spending it on new hospitals and on new hospital beds; and we are spending $2.5 billion a year of it on infrastructure over four years — two and a half times the amount of money the previous government spent on infrastructure. This is a proud record.

The whingeing, whining and stand-for-nothing opposition is arguing that this is terrible. Opposition members should look at page 29 and what follows — I am sure the shadow Treasurer has read it, but he seems to have forgotten — of chapter 2 in budget paper 2 for 2003–04. There is a table outlining the expected revenue, and I think it is about $90-odd million. If he

looks, he will find the details there. This is wise expenditure. It is not surreptitious, it is up-front — and it was done 10 months ago in the budget.

In terms of how the legislation is going to work, the annual rate will be set by the Treasurer, which is nothing new. It is set every year under section 8(1)(a) of the Subordinate Legislation Act 1994 — and at that stage the Leader of The Nationals was probably the head of the Scrutiny of Act and Regulations Committee. There will be no change to this process under the Monetary Units Bill. The annual rate will be set based on advice from the Department of Treasury and Finance concerning the expected consumer price index (CPI) for Victoria. This takes into account a number of factors, including recent movements in the inflation rate; the Reserve Bank's view on inflation, published quarterly; private sector views on inflation, including financial market expectations; other relevant external developments such as movements in the Australian dollar, oil prices, drought, public transport charges, and electricity and health costs; and estimates of reference against the Reserve Bank's medium-term strategy.

These figures develop and change during the year. The last budget update came out in December 2003: a figure of 2.2 to 2.3 per cent indexation was the general consensus, and in Consensus Economics it was between 2.2 and 2.4 per cent. This supports the 2.25 per cent inflation estimate in the budget updates for 2003 and 2005. The rate broadly reflects the CPI, and that will continue to be the case. The rate will be advised through the Scrutiny of Acts and Regulations Committee, and it will be done on a yearly basis, as has been provided for in the bill.

This is a bill which provides a system for introducing the automatic indexation of fees and fines. It is a comprehensive bill, and I commend it to the house.

Debate adjourned on motion of Mr McINTOSH (Kew).

Debate adjourned until later this day.

JOINT SITTING OF PARLIAMENT

Senate vacancy

Message received from Council acquainting Assembly that they have agreed to a joint sitting to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston.

LIMITATION OF ACTIONS (AMENDMENT) BILL

Second reading

Debate resumed from 4 March; motion of Mr HULLS (Attorney-General).

Mr McINTOSH (Kew) — This bill essentially does two things. The first is that it amends section 20A of the Limitation of Actions Act to expand the ambit of that act. The reality is that that section imposes limits on claims that can be brought in the courts by taxpayers seeking recovery of tax due to a mistake in fact or law. The limitation period is one year, and most people in this house would be aware that the general limitation on proceedings prescribed under the Limitation of Actions Act — for example, for a common-law claim or an ordinary claim in the Supreme Court — is six years. But the most important thing about this bill is that it contains provisions relating to taxpayers recovering revenue for an overpayment of tax due to a mistake in fact or in law.

The bill talks about a general understanding that may now be in jeopardy because of a number of interstate decisions that have cast doubt on the ambit of the act. In an abundance of caution the legislation adopts a belts-and-braces approach to make it perfectly clear that these provisions relate not only to taxpayers making claims against revenue but also to recovery in relation to moneys that are attributable to tax paid between private parties.

The second thing this bill does is insert a new section 20B into the Limitation of Actions Act to prevent something which we would all concede is inappropriate — that is, windfall gains.

The opposition does not oppose this bill. There are two matters in particular that have to be raised, and I will certainly be seeking precise clarification from the Attorney-General on those two matters. The decision in *Roxborough v. Rothmans of Pall Mall Australia Ltd*, which resulted from the tobacco franchise licensing fee case about four or five years ago, where the High Court declared that fee to be unconstitutional, is a case in point. It goes to an example of both a windfall gain and the operation of this section as it applies between two private parties and not just against a party and the consolidated revenue.

In *Roxborough v. Rothmans of Pall Mall Australia Ltd* tobacco retailers brought an action against the tobacco wholesalers, who had charged them the appropriate licence fee at the time, when the fee was later declared

unconstitutional — that is, a tax that obviously had no basis in law. That action was successful, and the retailers were able to recover the quantum of that unconstitutional tax from the wholesalers. But interestingly enough the consumers of the tobacco, who ultimately bore the overall cost, were unable to recover the tax because of a decision in New South Wales which found that it would be essentially impractical for the law to allow the recovered moneys to be returned to the consumers. So you had retailers recovering against wholesalers, but the people who bore the brunt of the tax — the consumers — were unable to recover the cost from the retailers. Accordingly, the retailers secured a windfall gain. This place certainly does not want to see any revenue that is recovered becoming a windfall gain, so this legislation introduces a mechanism that will prevent windfall gains from occurring.

The legislation adopts a belts-and-braces approach to make it perfectly clear that the payment of moneys that is attributable to tax should be limited to 12 months as it applies inter partes — that is, between two private parties.

The concern I have in relation to this bill — and I would certainly seek clarification — is the use of payments of money that is attributable to tax or purported tax. We had the case where a tobacco licensing scheme which was a sort of legal fiction to enable the states to recover some tax on the sale of tobacco was declared to be unconstitutional, which meant that they were not recovering the actual tax, they were recovering moneys that were attributable to tax — that is, the payment was made pursuant to some purported tax. In decision in the case of *Roxborough v. Rothmans of Pall Mall Australia Ltd* it is pretty clear how the chain would actually be made up in this particular circumstance. What concerns me is that the use of the words 'recovery of tax', tax that is paid through a mistake in fact or law or money that is attributable to tax or purported tax, may have a fairly broad ambit.

The reason I raise this is that in the case of someone who goes to see a lawyer or an accountant to get tax advice as to the payment of what their tax liability may or may not be, they may very well make a payment which results in an overpayment of tax — because of a mistake in either fact or law — that can be directly attributable to the negligence of a professional adviser such as that lawyer or accountant. What concerns me about this is that an overpayment under a mistake in fact was not tax, it was something that was attributable to tax; it was a payment under a purported tax, but it was not actually tax. In this particular case the taxpayer only has a limitation period of 12 months to recover those moneys. If, for whatever reason, the action is not proceeded with within 12 months of that payment, then the client of the lawyer or the accountant would perhaps have a common-law claim for negligence.

The thing that concerns me is that the purported payment was based upon the purported negligent advice of a lawyer or an accountant. That provides in the current state of the law a six-year limitation period. I am concerned about the operation of this provision because it is so broad and that we are talking about payments attributable to tax — that is, the overpayment is attributable to a tax that did not actually exist based upon the negligent advice of an adviser. What concerns me is that the ultimate person who suffered the loss may have their cause of action limited to a 12-month period to bring that cause of action.

It is a matter of concern and one that we raised at the departmental briefing, and we got the answer that it is definitely not included in the ambit of this legislation, but we could not rule down the precise distinction between where it would and where it would not happen. Certainly I would ask the Attorney-General, either by way of example or some statement to the house, to actually draw the definitive line between when the limitation of period applies inter partes, between private parties in the case of a retailer suing a wholesaler as opposed to someone suing a lawyer or an accountant for negligent advice. Some clarity of distinction between the two would be of benefit to the taxpayers of Victoria, considering that they are now going to have inter partes limited to 12 months.

The second matter I want to raise is the idea of a windfall gain. As I said, everyone agrees that people should not be able to recover from revenue a windfall gain, but it is unclear as to what would amount to a windfall gain. In the case of the wholesalers the windfall gain was the consumers could not bring an action against the wholesaler. Under other taxation provisions such as the Victorian Taxation Administration Act and the Land Tax Act, if that money was actually paid back to the consumers, if that was possible, then that is not a windfall gain. All you have done is recover it from the revenue; it has gone through and you have paid back to the ultimate user of the product, the consumers.

In the event that you do not pay back under two Victorian acts, the Taxation Administration Act and the Land Tax Act, if you give an undertaking to the court that you will return the money to the consumers — of course an undertaking is a very serious thing and is accorded the stature of an injunction which means if

you breach the undertaking then you can be dealt with by way of contempt of court — the money will be returned to consumers to prevent this windfall gain. Indeed if you are unable to return it to consumers because they cannot be identified or otherwise, and that excess money is returned back to revenue, then that is a very satisfactory and practical solution to this issue of windfall gains. It seems a bit curious because in this legislation what we have is the repayment of moneys to the consumer or third person to prevent the windfall gain, or alternatively if the tax is not repaid, then the taxpayer enters into an unconditional, enforceable agreement to reimburse the moneys to the consumer.

There are a couple of things that concern me and they are a bit technical, but I will sum up by saying this: in the sense that the consumer does not have a cause of action to recover the money against the retailer of the tobacco product, it is hard to see how you can get any enforceable agreement because there can be no consideration for that agreement. The serious issue here is that the taxpayer has to enter into an unconditional, enforceable agreement to reimburse. It is a simple idea, but you have now made the whole issue terribly complex and in many cases almost impossible to adhere to because the ultimate consumer in the case of Roxborough cannot offer any consideration because they have no cause of action against the retailer.

It seems to me the most appropriate course is for the Attorney-General to either come in and explain this particular matter and indicate to the house precisely what is meant by an unconditional and enforceable agreement to reimburse or the legislation should be amended while it is between houses to bring it in line with the Taxation Administration Act and the Land Tax Act to prevent a windfall gain being paid to a taxpayer. They can undertake to the court to either repay it to the consumer or they can undertake to return any unpaid moneys back to the state revenue. That seems to me to be a simple and appropriate way to solve this conundrum that is associated with the windfall gain.

Mr RYAN (Leader of The Nationals) — I must say that talking about tax is about as interesting as watching paint dry. Be that as it may, it is of course an imperative for most people, and so it is that I rise on behalf of The Nationals in this debate.

We do not oppose the legislation. In so saying, I have listened with much interest to the contribution which has just been concluded by the member for Kew. He has raised points which will bear consideration by the Attorney-General at the time this debate is concluded. I look forward to the Attorney-General's commentary. One hopes that the government will manage the business of the house so that the bill is not guillotined and the Attorney-General is thereby excused the prospect of having to make an explanation. Even if that be the case there is plenty of room while the bill is between houses to offer the explanations, and even if that fails one would like to think that in the course of the debate in the other place those explanations will be given.

The principal act here is the Limitation of Actions Act. As a matter of general course it has been talked about in the last two or three years in this place in the context of personal injury legislation, but in this instance that is not the case. Section 20A deals with the limitation on proceedings for the recovery of tax, and subsection (1) reads:

> (1) Subject to sub-section (2), a proceeding for the recovery of money paid by way of tax or purported tax under a mistake —

and I emphasise the word 'mistake' —

> (either of law or of fact) must be commenced —
>
> (a) within 12 months after the date of payment; or
>
> (b) in the case of a proceeding in accordance with another Act that provides for the refund or recovery of the money within a longer period, within that longer period.

The basic parameters of the operation of the Limitation of Actions Act with regard to recovery of tax which may have been paid by mistake either in law or in fact are set out in section 20A. The provisions in the bill now under discussion provide the relevant amendments to the section in the context of the current law as it stands throughout Australia and particularly the position that has been advocated by the High Court. It is noteworthy that the legislation is said to bring us into line with New South Wales, South Australia, Tasmania and Western Australia. I might say I always have some concern as to the validity of that argument. In the scheme of things we have an obligation in Victoria to pass the legislation that best suits our purposes; whatever might apply in other jurisdictions is not necessarily an indicator of what should apply here one way or the other but nevertheless can be used as a point of reference.

There are a couple of primary purposes to this, the intention being to clarify the application of section 20A of the principal act concerning limitations on the proceedings for the recovery of tax. In particular they are, firstly, to clarify the operations in relation to proceedings between private parties as well as against revenue-collecting authorities, and secondly, to prevent

the recovery of windfall gains in proceedings for the recovery of a tax or an amount attributable to a tax. The member for Kew has summarised the state of the law admirably, as is his wont. I do not propose to go through the same process. Suffice it to say that the proceedings in *Roxborough v. Rothmans of Pall Mall Australia Ltd*, which was determined by the High Court, were one of those great instances where the law was applied as the law was, as opposed to its being applied as it might otherwise be in a holistic state of whatever might be sensible.

Sometimes it is said that the law is an ass. It may be that some would regard the totality of the situation surrounding the Roxborough case as being one of those instances. When you look at the suite of laws applicable to the foundation of the Roxborough case that assertion is all the better made out. In the end the retailers were able to recover from the wholesalers money which had in effect been passed on to consumers; on the other hand, when the consumers tried to get that money back from the retailers they were unable to do so. People might say from an objective and clinical examination of the way the world works that that just ain't fair.

Mr Mildenhall — It's a rip-off!

Mr RYAN — It's a rip-off, as was observed by the member for Footscray, and he is absolutely right. It is my usual course to agree with him, and this is another instance where I do so.

The fact is that if you have suffered no loss then you should not be able to claim. In the civil jurisdiction this issue has been addressed in various ways, and notions and principles of law which have operated for many years and which in some interpretations have enabled plaintiffs to double dip with regard to their claims on issues to do with, for example, future medical care or loss of income or some elements of those styles of things, have been addressed by legislative change to ensure that you cannot claim a loss that you have not suffered. This bill seeks to enshrine that same principle to make certain that you cannot have a windfall gain — that what is good for the proverbial goose is good for the gander.

The other principal element to this is that if what is to apply to government and the authorities of government is to happen in the legal sphere, then the same sorts of rights and responsibilities should operate as between private individuals. There has been argument as to whether that is so. There has been argument as to whether some of these powers should apply in favour of only statutory authorities. What this legislation does is put the issue beyond doubt, in that the operation of the bill will mean that these rights will apply as between private parties as well as where an authority is actually involved.

The bill also makes it clear that a party that has actually passed on a tax will still be able to bring that proceeding if the windfall amount has been paid back to the customer or an unconditional and enforceable agreement is entered into with the customer to pay back the tax — for example, as is set out in the second-reading speech, there might be an agreement which is not dependent on the outcome of court proceedings. The point of this is that the bill is seeking only to regulate proceedings; it does not seek to distinguish any rights.

On that latter point, and cutting to the chase, there is the dreaded section 85 provision contained in this bill. Once again we see an instance where a government which belted the former government over issues of section 85 provisions and their use is now resorting to them. I believe it is doing so in an environment where the use of a section 85 provision is appropriate. Otherwise, if it were not there, it would make a mockery of the provisions of the legislation before us and the intent of that legislation. Nevertheless, as happened during the time of the former government, we see a section 85 provision being used in what is a legislatively constructive fashion to enable this legislation to operate in the way as is intended by the government and as will be reflected in the Parliament passing this bill. With those few comments, I reiterate that the legislation is not opposed by The Nationals and I wish it a speedy passage.

Mr MILDENHALL (Footscray) — It is a pleasure to rise on behalf of the government to make a few remarks on the Limitation of Actions (Amendment) Bill and to acknowledge the support, at least in principle, of the opposition parties with some qualifications around a couple of inquiries that the member for Kew has made. As he has indicated, the purpose of the bill is to clarify the application of section 20A of the Limitation of Actions Act — that is, that it operates in proceedings between private parties as well as against revenue-collecting authorities — and also to prevent the recovery of windfall gains in proceedings for the recovery of a tax or an amount attributable to a tax.

As the member for Kew indicated, the bill is necessary because the cumulative effect of a number of recent court systems has highlighted the shortcomings and uncertainties in the laws in relation to the recovery of imposts. Those cases, as members have indicated, include *Roxborough v. Rothmans of Pall Mall Australia*

Ltd, in which the High Court found that tobacco retailers could recover from wholesalers the franchise fees which had been found to be invalid by the High Court in the *Ha v. New South Wales* decision. That is an appropriate title — 'Ha!' would have been my reaction, too, if I had been the protagonist in that case. There was also the *Cauvin v. Philip Morris Ltd* case and more recently the September 2003 case of Thistle Investment Pty Ltd in which the Australian Capital Territory Supreme Court doubted the ACT provision equivalent to section 20A of the Limitation of Actions Act applied to proceedings between individuals and was instead limited to actions against a public revenue-collecting entity. It was those cases which caused the doubt to be raised.

The current law in this area is centred on the existing Limitation of Actions Act which provides generally that a proceeding to recover money paid by way of a tax or purported tax must be commenced within one year, as the member for Kew outlined.

We also have other taxation acts. The Taxation Administration Act 1997 contains broader anti-windfall provisions which are being applied to the Limitation of Actions Act by this bill. The Taxation Administration Act provision will mean that a person cannot recover money where they have passed on the burden of the tax to another person or, if they have passed on the burden, will not reimburse those persons. The Leader of The Nationals indicated that he agreed with me that it prevents a rip-off. It is a bill which enshrines the principle that you cannot have your cake and eat it too.

An important consideration in the anti-windfall provision focuses on the principles around the conditions under which a proceeding can be initiated. The anti-windfall provision will prevent a party from maintaining proceedings if it has passed on the burden of a tax. The bill does, however, make it clear that a party that has passed on the burden will still be able to bring a proceeding if a windfall amount has already has been paid back to the customer, or if an unconditional and enforceable agreement is entered into with the customer to pay back the tax — for example, an agreement which is not dependent on the outcome of court proceedings.

The provision aims to regulate proceedings; it does not seek to extinguish any rights. Further, the bill restricts a party to bring a proceeding only to the extent that the party has received a windfall gain. If the party has absorbed some of the burden, a proceeding can still be brought in relation to the part of the burden that has been borne by the party.

Mr Mulder — Are you reading that, Bruce?

Mr MILDENHALL — This is a fairly technical piece of work. I was actually expecting one of my learned colleagues on the other side to go into the term 'colore officii', which is also dealt with in one of the technical amendments to the act. I would have thought that an explanation in some detail of that technical term would have been in the realm of the professional expertise of the members for Kew and Gippsland South.

I have just received some advice on one of the questions raised by the member for Kew, on his first inquiry that the provision will not impact on any common-law right to bring a claim based on negligent advice. The advice I have received is that in a situation such as that outlined by the member for Kew, where he was concerned about the breadth of the legislation, if a tax has been overpaid or inappropriately paid to an authority or person there would be a claim for negligence between the parties on the basis that the tax was attributable rather than actually paid. We have a situation where not only are we looking at a tax that has actually been paid, but the query that was raised by the member for Kew would be dealt with by way of a common-law action on the basis of negligent advice. That is the advice I have received about the instance that was raised, but it may well be worth making a particular inquiry to the Attorney-General to get further clarification on that while the bill is between houses.

As other speakers have indicated, this is a reasonably technical piece of legislation, but it is based on precedent across other Australian jurisdictions. It is also based on a fairly firm principle that windfall gains, particularly against the public purse, ought not be contemplated and should be restricted to the absolute extent possible. I believe this bill achieves that and I commend it to the house.

Debate adjourned on motion of Mr MULDER (Polwarth).

Debate adjourned until later this day.

ROAD MANAGEMENT BILL

Second reading

Debate resumed from 4 March; motion of Mr CAMERON (Minister for Agriculture).

Independent amendments circulated by Mr INGRAM (Gippsland East).

Mr MULDER (Polwarth) — I wish to put on the record from the outset that the Liberal Party does not support the Road Management Bill. We oppose the Road Management Bill, we will not support it.

If you ever wanted to look at a situation where ratepayers and consumers had been done over by the bureaucracy, the Road Management Bill has all the hallmarks of that in terms of the inappropriate time for consultation and the fact that the opposition believes councillors and the public have no idea as to the implications of this piece of legislation. The fact is the bill has been sold to the bureaucrats based on VicRoads taking over the management of approximately 14 000 kilometres of roads that are currently being taken care of by councils, and councils having much greater control over utility providers enabling them to set up a process whereby they will receive an income stream from charging utility providers to access their roads and carry out works — you would have a whole bureaucracy built around this process of controlling utility providers. Of course all this eventually comes via the pockets of ratepayers and consumers.

The other issue is that most councils the opposition has had discussions with are very concerned that while it may look all right up front that VicRoads is going to take back responsibility for 14 000 kilometres of roads that currently fall under the management of councils, the bill also provides VicRoads with the opportunity to deem some of its existing roads to be municipal roads. In my own electorate I can think of some roads which could fall into this category. One that comes to mind is the Lavers Hill–Cobden Road. It has been poorly maintained and creates one hell of a maintenance challenge for VicRoads in its own right, and now, with the stroke of a pen, this bill gives VicRoads the ability to declare that road to be a municipal road. The only avenue of appeal open to local government is to take the issue back to the minister. One can only imagine who the minister will support if this matter appears before him or her. It is a real issue out there in country Victoria. The problem is this issue has been teased up with an offer of support, as I say, in relation to these arterial roads, but the downside is VicRoads will have the ability to hand over some of its existing infrastructure.

I point to the example in the bill where it states in part that specified road management functions in respect of a section of a road or of a particular piece of infrastructure may be transferred by agreement from VicRoads to a municipal council or from a municipal council to VicRoads. The issue is not so much the transfer of the roads and the costs associated with them from a municipality to VicRoads as what VicRoads will do in relation to what roads it wants to dump and whether roads that are too difficult to maintain will go across to municipalities without any assistance or any funding.

Another issue that has caused great concern among councils, and particularly among ratepayers, is the nonfeasance provisions, and although they have been extended to January, a lot of councils have concerns in relation to the development of their road management plans, along with the quality of those plans. Recently I travelled around the state and discussed a number of issues regarding road management plans and nonfeasance matters with councillors and officers of councils, and that included matters that were concerning them. One issue I have homed in on in relation to this bill is that under the codes of practice road management plans are drawn up based on available resources. The real issue that councils have with this is that while a council in one part of the state may be cashed up and travelling well and be able to pull out the code of practice and produce a road management plan that sets out a road audit process that takes place four times a year, as well as a maintenance process for the repair of potholes, road rutting and so forth that takes place three times a year, another municipality in rural Victoria that has massive road networks will look at its level of available funds and find there is no way known it could lock itself into a road management plan that it could not deliver on.

As I said, municipalities will be forced into developing road management plans based on available resources, so they will put together plans that say, 'Given the available funding we believe we will inspect and audit our roads twice a year, and given the fact that we are cash strapped at this time and no money is being provided with this program, we will fix the potholes and ruts maybe once a year.' When you ask questions and have briefings about these matters, you realise this will be tested in the courts. What will the courts say when they get hold of the road management plans around the state and come to the decision that the road management plan of a struggling municipality is not reasonable? This is what the legislation lends itself to. Municipalities, particularly in rural Victoria, have grave concerns about this. On a number of occasions they have raised the issue, saying that they do not mind road management plans and will go down that path but that they want time to implement them and make sure funding is provided. A lot of municipalities have indicated that the cost of the audits of preparing road management plans and new registers will come directly out of their road-funding allocations. It raises the issue that road management plans that look at the better maintenance of roads, including the process of auditing

and maintenance, will be a cost burden on councils. It is something they have not budgeted for, so there will be a direct impact on ratepayers.

I point to a couple of issues that were raised by officers from the Southern Grampians shire when I spoke to them about the bill and the codes of practice. Regarding the requirements of the codes I received comments such as, 'At the end of the day council needs to take a reasonable position with regard to its level of service. That level of service will be determined primarily by council's capacity to deliver it'. That is of some concern. The issue is that we will have councils across the state preparing road management plans designed to provide road surfaces that are in a safe condition for people to drive on, yet they will be restricted by the level of funding.

I spoke to an officer from the Glenelg shire and asked the question, 'Does it mean the road management plan that has to be put forward under the Road Management Bill will be based on the lowest possible standard so you protect yourself in that regard?'. Council officers are saying that they would be aiming not for the lowest possible standard but for a standard that is as high as they can meet. When I put the question, 'Does that include your financial constraints?', the response was, 'Yes, of course we have to take financial constraints into consideration when we put together a road management plan'. The officers went on to say, 'That will always govern it, but generally speaking at the end of the day we put into roads only as much money as we can'. This is the situation that councils right across rural Victoria are finding themselves in. It is a matter that will end up in the courts. The nonfeasance issues will be removed, and councils believe the real danger is that they will be hung out to dry.

In speaking to the officers from the Northern Grampians shire I asked about their road management plan, particularly in relation to the lowest possible standard given the budgetary situation. Once again they responded that it is a problem they are tackling at this time. They went on to say, 'It is an issue that needs to be addressed. It is not easy to maintain a higher category of road hierarchy if we cannot do what we say we can do; so yes, some of those roads may end up in a lower category and be maintained at a lower standard.' Given that those sorts of issues are prominent, they are of grave concern to the Liberal Party, which is reflected in the position it has taken on this bill. We see a number of the smaller councils being hung out to dry.

We question why the bill was not introduced in the spring sitting so that councils could have had more time to deal with these issues. It has only been in the last month that the Liberal Party has been able to highlight to individual councils exactly what the Road Management Bill will do to their municipalities and ratepayers. Where is the money coming from to help some of the struggling councils prepare road registers and road management plans? They are already struggling with the huge cost shifting that has taken place because of the actions of the Bracks Labor government, and the handing back of roads which will occur through VicRoads is of grave concern to them.

The real danger in the bill lies in the fact that many of the provisions will be tested in the courts. I quote clause 50 on page 65 of the bill:

> The purposes of a road management plan are having regard to the principal object of road management and the works and infrastructure management principles —
>
> (a) to establish a management system for the road management functions of a road authority which is based on policy and operational objectives and available resources …

Once again we will have a situation right across the state of a mishmash of road management plans based on whether municipalities can or cannot afford to put in place plans they can maintain. The plans will be based not on best practice but on the money that is available. That is a real issue, because when these matters end up in the courts, as I said before, it could result in small municipalities being hung out to dry.

Another issue that I believe has not been given any level consideration is the role of utility providers. Councils have been sucked into accepting the bill because they think that finally they will get money out of utility providers. In the past all the utility providers did was notify a council about carrying out works on a road or road reserve, and although sometimes there was a small notification fee the council did not have any real control over utility providers. Under the proposed legislation that will change significantly. What will happen now will involve consent for the utility providers. There will be applications to road managers, councils and VicRoads, there will be inspection processes and there will be certification processes — and all of these will come at a significant cost. Who do you think that cost will end up falling back on? The consumers! Whether or not it is shown on a separate line, anybody who is caught up in getting work carried out by a utility provider, whether it is the water authority, the power company or the gas company, will find, as sure as eggs, that even if they have been quoted a certain number of dollars to carry out an individual connection, at the bottom of the account there will be

permit fees, access fees, fees in relation to inspections and certification fees.

We will have fees in relation to inspections, and we will have certification fees. The problem once again is that no-one knows what these fees are going to be. No-one has a clue; they are all going to be set via regulation after this legislation has gone through. I can assure the house that as soon as customers realise what has happened there will be an outcry. Preparation of additional plans and consent applications, the redesign of works to meet a road authority's criteria and more expensive construction techniques are all issues being raised by utility providers as issues that they believe are going to end up falling straight back into the laps of their customers. None of these is going to come cheaply: delays in the works process waiting for consent and then negotiating conditions; changes in the times work is able to be conducted — for example, they may insist that more work is carried out at night; increased connection costs; costs associated with notification on the completion of works; increased reinstatement costs; and the total redesign of work practices. As I say, the problem we have here is that the government says this is to be cost neutral. There is no way known that this can become a cost neutral situation because these costs have to be borne by somebody, and a lot of them are going to roll straight back to the customer.

It has not really been discussed at this point as to how you split up those levels of works and fees. Early indications are that if a power company had to carry out works on a power line then maybe that sort of work would be exempt, but whereabouts does it cut in that they start to charge these fees and charges? The utility companies indicate there will be a substantial impact on essential utility service provision; that day-to-day activities will be delayed with a substantial impact on standards of services provided to customers — in other words, consent will delay their ability to comply with required time frames for connecting customers.

We all know what happens when bureaucracies get hold of these types of arrangements. I have raised the issues in the past. What happens if you have a situation where a municipal road goes over to a VicRoads road, goes back to a municipal road and then goes back over again? How many application fees, how many consent forms, how many inspections and how many certifications is that going to require? Will municipalities and VicRoads in that area have the same standard of service and standard of clean-up work that is required by the utility provider? If you have these works going across various municipalities, who is going to determine what an appropriate level of works is? The bill says it is up to various municipalities to work through that. Is reinstatement in one shire the same as in another and the same as required by VicRoads?

I can see this turning into one hell of a disincentive for customers to undertake works. I can see it being a nightmare for utility providers, but I can see why councils initially looked at this and thought, 'This sounds fairly good for us, because we can see a revenue stream, we can see the creation of some form of bureaucracy'. It is understandable why the bureaucrats have done a job, I believe, on councillors and the community in trying to convince them that this may be good for ratepayers and consumers.

Other issues raised in relation to the utility providers are the future innovation and efficiency improvements that may be lost. VicRoads and local councils can impose non-standard designs with additional one-off capital costs and long-term maintenance cost impacts. They are going to be dictating to utility providers who know their businesses — who know how to run their businesses, and who have been working with long-term standards and long-term designs — as to how councils and VicRoads want those works carried out. Who knows a business better than the person who is doing it, and yet this whole system is going to result, as I said, in local government and VicRoads dictating to utility providers how they do their works. There were other ways and means of dealing with this legislation, still through notification but with a greater level of detail, but the way this has come together is a disaster for ratepayers and consumers. VicRoads and local councils do not have the expertise to determine overall design standards for utility networks unless they hire additional staff or contractors, which is a duplication and an additional cost to utility customers. Someone has to pay. This is a Treasury bill — there is just no doubt about it.

There are administrative complexities with 78 local councils. VicRoads and other authorities will start to apply differing standards and processes in different regions. Can honourable members imagine what a nightmare that is going to be for an organisation contracting out work — most of the work the utility providers carry out is contracted out — in trying to relay that information from over 70 different councils and VicRoads as to how works are to be performed. It is going to come at a massive cost burden, and that will go straight back to customers. How utility providers will pass that cost on to day-to-day consumers is not known, but I can assure the house that when they are carrying out works for small business, when they are connecting a farmer to electricity or when water is being connected to a property, as sure as eggs that will

appear on the bottom end of the bill. They will say, 'This is as a result of the Road Management Bill that has gone through the Parliament. Here are the costs associated with it — wear it!'. As I say, this could have been dealt with in many other ways.

The issue is: what is the cost impact of the bill to customers? We understand the bill will substantially increase costs for all utilities — gas, electricity, water and telecommunications. Every bill will see an increase. How is this going to be passed on? How will utility providers pass it on? Is the government prepared to sit down with the providers, recognise the additional costs and charges and up the costs and charges to consumers and ratepayers? Can the government justify increasing costs for essential service infrastructure in a way that greatly decreases the business of the state? Is it really serious about imposing local council permits on utilities that provide essential services to the community? This gets to the crux of it. The problems that the utility providers are having are that they say, 'We provide an essential service, we know the business we are in, we know how to go about doing business here in the state, but all of a sudden we have this massive bureaucracy thrown up in front of us. How on earth do we deal with it, and how are we going to relay this information back to our customers?'.

Another issue I raise in relation to bill relates to development contributions. I raised this matter at the briefing. I had concerns as to how these development contributions would work. I understood at the time that this was a direct lift from another piece of legislation, the Planning and Environment Act, whereby if development contributions apply, the normal process is as follows. The developer goes to council with his development plans. They are then forwarded to VicRoads as a referral authority. VicRoads in its own right has a look at the plans and the impact on adjoining roads. It goes back to council with costs and charges, which are handed back to the developer, and says, 'This is the situation if you intend to carry out this development'. I understood that was exactly the way this legislation works, but I found as of this morning, as a result of the question I asked in the briefing, that it is not exactly the way it works.

In fact part of this bill has been lifted out of the Water Act, and we know what has been happening with water authorities and development charges, particularly in regional and country towns. They have introduced new development charges. They claim significant amounts of money, particularly in relation to subdivisions, for existing infrastructure. Headworks charges are always payable to water authorities for the work they do in relation to a new subdivision, but these new development charges go further than that — they want developers to pay a cost associated with the existing infrastructure. If that were to go into a sinking fund for future infrastructure upgrades in that authority's region you would say perhaps, 'We do not support it, but we can understand it', but it goes straight into consolidated revenue.

Honourable members know where that heads to from there — straight back to the state government. As I said, in the past it went from the developer to local government to VicRoads, which came back with a costing. Under this legislation VicRoads can say in its own right, 'We are going to build a new road', 'We are going to carry out construction of a new section of road', or 'We are going to construct a new roundabout'.

They are saying, 'We, as VicRoads, believe there are people in this region who should be contributing to the cost of this. Anybody that we can identify who will get a benefit out of this will pay for it'. That is what this is about. Anybody, anywhere, who will get a benefit has to contribute towards the cost of the road and the construction costs of any other road infrastructure associated with that road. It means that in the case of the small commercial subdivision that has just been put in, all of a sudden, 12 months down the track, VicRoads may decide that it will carry out major upgrades. It will do a traffic count and say, 'We think most of the heavy traffic is over here so we will go to you and ask you to contribute to the road'. But it gets worse. If they do not get enough first time around they then go back for a second grab. That is what the bill says. It is quite extraordinary.

Mr Carli interjected.

Mr MULDER — Have a look at clause 56. It is headed 'Development contribution'. That is exactly what it means. I will quote from clause 57 headed 'Review of required payments'. This is in the email I received this morning:

> I wanted to draw your attention to another aspect of the proposals which, although foreshadowed in the position paper issued in April 2003, was not mentioned at the briefing …
>
> … I thought I should draw your attention to it because development contributions under the Planning and Environment Act are triggered by development proposals rather than by the authority undertaking new works. Under clause 56 development contributions can be triggered by either, consistent with the existing practice for development contributions for water infrastructure.

That means if they want to go along and carry out major upgrades and works they will base the costs on

the belief that anyone who will get a benefit will have to contribute to it.

This gets back to the issue I spoke of before about subdivisions. What does this mean for a young couple who have bought a block in a subdivision, where the developer has gone through this process of development levies, gone to VicRoads, and been told, 'Yes, here is what it will cost you', and down the line it is determined that perhaps some additional roadworks in this area are necessary to put in place another public road? The bill is saying, 'We can go back to the landowners' — who may not be the developer but rather the people sitting in their homes — and say, "Your subdivision is generating all this additional traffic. Therefore, as individual landowners we think you have a contribution to make"'.

It is another special charge, and it is exactly what water authorities have done, particularly in rural and regional areas whereby we have seen blocks of land that have traditionally been worth $10 000 being hit with a development levy of around $3500 to $4500. The government has cottoned onto development charges, and that is what has been introduced in the bill. It will happen. That is what the legislation provides for and what the briefing note I have been given said it will do.

It is a Treasury bill. There is no other way to describe it. I believe councils have been hoodwinked. When the full impact of this is felt, particularly in rural and regional areas, there will be an outcry. Councils at this point in time cannot wear any further cost shifting. This bill is all about cost shifting and additional taxes and revenues. The Liberal Party does not support the legislation. We oppose it.

Mrs POWELL (Shepparton) — The Nationals also oppose the bill. We also call on the government to restore the defence of nonfeasance while preserving a right of action in cases of misfeasance. This was the purpose of a private member's bill introduced into the Legislative Council by a member for Gippsland Province, the Honourable Peter Hall, on behalf of The Nationals, on 9 October 2002. Later in my speech I will read the private member's bill that was introduced, which we feel would have alleviated the need for the bill here today.

The Nationals have continually brought this important issue to Parliament after the High Court decision in 2001 abolished the nonfeasance defence for road authorities. The event that brought about the need for the legislation has had a huge impact on councils in country Victoria. As National Party members we travel around the countryside, and that is what we are hearing right across the state.

On 31 May 2001 the High Court abolished the defence of nonfeasance for councils and highway authorities, which was then part of the common law of Australia. There were two cases — *Brodie v. Singleton Shire Council* and *Ghantous v. Hawkesbury City Council*. I will talk briefly on the Brodie case. On 19 August 1992, which is over a decade ago — so it shows how long it has been in the courts — Mr Brodie drove his 22-tonne truck onto a bridge, which was built about 50 years earlier. The bridge collapsed, and the truck fell into the creek below. The bridge was fairly badly damaged, and Mr Brodie himself was badly injured, but earlier in the day he had safely driven across another bridge on the same road. That bridge was signed, and on the sign it said, '15-tonne load limit'. As many country councils do, they put a load limit on their bridges. But Mr Brodie had travelled across that to go to the second bridge, and that first bridge certainly said it had a 15-tonne load limit, remembering that Mr Brodie's truck was 22 tonnes.

I believe council did meet its obligations by alerting the travelling public not to exceed the 15 tonnes on that bridge. The evidence found in court about that bridge was that it suffered from 'piping', which is the rotting out of the centre of the timber because of dry rot or white ants. The Singleton Shire Council inspected all its timber bridges four times a year, so it was not negligent, and this bridge was inspected by experienced carpenters and other experts. They were inspected by visual inspections only, and it was found that that was not appropriate. It was insufficient to detect the piping — they should have hit the girders with a hammer or driven a spike into them.

The Brodie case was decided on New South Wales legislation which is not identical to Victorian legislation; but the impact of the Brodie decision impacts on all states and territories across Australia. The decision in the High Court was made by a majority of four to three. There were seven judges, so it was not a huge majority. It could have gone either way. But the decision that has impacted on all of our councils now was made by a majority of four to three. There was a comment made by one of the dissenting judges in a judgment note handed down, and that was that the High Court should leave common-law changes with respect to immunity in the highway rule to Parliament. We all agree that that is the way it should be. Councils will now be tested out in courts right across Australia at huge cost to councils and a huge time factor.

The second case was *Ghantous v. Hawkesbury City Council*. Mrs Ghantous was an elderly lady who tripped on an uneven surface on the council's nature strip in broad daylight. All of the seven judges, even the four judges who abolished the nonfeasance defence, found against Mrs Ghantous and found that council had not breached its duty of care. There was no evidence that the footpath had been constructed negligently. Therefore the nonfeasance defence would certainly have protected council.

If it found that the council was negligent, that would have had huge ramifications for many councils across Victoria in particular. The area in which I live in East Melbourne has many old cobblestone laneways. I walk down one such laneway in high heels, in the daytime and at night-time, and I know the cobblestones are uneven. But if the judges had found that council negligent because there was a slight rise in the footpath, it would have meant that the Melbourne City Council might have been responsible for raising all those cobblestones right across East Melbourne, removing them and putting them onto a straight path. Many older municipalities have the same issue. Some of the historical country councils have the old historic cobblestone footpaths in their areas.

Many people have asked why we have the nonfeasance defence. It started in England more than 200 years ago when local municipalities were encouraged to build roads in their own municipalities and across into other municipalities — or villages as they were called in those days.

Councils did not have enough money to build those roads as well as adequately maintaining and repairing them, not to mention the continuing need for constructing them. It was considered inappropriate for a council, acting as a road authority, to be held liable for failure to repair or maintain these roads. Therefore a council acting as a road authority in its own municipality is immune from a lawsuit providing the council did not cause or contribute to the defect or the problem that caused the liability claim for any loss or injury.

This is reflected in section 205(2)(c) of the Victorian Local Government Act 1989. But this immunity has been abolished in the United Kingdom for about 40 years — I think it was abolished in 1961 — with the belief that councils now have enough money to be able to repair and maintain roads and footpaths to the standard that the community expects. However, in Australia the situation is vastly different. Our municipalities are quite large and we have small rate bases. In country Australia, more particularly, this is the case. Therefore many councils do not have enough money to repair their roads, bridges, footpaths and other infrastructure and keep them in perfect condition, as well as providing the other services that communities expect councils to provide such as human services like libraries, sporting facilities and kindergartens. Councils are now expected to provide all of those things. I can now see a situation where councils will have to put all of their money into litigation, liability, risk management, maintaining and inspecting infrastructure, and that will not be in the best interests of communities who have to pay for all of those services.

Many councils in country Victoria have spoken to us about this issue. They have large geographic areas and small rate bases and they simply cannot look after the many kilometres of roads, whether they be sealed or unsealed. One of the biggest issues facing councils, particularly in country Victoria and perhaps in some of the urban areas, is the issue of bridge maintenance. This has become a really big issue, particularly in the area I represent. Councils who need to repair their bridges have three choices: to repair them; to reduce the load limit; or to close the bridge. This has an astronomical effect on small communities because bridges are the only way to get across their waterways**.** Emergency service vehicles cannot get to some country townships because the bridges are out of service or a conservative load limit has been applied because the council does not believe it has the money in its budget to repair the bridge and it is worried about liability.

Mr Delahunty interjected.

Mrs POWELL — The honourable member for Lowan has just reminded me about school buses — —

The ACTING SPEAKER (Ms Campbell) — Order! There is too much audible conversation in the chamber. I ask members to go outside if they wish to continue their conversations.

Mrs POWELL — Another important point is that we have a lot of milk tankers and fruit trucks that have to use our roads and bridges so this is a huge issue for some of our country councils.

When the High Court abolished the nonfeasance defence for councils on 31 May 2001, as The Nationals spokesperson for local government I was immediately made aware of this development. I had councils telephoning and writing to me; I had a letter from the chief executive officer of the Indigo Shire Council, Mr John Costello, outlining the huge ramifications for councils if this nonfeasance defence was abolished.

In August 2001, a number of months after that decision had been set down, I wrote to the Minister for Local Government urging him to address the problem as soon as possible. On 7 November 2001, as one of the members for North Eastern Province in the other place, I introduced a motion into the Legislative Council 'calling on the Labor government to urgently legislate to ensure that municipal councils in Victoria can continue to rely upon the defence of nonfeasance, which has been jeopardised by a recent decision in the High Court'. The Liberal Party supported that motion, but the Labor Party voted against it and moved an amendment 'calling on the Australian Transport Council of ministers to consider the High Court decision regarding the defence of nonfeasance, with a view to reaching a consensus about action to be taken as it applies to all roads throughout Australia'. That has not happened; we do not have a consensus of — —

An honourable member interjected.

Mrs POWELL — Many of the states have the nonfeasance defence.

So all the states are different. At the briefing the Nationals had with VicRoads we asked, 'What other states?'. We were told that Victoria is leading the way. It is fine that we lead the way, but we cannot be putting our councils at risk and we cannot be making our councils the ones to be test cases.

We were told at the briefing that Queensland, New South Wales and Western Australia passed legislation in the last two years to retain the nonfeasance defence. We were told that the Northern Territory is reviewing its legislation. We were told that Tasmania has made no change; the nonfeasance defence is still in its local government act. We were told that South Australia is bringing back nonfeasance indefinitely. So there is a major concern about loss of nonfeasance to councils, but more importantly the loss of insurance cover to the councils.

In November 2001 I wrote to all rural councils explaining my concerns about the risks to their insurance cover. I had a very long conversation with Mr Graeme Lemmer, who is the scheme manager for Civic Mutual Plus (CMP), which is the insurer for all the councils, and he told me that the loss of the nonfeasance defence could lead to councils not being re-insured; it could also lead to councils having higher than normal insurance premiums and more litigation in the courts. Civic Mutual Plus was very concerned about the loss of that defence.

In November 2001 I also wrote to Premier Steve Bracks explaining the concerns of councils at the loss of the nonfeasance defence. The Leader of The Nationals also wrote to the Premier.

On 9 October 2002 a private member's bill was introduced by the Honourable Peter Hall, one of the members for Gippsland Province in the other place, on behalf of the Nationals in the upper house. The title of the bill was the 'Highway Authority Protection Bill'. Clause 4 of the bill would probably have protected councils, as well as ensuring that they were liable if negligent. It states:

> (1) No proceedings may be brought against a highway authority to recover damages in respect of any failure by the highway authority to make or repair a public highway or part of a public highway over which that highway authority has the care and management.
>
> (2) The immunity set out in sub-section (1) shall be confined to the non-feasance of a highway authority and shall not affect any action arising from circumstances where a highway authority has negligently made or negligently repaired a public highway or part of a public highway over which that highway authority has the care and management.

Had that private member's bill been passed many of our councils would be a lot more protected.

But it is interesting that about five or six days after the private member's bill was introduced in the upper house the Transport (Highway Rule) Bill was introduced by the government in the lower house. It mirrored The Nationals private member's bill, which we were pleased about, but it only temporarily reinstated the immunity rule until 1 January 2005. We are currently debating this bill, which will replace the provisions of the Transport (Highway Rule) Bill. So in effect this bill will remove that nonfeasance defence, which was the protection in the previous bill.

I recently wrote again to all rural councils and to the Municipal Association of Victoria and the Victorian Local Governance Association, which are the two peak bodies of local government, seeking their comments on this bill and how it will affect them. The MAV supports the bill. I have spoken to Mr John Henessy of the MAV who said, 'Yes, there were some concerns about the draft bill, and those concerns have now been clarified and rectified', so it was happy to support the bill. But the VLGA, which is the other peak body of the councils, has some concerns. I will read from the *VLGA Bulletin* of April 2004 — —

Honourable members interjecting.

The ACTING SPEAKER (Ms Campbell) — Order! Again I draw the attention of the house to the fact that the member for Shepparton is speaking. If members are having conversations, I ask them to please go outside.

Mrs POWELL — It states under the heading 'Road Management Bill':

> Notwithstanding the many achievements of the new road legislation (liability protection, road management plans, road authority and utility relationships), the overall directions and underlying philosophy do not reflect the recent reorientation towards sustainability and community consultation that is evident in state policy documents such as *Melbourne 2030*. Hence road authorities acting under direction of this legislation risk working at cross-purposes rather than supporting broad policy directions.

It is a fairly lengthy document, and I do not have time to read it all. It goes on to say:

> More immediate impacts on local governments include:
>
> > transfer of the roadside components of arterials onto local government budget and liability responsibility, which has the potential for significant maintenance costs for bike paths, bus stops and disability compliance, if not additional installation requirements;
> >
> > threat to the viability of activity centres by the empowerment for VicRoads to create clearways on arterials roads;
> >
> > limited opportunity to contest road classifications and controlled access roads.
>
> The intent of the bill may be cost neutral, but we suspect that reality may be otherwise.

We have received some comments from some councils. Horsham Rural City Council wants nonfeasance defence immunity to continue indefinitely; Hepburn Shire Council wants nonfeasance immunity to continue; Murrindindi Shire Council wants the nonfeasance defence to continue plus the road management requirements; the Moira Shire Council wants the nonfeasance defence to be retained but realises it may not now be possible — that is what it has been told — and wants the policy of defence to be rolled out for other council assets; Indigo Shire Council is concerned about cost shifting and would like to see nonfeasance retained; the North West Municipalities Association, which consists of 11 councils, would like a further two-year period of nonfeasance immunity to allow councils to prepare their road management plans and says that because some councils are understaffed they will not complete them; the Gippsland local government network, which consists of six councils, wants nonfeasance immunity to continue; West Wimmera Shire Council wants the continuation of nonfeasance immunity indefinitely; and the list goes on.

The Nationals met with the East Gippsland Shire Council, which oversees a huge road network and lots of bridges. It also has some huge concerns about how it is going to be able to get those management plans in place. It has been employing extra staff — all councils will have to do that, so we will have more inspectors and more people to prepare the management plans — so there will be huge increases in budgets and insurance premiums. One council told me that it estimates its insurance premiums will rise by between $50 000 and $100 000 a year. That is an astronomical amount of money for a small council. There will also be an increase in legal costs with the $1000 threshold, because a lot of cases will now be dealt with out of court and councils will allow people who have had accidents, whether or not the council is at fault, to just be paid out. This will start costing councils a huge amount of money.

Councils are also concerned about being the first test case. Obviously when it is tested a precedent will be set which will affect all councils in Victoria and the rest of Australia. Most councils certainly do not want to be the first council to go before the courts and be the test case. The case could be in the courts for months, and it could cost a council hundreds of thousands of dollars that will have to come from its budget. Councils are very concerned about that.

I turn to the elections in November. From July there will be a 90-day moratorium during which they will not be allowed to make any major budget decisions, and the concern is that they will not be ready.

The codes of practice are an issue as well — they are a big issue — because most councils have said they want them to be a guide only rather than mandatory. The second-reading speech states that one size does not fit all, and all councils want to make sure that their codes of practice are allowed to be managed by their councils and not by the minister. The minister has not prepared them yet, so the councils have been asked to support something they are not quite sure about.

The Nationals believe very strongly that the passing of this bill will not mean that councils have better roads; it will just mean that there will be more bureaucrats in the councils.

Mr CARLI (Brunswick) — The Nationals are clearly nostalgic about the 18th century, but we are in the 21st century and the expectations of road authorities and motorists has changed dramatically since then. The

highway rule is a relic, and the High Court of Australia decision in *Brodie v. Singleton Shire Council* was a very clear indication that times have changed, responsibilities have changed and expectations have changed. If we look at that High Court of Australia decision, we find that the court saw the highway rule as outdated, unjust and encouraging the poor maintenance of roads. This bill designs a new scheme that will result in better road management and a fairer system for motorists and other road users. It is pointless for the Liberal and National parties to put their heads in the sand and be nostalgic about the past because things have changed, and we need to go for a better, more efficient road-management system.

If we look at what existed under the highway rule, we see a situation in which a road authority was liable if it did maintenance work badly. If something went wrong with a piece of maintenance work on a road or a building on a road, it was malfeasance and the authority was liable; but if it did not maintain a road or a bridge or a footpath and allowed it to deteriorate, it had the nonfeasance defence.

So, as the High Court found, we had a situation which promoted bad and inefficient practices. It promoted not doing anything, because if you did something you were liable to be sued in court, but if you did nothing you had a perfect defence. That would have been understandable in the 18th century, in the times of horse and buggy and carriages, but clearly it is not suitable for the systems we have in place now.

Mr Walsh — The world has moved on.

Mr CARLI — The world has moved on, and we have to basically tackle these issues before us. It is extraordinary that the member for Polwarth should say there has been a lack of consultation on this legislation. There has been 18 months of consultation. There have been two exposure drafts of this bill; there have been over 40 meetings — meetings of stakeholders and meetings of utility stakeholders; and there has been a utility working party. There has been 18 months of consultation.

Mr Mulder interjected.

Mr CARLI — I inform the member for Polwarth that there has been 18 months of consultation and there has been an extraordinary amount of discussion. The Municipal Association of Victoria (MAV) has come out in support of this legislation, as have many councils. This is not an easy area. It is a high area of responsibility for councils and it opens up new areas of liability. We have, as a temporary measure, passed a piece of legislation in this Parliament to extend the nonfeasance sanction rule to 1 January 2005, but what we want to replace it with is a piece of legislation that provides extra protection and a more efficient management system for our roads.

The member for Shepparton used the Victorian Local Governance Association (VLGA) as an example. It is not pretending to support nonfeasance. It is not going down that track. It has other concerns, in particular inner suburban concerns about the impact the legislation will have in giving VicRoads the authority to determine clearways. But I can say there were changes made between the exposure draft and the bill before the house, which put in place a code of practice so that local government is protected and local communities can discuss issues of parking and clearways with VicRoads.

There has been positive discussion with councils, with the utilities, with the VLGA and with the MAV. It is a difficult issue, but time has moved on, and we cannot just respond to what occurred in the 18th century. We have to clarify the allocation of responsibility between the various road authorities. It is not an attempt by VicRoads to shirk responsibility or to pass on responsibility for roads it does not want to maintain, as was suggested by the member for Polwarth. In fact VicRoads will be taking on 14 000 kilometres of extra roads to maintain, so it is a nonsense to say it is an attempt by VicRoads to shirk responsibilities. VicRoads will clearly be the leading road authority in this new era of road maintenance and of a more efficient response to having better roads and a fairer system. This legislation will mean the end of what are essentially old and unjust laws that were clearly outdated.

I will also take up the issue of the utilities that the member for Polwarth went on about. He is basically assuming that the government is about creating a big bureaucracy and that it wants to force higher costs on consumers. At the moment we have an incredible lack of coordination at the local level between the utilities and the road authorities, whether it be local government or VicRoads. Roads are being dug up all the time, and it is costly and it is inefficient, and the idea that the government is trying to build greater inefficiency is clearly wrong. Coordination will in fact make the system better, it will make it more efficient and it will actually drive costs down. There will be less disruption to motorists and there will be less disruption to local communities.

An extraordinary effort has been made to work with the utility companies, to work through the various

protocols and to work together to achieve that coordination, so it is a nonsense to say the system is going to get worse. It is going to get better, and the reason it has to get better is that there is a real problem with the system at the moment. If you speak to any local government body or councillor in any area, they will tell you it is a problem. Yet we have the member for Polwarth suggesting that somehow the legislation is an impost by local government and by the state government to create more bureaucratic positions and to basically increase costs to consumers. Again that suggestion is a nonsense and an attempt to create an extraordinary amount of distress and concern to Victorians.

It is the same with the developer contribution — proposed section 56 — which the member for — —

Mr Mulder interjected.

The SPEAKER — Order! The member for Polwarth!

Mr CARLI — The member for Polwarth has a rather liberal interpretation of proposed section 56. The proposed section is a genuine attempt by the government to ensure that we go from the current system whereby we have to seek developer levies via local government to a system that allows VicRoads to directly seek contributions from people with adjacent land interests who will benefit from the roads. The developer levies do apply to road construction, but at the moment it is local government that seeks that contribution. That system is being replaced with a system under which a reasonable contribution can be sought by VicRoads. The bill just takes away the middleman, if you like, in this case. There is nothing untoward about the fact that people who have major increases in the value of their properties and who directly benefit as a result of roads being constructed will be asked to contribute to the construction of those roads. That has been a longstanding practice.

Mr Mulder interjected.

Mr CARLI — The member for Polwarth intervenes again, but it has been a longstanding practice, and developer levies are used to contribute to road construction. Again this is an attempt by the member for Polwarth to use scare tactics to knock over this bill. That is really unfortunate, because this is a bill which has resulted from a High Court decision that found that the highway rule was unjust. The bill seeks a new balanced system which first of all tries to clarify responsibility for roads between the road authorities and also attempts to ensure that the road authorities are not accountable for small costs — that is, anything under $1000. That is not unreasonable, because to have all the small claims going through to the road authorities would make the whole system unworkable. But that is not to say that motorists do not have a right to know that roads are well maintained.

The basic premise in all of this is that we are trying to create a regime in the state that will ensure that motorists have the security of knowing there is a maintenance system in place to protect our roads and to ensure the maintenance of our roads, and nonfeasance does not achieve that. That was the finding of the High Court, and it is self-evident that it does not achieve it, because nonfeasance actually benefits those councils that do nothing.

Debate adjourned on motion of Mrs SHARDEY (Caulfield).

Debate adjourned until later this day.

MARINE (AMENDMENT) BILL

Second reading

Debate resumed from 4 March; motion of Mr CAMERON (Minister for Agriculture).

Mr MULDER (Polwarth) — The Marine (Amendment) Bill, which is basically a technical bill, deals mostly with the issue of compliance plates on recreational boats.

This bill had its origin as a result of the Howard government when, back in August 2002, it called for new standards to make boating safer. A national draft compliance plate program for recreational boats was released and the federal government sought public submissions. The federal transport parliamentary secretary, Senator Ron Boswell, said the program would raise consumer awareness of boat capabilities and result in safer vessels.

The federal government wanted to see compliance plates fixed to all new boats manufactured or sold in Australia, with compliance plates showing passenger capacity, maximum engine rating, standard of buoyancy and the manufacturer's name and model type. The proposal was part of Australia's new national recreational boating safety system aimed at producing safer boats and encouraging safer boating.

It has taken almost two years for the Bracks Labor government to look to the issue of having compliance plates on our recreational boats. One can only assume

that the delay has something to do with the program introduced by VicRoads and the Bracks government in relation to compliance plates for modifications carried out on heavy vehicles. This program was supposed to start in the middle of last year but has fallen into total disarray. I would only hope that the government has done the work in relation to recreational boats, because it certainly did not do the work in relation to heavy vehicles. The problem that the heavy-vehicle industry came across with the fitting of modification plates was that a number of signatories had to be provided for that particular service.

VicRoads went down the pathway of introducing the regulations and putting in place a date by which they were supposed to start. What it has discovered is that a number of the supposed signatories to the modification-plate system have fallen by the wayside. The reason is that when they went to their insurers to seek cover for the new work they were going to undertake — the fitting of modification plates — they were advised that they would be in for some hefty increases in their insurance premiums. No-one anticipated that that would be the case. What it has done, I am assured, is driven a lot of modification work on heavy vehicles underground. I am talking about vehicles on which engineers or companies that provide some of the modifications such as those to cranes and lifts have not been able to get the appropriate insurance. This is creating a situation throughout Victoria whereby after the regulations have been introduced vehicles will be travelling around the state with backyard modifications and therefore without the appropriate modification plate.

If the work has not been done in an area as important as heavy vehicles obtaining the correct and appropriate level of insurance, I would ask whether or not the government has covered this issue with boat manufacturers and importers here in Victoria. If it has not, it will create the same situation that currently exists with heavy vehicles. I am assured that a host of work is being carried out by backyard operators. I am told that those who have been able to obtain it may have got some dodgy offshore insurance: they would be hoping that they do not get caught up with people who have taken vehicles and as a result are challenged in relation to some of the work that has been carried out.

Another issue that this bill raises, apart from the insurance, is the lack of available people who have the expertise to fit these different devices to vehicles — and none of that was canvassed prior to the program being launched. I am assured by people out there in the industry that that in its own right is also causing a great level of concern. It gets back to the situation of saying, 'Yes, we can work in a particular industry, but that is not one we want to be involved in due to the fact there are significant problems in the implementation of the modification-plate system'.

I would like to quote from fishvictoria.com. This gets back to the issue of it being one thing to fit a modification plate but another thing to work out how are you going to control it and how you are going to police it. Given the statements by the government in the past in relation to issues such as fishing licences and additional police resources, one would wonder where it is going to find the police resources to look after the fitting of modification plates to recreational boats. I will quote from an article by Mr Ricky Amer headed 'So, where are the inspectors?'. He wrote:

> South-west wind, cold, dirty seas, wrong tides etc., etc. Too rough to take the boat out, so I thought I would have a surf through some of the fishing sites and read about some of the people that have been catching some. After reading nearly everything on this site, the one thing that seems to stick out the most is the amount of people that have claimed to have paid $20 for a fishing licence, so where are the inspectors? I happen to agree. Just have a surf through the shame files and you will see what I mean. Hey, maybe there is something in this. Now this is where my story ends, because it will only get nasty if I go on any further with it. Have you heard the joke about the government that raised revenue through licensing and promised to spend it on policing etc? Well, you have now.

This is an issue which is of major concern — —

The SPEAKER — Order! I hate to interrupt the member for Polwarth in full flight, but we are required to ring the bells to organise the joint sitting. The member for Polwarth will have the call when the debate resumes.

Debate interrupted.

Sitting suspended 6.15 p.m. until 8.02 p.m.

MARINE (AMENDMENT) BILL

Second reading

Debate resumed.

Mr MULDER (Polwarth) — Prior to breaking for dinner I was discussing issues relating to increased recreational boating traffic. What we have seen over the last few years has been an influx of recreational boats, skiers and all those people who come with recreational boats into my part of the world, the Western District. That is, of course, due mainly to the fact that we have been one of the few places that have been able to have lakes and other waterways at reasonable sorts of levels.

Recently I inspected one of the outstanding lakes in my electorate, Lake Bullen Merri, at Camperdown. The people once again indicated to me that due to the dryness in other parts of the state they have experienced continual growth in recreational boating use on the lake. Lake Bullen Merri is possibly one of Australia's greatest fishing spots. The very hardworking members of the committee of management down there look after the south beach at the lake. Possibly because it is so far off the Princes Highway and away from the public eye, a lot of people would not understand or recognise what is down there. It is a splendid, outstanding and stunning lake, set in the crater country outside Camperdown.

As I said, a lot of recreational boats use that area not only because of the water levels but also because of the natural beauty of the area. Like all small committees of management its members have been struggling. They get an influx of people from the metropolitan area and other parts of the state, but are expected to operate on a very meagre budget in trying to maintain the facilities there. They have been successful with a couple of grants to do some work with the ramp and other parts of the foreshore area. However, what they need is a good, solid management plan that will enable them to plan for the future and apply for grants for a number of smaller upgrades, particularly for public seating areas, disabled access and so forth. I have indicated to the committee that I would support any application it put forward, particularly, as I said, because it is for the benefit of not only the people of the Camperdown community but also that area actually supports a number of people from the metropolitan area and those who travel from other parts of the state to use those boating facilities.

Wherever you go around the south-west of Victoria and in my electorate of Polwarth, whether it be Lake Colac or Lake Purrumbete, they are highly sought-after areas and very well patronised in terms of recreational boating activities. As I said, they have their own issues up there in relation to enforcement, simply due to not just boats but also jet skis and the problems they create with the mixture of swimmers. A number of the long-distance swimmers come to those areas to train and some of them are not totally aware of the danger they face in swimming without an escort vessel when there are skiers, ski boats and jet skis all using the same waterway.

I will watch with interest as this piece of legislation is enacted to see how the Bracks government follows through with the matters it has introduced in relation to compliance plates and also the proposed level of enforcement to ensure that boats have appropriate compliance plates fitted. If the government is going to do that, surely it will need to pick up on some of the other areas that it has promised to deliver on in relation to — —

Dr Napthine interjected.

Mr MULDER — Of course if the government increases registration fees, it will pick it up. We should get a policeman in a boat on the water as well, perhaps, given the legislation debated today. I will watch with interest. I wish the bill a speedy passage.

Mr WALSH (Swan Hill) — This bill implements the final recommendations of the Russell review, as we have heard, and follows on from the changes last year to the Port Services (Port of Melbourne Reform) Bill and the Port Services (Port Management Reform) Bill. It amends the Marine Act 1988 and the Port Services Act 1995 and its prime objective is to increase the marine safety for people, vessels and the environment.

The bill encompasses activities across four different types of waterways, which a lot of people would probably not be aware of: commercial port waters, local port waters, coastal waters and inland waters. It redresses gaps and inefficiencies in legislation, particularly those relating to state waterways. Besides clarifying the functions and powers of harbourmasters and waterway managers, it actually introduces new powers to enable police and Marine Safety Victoria inspectors to conduct random recreational or commercial vessel safety audits. There are also some elements in the bill that harmonise state licences and state regulations regarding boat safety, which will make life easier for those of us — like my constituents in the seat of Swan Hill — who live on the border with another state.

If you think about the way we are harmonising some things with other states and other matters, can I dare say — even though I am a member of this house — there is probably a very good argument at times to actually get rid of states, the way life is going now. If we harmonised a lot of these things we could actually simplify the life of Australians quite significantly. The bill harmonises some of these things, and for my constituents who live on the Murray River and actually go fishing on a New South Wales waterway it is quite a significant issue.

The bill will ensure Victorian compliance with a national initiative, which is the Australian builders plate for new recreational vessels. It specifies that the new builders plates are to be displayed on vessels and have specifications on them.

As we talk about the ports and waterways of Victoria, it is important to focus on some of the issues that are so vital to Victorians — and I refer not just to the commercial ports but to our regional ports and waterways. The port of Melbourne is extremely vital to Victorians. It is on a key international trade route, is located at the centre of what I think is Australia's most important agricultural, industrial and manufacturing area and has reasonable rail and road access.

In a previous debate on ports I spoke about the importance of making sure that the government honoured its commitment to upgrade the rail tracks of Victoria. For my area of Victoria and to the north-west to Mildura having access to the port of Melbourne is extremely important. The government gave a commitment two or three budgets ago to spend $96 million to upgrade and standardise the rail tracks of Victoria. The people of Mildura are still waiting expectantly for the rail upgrade to happen. Transport operators have developed a very good system of container accumulation, but they need the rail track upgrade to get good access to the port of Melbourne, and we need it to make sure we have an efficient transport system for our vital export industries.

Melbourne has the highest rate of any Australian port of direct services to the United States of America, Europe and South-East Asia. The port is vital for that reason, because 99 per cent of Victoria's exports and imports are transported by sea, which makes Melbourne the leading container port in Australia. The port of Melbourne handles approximately 37 per cent of all the container traffic in the country, and about 1.6 million containers went through Melbourne in the last financial year.

In debates on previous legislation, given my role with the Victorian Farmers Federation, I have spoken about the fact that when people cross the West Gate Bridge and look down on the container port of Melbourne and the huge activity going on there they often do not realise that the biggest single user of the port is the dairy industry. At the moment there is an intense debate about water use in the state, and the government will shortly publish a white paper on the issue. I understand from unsubstantiated rumours that it will talk about taking water away from the irrigation industry and giving it to other users. If water is taken away from the irrigation industry, it will be taken away from the dairy industry, which will not produce as much product or create as many jobs in country Victoria. The flow on effect will mean that fewer containers will go through the port of Melbourne.

The port of Melbourne is directly and indirectly responsible for about 80 000 jobs in Victoria. It handles about $67 billion in trade, which is the equivalent of about $129 000 per minute flowing through the port. It also contributes $5.5 billion in economic activity to Victoria. More than 7000 commercial vehicle movements go through the ports of Melbourne and Geelong each year, which is phenomenal.

The issue I want to expand on concerns the constraints imposed on the ports of Melbourne and Geelong. Melbourne is a key international hub for sea freight, but its competitiveness and possibilities for the future are being limited. The deepening of the channels in Port Phillip Bay is important. Currently the main channel is about 7.5 metres deep, increasing to 12 metres with tidal influences. As we all know, it is not deep enough for a number of the larger vessels that deliver and pick up from the port of Melbourne. About a third of the ships coming into Melbourne cannot load to their full capacity because of the depth limitations on the channels in the bay and in the Yarra River. As we know, the trend is to larger and larger container vessels, which means more and more ships will not be able to call into the port of Melbourne in the future.

If Melbourne does not deepen its main channel and provide access to the world's largest and most efficient ships it will slip as the port of choice for a lot of container ships. Economic studies indicate that the deepening of the channel will have a huge effect on the growth of trade coming through Melbourne. If we do not do it, it will be an impediment to growth not just in the City of Melbourne but for those who rely on the port, particularly in rural and regional Victoria and southern New South Wales. The port covers a large catchment.

Making sure we have a port that is cost competitive is vital to our farmers and rural industries, particularly, as I have spoken about, the dairy industry. The New South Wales rice industry exports the majority of its product through the port of Melbourne. The loss of any economies of scale would have a big impact on our export industries. The costs of exporting through the port will be sheeted back in the form of lower returns to farmers and food manufacturers. There is the real possibility that Melbourne will become uncompetitive compared to Botany Bay, Sydney and Brisbane. Many of us do not have the opportunity to watch much television, but members will no doubt have seen the advertisements for the port of Brisbane, including how deep its port is. It does not take that much for exporters in southern New South Wales to put a container on a truck and have it go to the port of Brisbane, if that is the most economical port to export through.

The deepening of the commercial channel to about 14 metres is vital so the bigger ships can enter the port. It will be a major undertaking that will cost the state about $400 million. We will dredge about 14 million cubic metres of sand, silt and rock to make the channel deeper. Currently an environment effects statement is looking at the biological, physical, engineering and socioeconomic issues involved in deepening the channel. As we know, environment effect statements can be challenging for members of the community as they work through physical issues, hydrodynamics, water-quality modelling, social issues and even Aboriginal and heritage issues. The report is due to be released in June and will be on public exhibition for about six weeks so that people have the chance to comment on it. No doubt many issues will need to be resolved. Apparently it will take some time for turbidity in the bay to settle. There is also the issue of the effects of 200 years of white settlement. We are not sure what pollutants have leached into the bay as a result of the actions of previous generations and what has been disturbed.

The most controversial aspect and the hardest to address will be the deepening at the Heads. Not only will it be technologically challenging because of the types of rocks and the strong currents, but because a lot of ships pass through the Heads we cannot shut the channel down for long because those ships would not be able to access the port. There are some challenges to be addressed. The Nationals are concerned to ensure that, although the Victorian government has given implicit support for the project, we do not get bogged down in environmental issues. We must resolve those quickly so that they do not have a profound economic impact on the effectiveness of the port of Melbourne.

If we are going to achieve this government's target — a Kennett government target that it very worthily followed on with — to achieve $12 billion worth of food and fibre exports out of Victoria by 2010, we are going to need a very efficient port. While I understand that we have to go through this environmental process, we need to make sure that we get started on deepening the port in the near future. I urge the Premier to make sure he keeps very focused on achieving this. If we get immediate government approval, we will see the channel deepening completed by something like 2007. I noticed, in doing the research for this, that there was an article in the *Age* recently where an unnamed cabinet minister was quoted as saying, 'Let's talk about the channel deepening. We actually like this project'. So I hope the Labor Party stands up to its union mates.

Dr Napthine interjected.

Mr WALSH — I did not know there was a minister that supported genetically modified foods — not publicly anyhow.

Mr Carli interjected.

Mr WALSH — This is about the ports. The ports and waterways of Victoria are very important. As I understand it, the Maritime Union of Australia, the Australian Workers Union, the Transport Workers Union and the Australian Manufacturing Workers Union are all in favour of the channel deepening, so we have an opportunity here for the government of the day to actually please not only the unions but the farmers and the businesses of Victoria to make sure we get a very good outcome here. I hope as we go through this we do not see a cave-in to the green movement for the short-term benefit of a few preferences like we have in the genetically modified organism debate.

I have talked at considerable length about the port of Melbourne and the importance to Victoria, but our local ports, for which this bill also covers safety issues, have quite a significant impact on the economy of Victoria as well. If we look through the list of local ports, some of them are quite significant fishing ports and quite significant tourist destinations. This bill also covers our coastal waters, which are waters up to 3 nautical miles off the coast, and then the commonwealth government takes over responsibility.

In the last few minutes I have left on this bill I would like to touch on the issue of inland waters. What a lot of people probably do not realise — and I did not either — is that there are something like 59 waterway managers in Victoria which this bill will cover that manage over 150 waterways. If you think about inland Victoria, the likes of Eildon Reservoir will come under this and also some of the other lakes and rivers that we have here. This bill puts in place powers for those waterway managers to impose fees that are prescribed for the regulation and services they provide there.

Speaking as someone who has had a significant involvement in agriculture, particularly irrigated agriculture, we possibly have the opportunity under this bill to spread some of the costs of the management of our waterways across a wider section of the community than just the irrigators. Historically the charge for water to irrigators has covered the cost of managing quite a few of these waterways. With this bill we have the opportunity to charge some of the other users of our waterways and put some equity into the system so that we get to more of a user pays beneficiary-type arrangement where the boat users of the likes of Eildon will pay a fee and that will help with the maintenance

and ongoing control of those waterways. The Nationals do not oppose this bill and wish it a speedy passage.

Mr CARLI (Brunswick) — The member for Swan Hill gave an excellent outline of the challenges facing the port of Melbourne and Victorian commercial ports. Clearly those challenges are well understood by the government, and it has been doing a number of things to meet the challenges facing our ports. Clearly the environment effects statement (EES) that is going on with the port of Melbourne and the channel deepening is part of that, and the support that the cabinet and the government has given to the proposed channel deepening, based obviously on the success of the environmental challenge, is well understood by the previous speaker.

The government has also passed a number of pieces of legislation around the issues of ports and waterways over the last couple of years. They have largely come out of work done by Professor Russell. The Russell review of the 1990s port reforms indicated that there were a number of institutional difficulties in terms of meeting the challenges of the ports. Those have been met by previous legislation. But one of the areas that Professor Russell identified was safety in the ports — basically the failure to have clarity about who had responsibility and also the risk that certain environmental safety procedures were not adequately being met in the ports of Victoria — so in part this bill is about rectifying those discrepancies and ensuring that we are on top of the safety challenges within our ports and waterways.

In terms of the Russell report, I think the principal areas that concern this bill include, first of all, the consolidation of the role of the harbourmaster. Currently there are two pieces of legislation — the Marine Act and the Port Services Act — both of which state what the role of the harbourmaster is and contain certain descriptions of their responsibilities. The harbourmaster is the manager of port services. He is the person responsible for the movement of ships, the unloading of ships and the berthing of ships.

This bill consolidates those two bills and essentially clarifies the role of the harbourmaster and ensures that that person is licensed by the director of Marine Safety Victoria and that the role of the harbourmaster clearly relates to safety issues. It is very much picking up on the weaknesses, if you like, that were identified by Professor Russell. So there is a consolidation of the harbourmaster role.

The other one is the clarification of the powers and the roles of local authorities. Currently in terms of the management of major ports and local ports there are a number of responsible bodies — waterway managers and local authorities. This bill clarifies those bodies by referring to them by name rather than simply as the local authority. Again the amendments in the bill clarify the roles and responsibilities of the waterway managers and consolidate the legislation that currently exists dealing with waterway management. In terms of the challenge of port safety, the bill is very much about rectifying the weaknesses that were in the previous legislation and the previous port regimes. I suppose it is yet another part of the reform process that we have been undertaking as a government over the last two or three years.

The bill does other things, and they were talked about by previous speakers. It enables Australian builders plates to be provided by Marine Safety Victoria, and that is part of national agreements. The plates will be provided in recreational boats and will have a whole lot of detail about those boats. They will be available for recreational boats in Victorian ports. The bill also clarifies the powers that allow Marine Safety Victoria and Victoria Police to conduct compliance safety tests on outboard vessels, and again it is very much part of the overall thrust of the government to achieve greater marine safety.

There has been a lot of publicity about the role and efforts of the Bracks government in terms of road safety. We know, given that the road toll is now the lowest on record in this state, about the success of that challenge. It is probably not so well advertised that we have made an equally strong effort to ensure that marine safety improves, and is improving, in Victoria. I think we have a very proud record in terms of marine safety. As members of the house would know, in February 2002 the government introduced a boat licensing system. We currently have 136 000 licensed recreational boat licences in Victoria.

That has been very successful. Certainly we have ensured that licence fees have been paid, but equally we have developed the boat safety funding program, and members with bayside electorates, or with inland waterways within their electorates will know of the success of this program. An amount of $4.38 million has been made available throughout Victoria to assist in boat safety and recreational fishing activities, and in terms of the boating community it has been extremely popular. I have had the great fortune in my role as parliamentary secretary to visit many fishing and boating communities throughout the state and to see how the money is being spent. It has been a terrific opportunity to provide resources for volunteer organisations to put towards such things as jetties and

other recreational boating facilities. It has often been in areas of enormous neglect where there has been a large amount of volunteerism, but it is very hard for volunteers to get anything done without the money to buy the boat or fix the jetty, and that $4.3 million has been successful in remedying that situation throughout Victoria.

The grant system, as members in this house would know, has been very well received. Some of the areas where funding has been provided includes the Torquay Marine Rescue Service search and rescue vessel; the Australian Volunteer Coastguard Werribee search and rescue vessel, which I actually launched; the Royal Volunteer Coastal Patrol at Port Welshpool; and the Volunteer Marine Rescue Mornington, which I also attended along with the Acting Speaker. They are all important examples of where this program is really working.

There has also been increased policing. The member for Polwarth talked about whether there would be extra policing; and there certainly has been over the last few years. There has been greater auditing of boating and a greater use of spot checks. It is all about ensuring that we have a safer boating community.

There have been major media campaigns — for example, the 'Life jackets save lives' campaign, which has been extremely successful. It has been run over the last two summer boating seasons and has involved mobile billboards, television advertising and written material. It started over two years ago and has had a major impact. It is a particularly important campaign, making the recreational boating community aware of the importance of personal flotation devices and safety on boats. Over the last two boating seasons equipment checks have been conducted at a large number of boating destinations. Again it is very much about reducing injuries and fatalities and encouraging people involved in recreational boating to take the necessary precautions and have the appropriate equipment available.

There have been 4000 recreational boat checks over the 2002–03 period. It is not an attempt at being Big Brother; rather it is about ensuring that we reduce fatalities and injuries on our waterways, and it runs very much parallel to the campaign that the government has conducted on road safety. Boat safety has been important, and it is a major commitment of the government. This bill further strengthens that aim. It is very much a plank in ensuring marine safety.

Marine Safety Victoria is doing a terrific job, and certainly the money that has been put back into boat safety throughout the state has been very well received. It is very popular. It is a program that needs to continue in the longer term because it is having a big impact in recreational boating safety, in saving lives and in reducing injuries.

Debate adjourned on motion of Dr NAPTHINE (South-West Coast).

Debate adjourned until later this day.

JOINT SITTING OF PARLIAMENT

Senate vacancy

The ACTING SPEAKER (Mr Cooper) — Order! I have to report that this day this House met with the Legislative Council in the Assembly chamber for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston and that Mr Peter Mitchell Fifield has been duly chosen to hold the vacant place.

PETROLEUM (SUBMERGED LANDS) (AMENDMENT) BILL

Second reading

Debate resumed from 4 March; motion of Mr CAMERON (Minister for Agriculture).

Dr NAPTHINE (South-West Coast) — The Petroleum (Submerged Lands) (Amendment) Bill has a purpose to bring about a nationally uniform scheme for occupational health and safety in the offshore petroleum industry across all states, territories and commonwealth waters of Australia.

All members would be well aware of the importance of the offshore petroleum industry in Australia, and in particular in this state the Bass Strait fields in Gippsland and the Otway Basin, which are producing petroleum and natural gas, and of course off the shores of the north-west of Australia the enormous North West Shelf fields. The offshore petroleum industry is vitally important in terms of jobs and economic value, and of course in providing a supply of fuel for both our vehicles and for industry within Australia and hence driving the economy of this country. All members would also be aware of the inherent risk for employees on offshore oil and gas platforms in this industry and hence the importance of having an effective and workable occupational health and safety system which delivers the highest standards of occupational health

and safety for employees in this very important industry.

In 1999 the commonwealth government commissioned a review of offshore safety management, and I will refer to some aspects of that review. It was conducted under the auspices of the Department of Industry, Science and Resources by the offshore safety and security, petroleum and electricity division. The executive summary of the report entitled *Future Arrangements for Regulation of Offshore Petroleum Safety* states, and I quote from 1.3 in the executive summary headed 'Findings of the independent review team':

> The primary conclusion reached by the independent review team was:
>
> > the review team is of the opinion that the Australian legal and administrative framework, and the day-to-day application of this framework for regulation of health, safety and environment in the offshore petroleum industry is complicated and insufficient to ensure appropriate, effective and cost-efficient regulation of the offshore petroleum industry.
>
> Much would require improvement for the regime to deliver world-class safety practice.

If further says:

> In particular the independent review team found that:
>
> > there are too many acts, directions and regulations regulating offshore petroleum activities, their boundaries are unclear and application is inconsistent, different sets of legal documents apply for each of the different states and Northern Territory, and there are overlaps in legislation.

Further it says:

> The state and Northern Territory safety regulators lacked regulatory skills, capacity and consistency and did not have a clear view of their role.
>
> The commonwealth did not have sufficient resources, technical expertise, credibility, and authority to drive the required changes.
>
> The team made two central recommendations:
>
> > the current commonwealth safety regime's framework of legal documents should be revised;
> >
> > the current safety case regime's regulatory system should be restructured.
>
> In particular it recommended that a national petroleum regulatory authority, similar to AMSA, should be developed to oversee the regulation of safety in commonwealth offshore waters.

This report was fairly scathing of the current regime of regulating occupational health and safety in our very important offshore petroleum industry and made some substantial recommendations about the future direction for providing world best practice in terms of health and safety regulation in this vitally important industry.

That sparked some discussion and debate between the states, territories and the commonwealth to ensure that a better system was put in place which required agreement between the commonwealth and the states because the states and territories have jurisdiction in waters out to the 3-mile limit. The area beyond that comes under commonwealth jurisdiction. It was difficult for the offshore petroleum industry when different occupational health and safety regimes applied in the various jurisdictions covered by Victoria, New South Wales, Queensland and Western Australia. Then outside the 3-mile limit there was a different, commonwealth, jurisdiction, and this caused some frustration for the industry. However, more importantly, that divided jurisdictional process put lives at risk because the safety regimes that were in place were not of the best standard. As a result of the discussions and negotiations I am pleased to say that agreement was reached between the states, territories and the commonwealth on this issue, culminating in the commonwealth government bringing in legislation into its Parliament last year entitled the 'Petroleum (Submerged Lands) (Amendment) Bill'.

In his second-reading speech to the commonwealth Parliament the federal Minister for Industry, Tourism and Resources, the Honourable Ian Macfarlane, said:

> The Petroleum (Submerged Lands) (Amendment) Bill 2003 is a bill to amend the Petroleum (Submerged Lands) Act 1967, which is the legislation through which the commonwealth regulates … its offshore petroleum reserves.
>
> This bill gives effect to the government's election commitment to establish a single safety regulator for the offshore petroleum industry in commonwealth, state and Northern Territory coastal waters.

Further on the minister's second-reading speech summarises what this bill in the commonwealth Parliament was about, and this is reflective of what this bill before the Victorian Parliament today implements with respect to Victoria. I quote again from the minister's second-reading speech in the commonwealth Parliament.

> In … 2001 the commonwealth Department of Industry, Science and Resources prepared a report on offshore safety titled 'Future arrangements for the regulation of offshore petroleum safety'. It found that the current system was inadequate. In particular, it was noted that there are too many acts and regulations regarding offshore petroleum activities, with unclear boundaries and inconsistent application. Different sets of legal documents apply to the areas adjacent

> to each state and the Northern Territory. And there are overlaps in the applicable legislation.
>
> In response to this report, and the wishes of industry and the work force, the government committed $6.1 million in the 2002–03 budget to establish the authority as a single national safety regulator. It will cover offshore petroleum activities in commonwealth, state and Northern Territory coastal waters from 1 January 2005.
>
> The authority will be established as a commonwealth statutory authority which will regulate offshore petroleum facilities on behalf of the commonwealth, the states and the Northern Territory.

That was the legislation that introduced the new authority to the commonwealth Parliament. In conjunction with that another piece of legislation was introduced into the commonwealth Parliament simultaneously, which was entitled 'Offshore Petroleum (Safety Levies) Bill'. I quote from the *Bills Digest No. 50 2003–04* which outlines the purpose of that bill and what it is about. Under the heading 'Purpose' it says:

> The commonwealth, the states and the Northern Territory have, by agreement, decided to create the National Offshore Petroleum Safety Authority (NOPSA) for the purposes of regulating, in a nationally consistent manner, safety in the offshore petroleum industry.

Further on under the same heading it says:

> This bill gives effect to the agreement to create NOPSA as a full cost recovery agency.

Under the heading 'Background' this document says:

> In 1979 the commonwealth and the states agreed to a division of offshore powers and responsibilities known collectively as the Offshore Constitutional Settlement (OCS). A … consequence of the OCS was that, as states and the Northern Territory retained responsibility for coastal waters up to 3 nautical miles from the low water mark, the Occupational Health and Safety (OHS) legislation of those states and the Northern Territory applied to activities of the petroleum industry in those waters. This has resulted in significant costs and inefficiencies for companies that operate in more than one state and/or … territory.

Of course the bill that preceded this changed that situation to give a commonwealth responsibility.

In relation to the safety levies legislation it is important to note where various groups stood on this issue. The *Bills Digest No. 50 2003–04* reports on the position of significant interest groups, and under the heading 'Position of significant interest groups' it says:

> State and Northern Territory governments have supported the formation of NOPSA and … the agency will operate on a full cost recovery basis.
>
> The formation of a single … national agency to regulate and oversee safety in the offshore petroleum industry is the preferred outcome of the industry peak body, APPEA, and the International Association of Drilling Contractors.

It also says:

> As noted in the regulation impact statement, the ACTU in their written response to the issues paper supports the formation of such an agency as the best means of giving the work force confidence that decisions affecting their health and safety are not unduly impacted by industry or government perspectives.

This bill by the commonwealth Parliament, the Offshore Petroleum (Safety Levies) Bill, outlines how this new organisation will be funded. It will be funded by a series of levies. Part 2 of the bill deals with the safety investigation levy, part 3 deals with the safety case levy, and part 4 with the pipeline safety management plan levy. As expected, the safety case levy was projected to meet the bulk of the operating costs of the National Offshore Petroleum Safety Authority (NOPSA), projected at $6.1 million in its first year of operation.

So we have fairly universal support within the industry from the commonwealth, from the states, from the industry bodies, and from the representatives of employees through the Australian Council of Trade Unions (ACTU), all supporting this agreed approach to offshore health and safety. The way this is to proceed is that the commonwealth has passed two acts of Parliament: one covering the structure and function of the new authority, and the other covering the levies that will apply in the funding of this new national offshore petroleum safety organisation.

The bill before the Victorian Parliament fulfils Victoria's responsibility to ensure that NOPSA can operate effectively within Victorian state waters. I am advised that Victoria is the first state to bring forward this legislation, which will be followed by complementary legislation in other states and the Northern Territory to ensure that there is an effective body to operate from 1 January 2005 to take over this important responsibility.

The nub of how this will operate in Victoria, as I am advised and as I understand it, is that WorkCover will still apply on the oil rigs and platforms — that is, the employers will still pay appropriate WorkCover levies and employees will still be covered by WorkCover as if they were on land and as if they were within Victorian jurisdiction. However, the role of WorkSafe Australia, if one can describe it in that broader sense, in terms of occupational health and safety and prevention issues will not apply in the offshore petroleum industry and

that authority will be replaced by the National Offshore Petroleum Safety Authority, which will have responsibility for occupational health and safety plans and accident prevention issues in the offshore industry.

I am advised that there are currently five people in Victoria doing fundamentally occupational health and safety work who are dedicated to working in the offshore petroleum industry and who have expertise in that area. I was disappointed to hear that while it may be possible for these five people and their expertise to be transferred to the new commonwealth authority, this is by no means guaranteed. I am disappointed that the Victorian government has not sought to have better arrangements with the commonwealth to ensure that these people are all transferred to the commonwealth authority and their expertise picked up. We were told in our briefing that it is likely that these five people could even be made redundant. I will quote the actual words used by the senior bureaucrat who briefed us. He said, 'It is not inconceivable that somebody is made redundant as a result of this process'. It would be disappointing if that expertise were lost and if these people lost the jobs they have in the Victorian public sector simply because the Bracks Labor government has not made adequate provision for their transportation together with their expertise to the new commonwealth body.

The other issue I wish to make a passing comment on is that we were also advised that the new NOPSA will be in Western Australia. That seems like another blow for Victoria. It would seem given the level of the offshore petroleum industry in Victoria — in Bass Strait, in the Gippsland fields and in the Otway Basin fields — and the potential for further expansion, particularly in the Otway Basin for gas, that once again Victoria has not worked hard enough to ensure that the headquarters of this new authority will be here in Victoria, perhaps in regional and rural Victoria so we can create jobs in country Victoria. Perhaps Bairnsdale or Sale are appropriate — —

Mr Jasper — The north-east!

Dr NAPTHINE — With due respect to the honourable member for Murray Valley, I do not think Wangaratta would be an appropriate spot for the offshore petroleum safety headquarters! Certainly Sale or Bairnsdale or somewhere in western Victoria, such as Warrnambool or Portland, may be appropriate sites in rural and regional areas for this organisation. It is an area in which the Bracks Labor government has let Victoria down by not working hard enough on its behalf to secure those jobs and opportunities for the state.

I refer to the second-reading speech made by the federal Minister for Industry, Tourism and Resources, the Honourable Ian McFarlane, on the creation of NOPSA. He said in that speech that the board members will be nominated for appointment by the Ministerial Council on Mineral and Petroleum Resources and will be appointed by the commonwealth minister. That seems to be a fair and reasonable way to ensure that we have board members who are appointed on the basis of their expertise and the contribution they can make to ensure that we do have world best practice in occupational health and safety in this very important but potentially high-risk industry, and that this organisation does its job and does it well.

There are a couple of issues in the bill on which I seek comment by the minister in his response. If the minister is not here, perhaps the parliamentary secretary may respond to the concern that I wish to raise.

An honourable member interjected.

Dr NAPTHINE — We will see. Clause 9 on page 13 of the bill inserts proposed section 151ZB, which defines offshore petroleum operations as:

> … any operations (including diving operations) that —
>
> (a) relate to —
>
> (i) the exploration for petroleum …

Two pages further on the bill sets out the safety authority's functions under proposed section 151ZF. Paragraphs (a) and (b) of the proposed section refer to the need for functions related to offshore petroleum operations and the promotion of occupational health and safety of persons engaged in offshore petroleum operations. The issue I wish to raise is whether this includes seismic surveys and other exploration activities or whether it relates only to drilling activities, be they drilling by tapping into a gas field or an oil well or exploratory drilling. This definition of exploration for petroleum seems to imply that seismic surveys and other non-invasive exploration activities would be covered by NOPSA, but there was some confusion in the briefing about whether that was the case. I ask the parliamentary secretary to advise the house and make it clear to the industry whether this new organisation will be responsible for occupational health and safety on not only drilling platforms, whether they be exploratory drilling platforms or harvesting drilling platforms, but also on other exploratory activities.

I wish to make a general comment — I do not expect the parliamentary secretary to respond — on an aspect of the structure and the nature of legislation. I am sure

you will excuse my indulgence, Acting Speaker, because although it is a hobbyhorse of mine the way that parliaments use codes of practice is relevant to the bill.

We should get some uniformity into how codes of practice operate, because we have some that operate as de facto regulations or legislation — in other words, breaches of codes of practice are considered to be breaches of the law — while others operate as guidelines. Page 88 of this bill states:

> Codes of practice
>
> (1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to operators of facilities and employers (other than operators) of members of the work force at facilities.
>
> (2) A person is not liable to any civil or criminal proceedings for contravening a code of practice.

These provisions make it very clear that codes of practice are guidelines to assist people and are not in themselves de facto legislation or de facto law. My personal view is that that is the way codes of practice should operate. They should not be de facto legislation. If we are going to have legislation, let us legislate, and if we are going to have regulation, let us make regulations — but we should not have codes of practice that operate as regulations or legislation.

I applaud and support the approach being taken in this legislation, and I urge this government and this Parliament, as well as governments and parliaments across the commonwealth, to have a look at how we use codes of practice. It is extremely confusing for the average punter out there to work out whether codes of practice are guidelines or black-letter law, much less what they actually mean, because they mean different things in different legislation.

The industry supports this legislation and this approach, the Australian Council of Trade Unions supports this approach, the states and territories support this approach and the commonwealth supports this approach. When you get a quadrella like that, is it any wonder that the Liberal Party opposition in Victoria also supports this legislation!

Mr JASPER (Murray Valley) — I rise to speak on the legislation on behalf of The Nationals. Some would query immediately why I would be responding on behalf of The Nationals when my electorate of Murray Valley is in north-eastern Victoria, with its northern boundary being the Murray River, given that this legislation refers to the submerged lands, which are generally off the southern coastline of Australia. But as always in the National Party, we are very broad minded about all these things.

Mr Ingram — The Nationals.

Mr JASPER — The Nationals, thank you! When you have been in the party for a while, it takes time to accept those changes. We obviously have a look at all legislation to see how it affects the state of Victoria, the people within the state and the people within our own electorates.

I read with interest the second-reading speech by the Minister for Agriculture. I support many of the general comments made by the minister, including that the offshore petroleum industry supports thousands of jobs and provides the Australian community with most of its domestic natural gas requirements. That makes the industry very important to all of us within Victoria, particularly those living in the southern parts of the state.

The offshore safety of petroleum facilities is regulated according to whether they lie within commonwealth or state waters; and if they operate in several jurisdictions, they may be subject to two or more regulatory regimes. I note also that the regulations provide that when production facilities are outside the 3-mile limit they come under the control of the Australian government, whereas facilities within 3 miles of the coastline come under state legislation. The pipelines joining these gas fields and oilfields to the coast obviously come under Victorian legislation as well.

The former commonwealth Department of Industry, Science and Resources prepared a report on offshore safety in 2001. The member for South-West Coast commented on that report, which found that the regulation system was inadequate and had unclear limitations, overlapping acts and inconsistent application between commonwealth and state jurisdictions. It has been interesting to watch the action being taken by the commonwealth government to create the National Offshore Petroleum Safety Authority to regulate occupational health and safety matters on offshore petroleum facilities in both commonwealth and state waters. The commonwealth government has sought the implementation of complementary state government legislation, and Victoria is the first state to introduce it. The legislation will obviously be mirrored right across Australia.

Victoria is enacting this legislation to reflect the changes made by the commonwealth to enable the safety authority to carry out its occupational health and safety role in state waters. Schedule 7 outlines the

duties of the various people involved in the authority and how it will operate. The bill also outlines the functions of the safety authority, which include the promotion of appropriate occupational health and safety for persons on offshore petroleum facilities and the development, implementation, monitoring and enforcing of strategies to ensure compliance with occupational health and safety obligations. The bill goes further and provides for a review of the legislation within three years to ensure that both the commonwealth legislation and the mirrored state legislation are operating effectively.

It is interesting to note that there is a statement in the second-reading speech in relation to section 85(5) of the Constitution Act, which is often included in acts of Parliament now. Members understand why that statement has been made in relation to the bill before the house. I also note that there is a provision in the legislation for the authority to be excluded from any liability arising from the performance of occupational health and safety functions that are carried out in good faith. The exemptions will need to be monitored to see that they work effectively and that they do not encroach on what would normally be regarded as the liability of an authority and the liabilities of other people as far as the activities associated with it are concerned.

I noted the comments made by the member for South-West Coast about codes of practice. I also note that a code of practice has been included in this extensive bill, providing all the details relating to occupational health and safety. As a member of the former Regulation Review Committee for many years in my earlier days in the Parliament, I recognise the importance of acts that provide for the making of regulations. The codes of practice control not only the information contained in acts of Parliament but also the regulations made under those acts. In the past we have seen codes of practice that have not been developed either within legislation or within the regulations made under a particular act. We often see in those codes of practice so-called 'Edward VIII' clauses, which we need to look at carefully to ensure that there are no provisions in legislation which would allow changes to be made by the executive rather than through legislation or regulation. I applaud the fact that a code of practice has been included within the bill before the house.

As is normal with the Nationals, we have undertaken investigations into the legislation. The Honourable Peter Hall in another place has met with representatives from the relevant department, obtained information in relation to the legislation and received correspondence with Esso and BHP Billiton as a result of seeking their comments on the legislation.

He initially received no objections to the legislation; generally there was support for bringing occupational health and safety under legislation produced by the federal government, which is then mirrored by legislation within the state of Victoria.

We also received information from Esso only just this week in which it responded to the representations from the Honourable Peter Hall seeking some response on the impact and importance of the legislation, and whether it was appropriate for the work that Esso is involved in with offshore oil and gas production. We received a letter, which is a copy of a letter sent to the Honourable Ian Macfarlane, the federal Minister for Industry, Tourism and Resources, dated 21 January 2004. In it Esso expresses some concerns in relation to the funding of the new National Offshore Petroleum Safety Authority (NOPSA). I want to read into *Hansard* some of the comments made by Mr Heath, a director of Esso on behalf of Esso Australia Pty Ltd. He says in the first sentence of his letter:

> I am writing to express my concerns regarding the current funding proposal for the new National Offshore Petroleum Safety Authority.

Then he goes on in the letter sent to the federal minister:

> In your letter dated 8 April 2003 we were pleased to receive your assurance to … industry members that NOPSA would be cost efficient. Notwithstanding this, information now supplied by officials shows that NOPSA will cost considerably more than the state bodies currently administering safety in federal waters. State governments have announced that they will reduce their existing fees in total to only $1.5 million when NOPSA is activated. This amounts to less than one-quarter of the NOPSA budget ($A6.8 million) and if indicative of current expenditures raises serious questions in regard to the cost efficiency of the new authority. In addition, with the proposed funding arrangement industry is in effect being asked to significantly fund potential prosecutions against itself, which creates an apparent conflict of interest for NOPSA.

I think he raises a very valid point on the basis that the organisation set up by the government will be funded by the industry and will in fact be in a position that if complaints were brought against oil and gas fields operators, the organisation funded by the oil and gas industry itself would in fact be undertaking investigations into those industries. It would be a conflict of interest. I trust we will get a response from the minister in his closing and summarising of this debate.

I want to quote a few more sentences from this particular letter because it is important to have it written into *Hansard* to indicate there are some concerns with the development of this organisation, the new safety authority, despite the fact that the legislation has been supported by the federal government and is mirrored by legislation within the states of Australia.

> Having regard to these concerns we ask that the funding of NOPSA be rearranged so as to achieve industry and governments' stated objectives of improving the cost efficiency of safety regulation and avoiding any conflict of interest. To this end we ask that the federal government not disassociate itself entirely from the funding arrangements for NOPSA and that an equitable arrangement be found for it to contribute to the funding of this very important enterprise. Such funding would eliminate the potential conflict of interest and address the longer term efficiency of NOPSA.

Whilst the letter is directed to the federal minister, and a response was sought from him that the government would continue with funding, it indicates that state government funding will be at the level of $1.5 million where the cost of the organisation is estimated at $6.8 million. We need to have a response from the responsible minister as to what the government's attitude will be in relation to the funding of this organisation.

We are seeing time and again where the government is introducing and developing a range of organisations that control industry and business within the state of Victoria that the cost of operating those organisations is being landed on the industry and businesses that it is seeking to control. We see greater and greater regulation being imposed on business and industry where we should be trying to reduce the impost on business and industry generally. On this occasion we see an authority being set up to achieve uniformity in the implementation of occupational health and safety in submerged waters, particularly as it relates to the oil and gas industry. It is supported by the federal and state governments on that basis — on the basis that it will be achieving uniformity of occupational health and safety by the setting up of this new authority.

The National Party will not be opposing the legislation. However, I would like to think we will get a response from the responsible minister on the issues which have been raised in debate, and in particular the issue in the letter from Esso on the funding of this organisation; that there will not be a situation where industry will be funding an organisation that could in fact be investigating whether there is a breach of occupational health and safety so that the authority could be investigating a breach of a particular industry where the authority is being funded by that industry itself.

I indicate finally that we would like some response from the minister to get clarification on those issues that recognise not only the importance of the authority being established but also that there will be a review in three years time to assess the efficiency and whether it has operated to the benefit of all people operating in offshore submerged waters and the industries with which they are involved.

Mr HOWARD (Ballarat East) — I am certainly pleased to speak in support of the Petroleum (Submerged Lands) (Amendment) Bill brought forward by this government. As we have heard from previous speakers, and as all members in the house would be aware, the petroleum industry, which includes the natural gas industry, is a very significant Victorian industry not only because of the large number of employees in that industry but also because of the economic turnover of oil and natural gas which is used in this state and because of the importance of oil and natural gas in insulating us against international incidents which periodically happen around the world by ensuring that we have some of our own supplies.

It is also fair to say that the petroleum industry is and has been a very dangerous industry to work in. I am advised by my colleague the member for Geelong, who used to be a safety officer in that industry, that prior to the 1970s in particular it had a very poor safety record, with serious injuries and some fatalities taking place on oil rigs. It was clear that back in those times significant action had to be taken to increase the safety level for the workers. Through the 1970s and 1980s the Australian Workers Union (AWU) worked extensively with the industry to increase awareness of safety issues. It worked in particular with Esso, which is one of the bigger operators in Victoria, providing a good example of how unions could work for the betterment of the industry. Over that period the safety record of the oil industry was significantly improved and hence we saw far fewer serious incidents.

However, it is clear that because this is essentially an offshore industry, especially as it is operated in Victoria, some of the industry operates in commonwealth-controlled waters and some of it still operates within state-controlled waters. Therefore there was a recognition within the industry that the state and federal regulations affecting occupational health and safety in this industry needed to be reviewed and streamlined to provide a much clearer series of occupational health and safety guidelines whether the operation was in state or federal waters. The federal government initiated an inquiry which recommended the establishment of a National Offshore Petroleum Safety Authority which would have the overall

authority to regulate in both federal and state waters. State governments across Australia have supported this proposal, and this bill effectively puts into effect the state government counterpart legislation to the federal legislation, bringing into being the National Offshore Petroleum Safety Authority, to be known as NOPSA.

This state legislation reflects the federal legislation. It sets out the responsibilities with which the safety authority will operate. It clarifies that it operates in state waters in the same way it operates in federal waters and sets the guidelines by which the industry operates. It also informs manufacturers and suppliers of plant and equipment that is used on oil and gas rigs and in the offshore petroleum industry that the equipment they supply must meet the safety level required. It makes clear that it is not just aimed at those offshore industry operators but that those who are supplying equipment to the offshore rigs also fall under these guidelines.

Basically the role of the safety authority is to do two things: one is to ensure the promotion of occupational health and safety issues across the industry — in other words, the encouragement, the carrot approach, the challenging approach — and the other is to back up the promotion by monitoring and enforcement. So we have, as it were, the carrot and the stick working together to ensure that the industry is in one way or another encouraged to recognise and follow best practice principles of occupational health and safety but that if there is a problem they can be followed up with enforcement and monitoring. It ensures that NOPSA will be empowered to cooperate with other states and commonwealth agencies where necessary to ensure that occupational health and safety issues within the petroleum industry are not impeded in any way and are promoted to the maximum.

Industry operators will be required, for example, to prepare complete reports for the minister on at least a three-yearly basis regarding the operations and safety within the industry. They will also be required to report on strategic matters relating to issues on offshore facilities — that is, in regard to activities which can help to improve health and safety performance. NOPSA will be given broad-ranging authority through federal legislation supported by this legislation.

I also note that this legislation reflects the national legislation whereby legal liability will be limited so that NOPSA or inspectors of occupational health and safety or any people operating on behalf of NOPSA will be protected, wherever they are acting in good faith, in the advice they offer.

This legislation is important. It recognises that this government believes occupational health and safety issues need to be focused upon in every industry and that in this industry, where we have offshore operators and where federal and state legislation could be confusing, the government has supported the federal government in ensuring there is one set of legislation. The bill clearly sets out the power of inspectors, including when they can require information and documentation and physically inspect facilities. It sets out appropriate procedures and the requirements for operators to provide information — for example, to report whenever there is any dangerous incident or occurrence on an offshore facility.

The legislation works through all those issues to make them very clear and supports the federal legislation. I am very pleased that as a result of this legislation we should ensure that the petroleum industry not only remains a safe industry but increases the level of safety of all those working in the industry, which is a very important issue. We want to ensure that all those people who go out to work on any offshore oil or gas rig are protected while they are there and come back safely to the mainland again.

Debate adjourned on motion of Mr PLOWMAN (Benambra).

Debate adjourned until later this day.

ROAD MANAGEMENT BILL

Second reading

Debate resumed from earlier this day; motion of Mr CAMERON (Minister for Agriculture).

Mr PLOWMAN (Benambra) — The Road Management Bill has three inherent issues or problems that require the opposition to oppose this legislation. Because of those three basic issues we have no alternative. As a country person I know that of all the issues that are important to country constituencies, the issue of roads runs very high. Therefore it is essential that members look at this bill to ensure that the best interests of all communities — and in my case, representing a country constituency, including country constituencies — are properly represented in this debate.

I oppose the legislation on the basis of three things. Clause 14 virtually gives the power to VicRoads to determine its own destiny in respect of being able to declare which roads will be freeways or arterial roads under its responsibility and which will be municipal

roads under the responsibility of local government. That is a power that VicRoads has not had previously to that extent. It is important to look at this and say, 'That's okay, providing the guidelines are okay'. When you look at the subclauses, clearly clause 14 will leave VicRoads in an incredibly powerful position to determine its own future. Clause 14(1) provides that:

> VicRoads may by notice published in the Government Gazette —
>
> …
>
> (b) declare a road to be a non-arterial State road or a municipal road …

For the purpose of VicRoads determining under subclause (1)(a) whether it declares a road to be a freeway or an arterial road, it must consider a few issues under clause 14(3). They are that the road:

> (a) provides a principal route for the movement of people and goods —
>
> (i) between major regions of the State; or
>
> (ii) between major centres of population or between major metropolitan activity centres —

none of which we would have any argument with at all —

> (iii) to major transport terminals —

again, a requirement of all industry, particularly country industry.

Then it goes on to provide that it must consider whether the road provides a major route 'across or around cities', which would indicate that there is a preference for VicRoads to have responsibility for roads in and around cities, as against in and around country areas that are not necessarily going to be vital for a municipality but will be vital for the free flow of traffic through country Victoria. It goes further to provide that it must consider whether the road:

> (b) is a major route for public transport services; or
>
> (c) has State-wide economic or tourism significance …

As I am a neighbour of the member for Gippsland East, we have discussed this issue. I agree with his sentiment, that this would indicate that unless a road has statewide economic or tourism significance it should not necessarily be included as a road that comes under the jurisdiction of VicRoads. When you think about that, there are probably only three roads that spring to mind that have statewide economic or tourism significance. One is the road to Phillip Island for tourists to enjoy the trip down to see the penguins. Another is the Great Ocean Road, which is extraordinarily significant for Victoria. The third is the Great Alpine Road, running from Wangaratta across Mount Hotham down to Bruthen and then on to Bairnsdale, through centres such as Omeo. It is a wonderful tourist road. I cannot think of any other roads that meet the significance of this clause, which requires that the road must have statewide economic or tourism significance.

There are lots of roads that are vital as tourism roads in regional Victoria. There are lots of roads that have real economic value in rural and country Victoria that might not meet these criteria. After discussions with the member for Gippsland East, I concur with his thoughts that we should oppose the bill because this gives an out to VicRoads to say, 'This road need not necessarily be included in our responsibilities'. If 'State-wide' was replaced with 'regional' — in other words, if we were considering 'regional economic or tourism significance' — then very many of the roads that are important to us in regional and country Victoria would in fact be maintained as a responsibility of VicRoads.

I do not read anything sinister into this at all. I think it is virtually an oversight. I think VicRoads has conducted its work with rigour and responsibility and, having travelled widely throughout Australia, I recognise that our roads through country Victoria are an example for all states across Australia.

I do not think this is an issue where VicRoads is contriving to get out of its responsibilities, but I do not think we can afford to take the risk and therefore I think this provision in the bill, although not a major provision — especially for country Victorians and for all Victorians who want to maintain access to tourism points throughout Victoria — should be changed. It should talk about regional economic and tourism significance and not statewide significance. As I said before, I can only count three major roads that comply with that criteria.

It appears to me that clause 14 gives a power to VicRoads which might not be intentional but which may well be used at a future time, particularly by a government that does not understand the value of country tourism and of these roads to country Victorians. It might write them off and say this will be a local government responsibility. Those of us who come from regional Victoria know that local government cannot afford to accept greater responsibility for roads that currently they do not have. I refer to two examples of that. The first is the road from Benambra to Omeo. It clearly does not have any benefit to the municipalities

on either side of Sassafras Gap, but it is a vital link between the areas north of the divide in the Upper Murray and areas of East Gippsland. The member for Gippsland East and I have pushed the tourism road that connects Falls Creek with the length between Tallangatta, Mitta and Omeo. It has absolutely no benefit to the municipalities on either side, and they cannot afford to do the work that is required to lift the road to the standard required. Clearly this is another road that is indicative of the problem, because if the legislation went through as written it would be detrimental to the future of that area.

The other two areas I touch on briefly are, firstly, the issue of nonfeasance that was well covered by the member for Shepparton. Correspondence was received from 16 councils by the shadow Minister for Local Government saying they cannot accept the changes in the proposed legislation that take away the nonfeasance protection. They want to be covered for that. The third issue is the development contribution, which was so well covered by my friend and colleague — —

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

Mr INGRAM (Gippsland East) — I have done some work on the Road Management Bill, and I have looked at some of its implications. It dates back initially to the abolition of the nonfeasance defence under the case of *Brodie v. Singleton Shire Council*. In the last Parliament we temporarily reinstated the nonfeasance defence in the Transport (Highway Rule) Act 2002. That provision runs through to the start of next year. When the government introduced and debated the highway rule bill it indicated that it proposed to fix the issue by introducing a road management system — a structure to allow road authorities to set up and implement road management plans — and that that would be a defence.

The biggest impact is on councils, because they have the largest road networks. Rural councils have been struggling under financial constraints to adequately manage their roads. The road networks of shires such as East Gippsland and Wellington are in dire straits. Shires are struggling to maintain their roads. The councils I have spoken to, while welcoming the principle behind it and supporting the attempt to reintroduce a defence, are still very concerned that even with the passing of this bill that they will be exposed to litigation which could have a devastating impact on their financial affairs.

The member for Benambra referred to the road definitions, which is an interesting part of the bill. It not only introduces road management plans but introduces a range of other actions. One of the issues that got on my goat was clause 14, where VicRoads has the power to make declarations with respect to roads. The definition of tourism roads is particularly important, and I thank Nicole Rees for the briefing and an explanation. Apparently it stems from a statewide review of road classifications in the 1980s which determined the principles to be adopted in road classifications and was prepared by a number of different organisations, including the former Road Traffic Authority and Road Construction Authority and a number of local government organisations. It set up a number of different proposed classifications. The problem is that in my view the bill is in direct conflict with those agreed classifications. A lot of rural councils and people in rural areas would be saying, 'Hang on a second, when we try to align the classifications with the bill they do not match up, particularly the definition of tourism roads.

In the agreement between the organisations it is stated that roads that will be state-government funded will be roads that:

> … provide access to areas of high tourist or recreational significance.

That has been translated into the bill as roads having statewide economic or tourism significance. There is no comparison. The statewide provision will rule out roads like Cape Conran tourist road, which does not have statewide significance but is an extremely important regional road. I would like the minister and VicRoads to look at the agreement with local government, which was supported by the various organisations, because I do not think the interpretation in the bill is accurate. That is the reason I will move amendments during the consideration-in-detail stage, and I hope the house will support my amendments. I will also propose a reasoned amendment. Therefore I move:

> That all the words after 'That' be omitted with the view of inserting in place thereof the words —
>
> 'this house refuses to read this bill a second time until there is further consultation with regional, rural and outer metropolitan councils concerning —
>
> (1) the impact of the abolition of the concept of nonfeasance;
>
> (2) whether the $1000 threshold claim level sufficiently takes into account the high cost to councils of repairing vehicles; and
>
> (3) the cost implications for councils in implementing the provisions of the bill and in particular the cost of establishing and maintaining the proposed road management structure'.

I highlight the definitions provision, which I do not think is right. I also indicate that I would like to see the continuation of the nonfeasance defence, as would most councils in my area.

In the last bill — and I have had a look back through the *Hansard* of 2002 — I moved an amendment at that stage to extend it through to the start of January 2005 to give councils a bit of time after the introduction of the Road Management Bill to implement their road management plans. I think it is important to recognise that if we had not done that most councils would only have had a couple of months after the proclamation of this bill to implement their road management plans, which they are having an enormous amount of trouble doing.

After speaking with some councils, I think it is quite clear, looking around my area particularly, that we have extensive gravel roads. The comment has been made that some gravel roads in some rural councils are maintained at about 50 per cent of what is currently required to maintain a reasonable surface on them. Basically they are deteriorating. How does a large rural council put that into a road management plan, because they have to establish a standard? Do they say, 'We are going to maintain a standard that is below all expectations of a reasonable surface'? Is that an acceptable standard? Will the courts, when they look at that, say, 'This is a reasonably expected standard. This is what the council can afford to maintain it at'? I think ultimately the challenge will be for the courts to make a decision on this. They will look at what is an acceptable, reasonable standard of a gravel road.

Councils like East Gippsland and Wellington and a number of others around the state which are really struggling under road funding will not be able to maintain those roads at an acceptable level. Local communities will complain about that. How do they do the negotiating? 'We are not going to maintain your road. We are going to grade it once or twice a year'.

We have communities that complain about that level of maintenance already, but councils cannot afford to do it. Why cannot councils afford to do it? I think it is the continual cost shifting from state and federal governments back onto local government in road funding. We hear a lot of complaining in this place about the Commonwealth Grants Commission and how inequitable it is to Victoria. Let us look at how inequitable it is to regional Victoria when 30 per cent of all the money that comes from the state grants commission goes directly into metropolitan councils that do not have a right to it if we base that funding on needs. There are six councils in Victoria receiving 30 per cent of the money that cannot justify the road funds going to those areas, because they do not have the roads. When you look at these definitions, you have a definition of a VicRoads road which is across or around cities. Would that apply to a country area? No.

Nearly all country roads in country shires are funded by local government, but in the city the state picks up most of that road funding. That is the real problem because we have continually cost shifted. We continually fund roads around metropolitan areas. Every time there is an election, there is another freeway declared at a state or federal level when that freeway ultimately benefits the local residents in that area. Who pays? State and federal governments. It is a road of national importance (RONI). You try and get a RONI in a country area. No way, because there are only one or two seats out there. Politics has corrupted the road funding networks so that rural councils and rural people miss out on adequate road funding. If the grants commission is supposed to work, it needs to — —

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

Mr WYNNE (Richmond) — I rise to support the Road Management Bill and in doing so want to acknowledge the excellent amount of consultation that has occurred across a whole range of key interest groups that have an interest in the road network, but most specifically local government. I will concentrate most of my contribution in this debate on local government from an inner city perspective obviously. From the perspective that some of my colleagues bring from country Victoria, obviously they face a different set of issues to what I have to confront in the inner city, but nonetheless the issues for both local government and trader groups in seats like mine are real. There were concerns that were expressed about the Road Management Bill which, through an excellent and open consultation process, have been put to rest.

This bill provides for a more efficient and safer Victorian road network and, as I indicated, is the result of very extensive consultation. The new laws will replace the old highway rule which the High Court found was unfair and outdated. The existing laws allow road authorities to reject claims based on lack of maintenance even when they were aware of a defect. Authorities will now be fully accountable for claims based on lack of maintenance and repair. If they do not maintain the road to a certain standard, they will obviously be called to account for that.

The bill, as has been indicated by other speakers, establishes a new statutory framework for the

management of Victoria's state and local road networks based on what we regard as quite important key principles: a clear allocation of road asset ownership. As we know, even within the very built-up areas such as my own there are debates about what is a local road and what is a municipal road. You often see this related to some of the old subdivisions within inner Melbourne, particularly in some of the early subdivisions around Richmond and Collingwood, where with some of those old battleaxe blocks or subdivisions it was very unclear as to who owned the road or who was responsible for the maintenance of that road. They will be brought to resolution.

It also establishes process and accountability for policy decisions and performance standards, the provision of operational powers to achieve targets in those performance standards, and clarification, most importantly, as has been indicated by the member for Gippsland East, of civil liability laws for the management of the roads. I want to deal specifically, though, with concerns that have been expressed at a local government level in relation to clearways on declared arterial roads. This is a particular issue for — —

Mr Baillieu interjected.

The ACTING SPEAKER (Mr Kotsiras) — Order! I can appreciate the member for Hawthorn trying to repay the member for Richmond, but I ask him to stop interjecting.

Mr WYNNE — Thank you for your assistance, Acting Speaker — not that I need it; not from the member for Hawthorn anyway!

The ACTING SPEAKER (Mr Kotsiras) — Order! The member for Richmond, on the bill.

Mr WYNNE — Thank you, Acting Speaker.

Mr Baillieu interjected.

Mr WYNNE — And I enjoy that divide, Acting Speaker, let me tell you.

The clearways on declared arterial roads were an issue for inner city local governments in particular; they were concerned about by what process the designation of clearways would be resolved. The concern was expressed, certainly from my own council, about how it would play a meaningful role in a declaration of clearways on arterial roads. Similarly, a number of my trader groups, particularly along Swan Street, Bridge Road, Brunswick Street, Smith Street and Victoria Parade, were obviously concerned because some of those roads operate now as clearways. They wanted to understand what the rules were about, how they were going to be declared and what the potential impact would be, if any, upon their current trading operations, which is not an unreasonable concern to express.

If you think about a road which is currently designated an arterial road, such as Victoria Street in Richmond, and you understand how a road like that operates, you realise that the system works extremely well. It is a clearway coming into the city between 7.30 a.m. and 9.15 a.m., and obviously the shops on that side of the road do not operate at that hour of the day; but once the clearway is ended the shops start to open, so basically they open a little bit later in the morning, and obviously it is reversed in the afternoon as traffic is going out of the city. But clearly people were concerned to understand what that process would be.

I sought the support of my colleague the member for Brunswick, and indeed the minister, to get advice from VicRoads. We had an excellent meeting with all of the trader groups in the municipality of Yarra to talk through these issues with the chief executive officer of VicRoads, who willingly gave of his time to come out and talk to the traders, to understand what their concerns were about the designation of clearways and to take on board a number of concerns they had in relation to how these designations of clearways would be advertised and implemented, and what were the potential conflict resolution procedures.

Section 28 of the act clearly establishes that there has to be a consultation process by which a code is developed. VicRoads sent a draft of this ministerial code to all local councils for further comment. It went out in November last year, and much discussion took place around local government. This draft final code has now been sent out to local councils for their consideration, with submissions closing on 7 May this year, after which it will be finalised by the minister and of course be appended to this legislation as a code of conduct for the designation of clearways.

I have to say that in my discussions with the chief executive officer of VicRoads he took on board a number of concerns expressed by local traders, including, for instance, that there be a 60-day period within which affected parties would have the opportunity to be advised about any proposed changes in the declaration of clearways. That is quite important to traders, as is the proposal that not only traders along the street but also those in the cross streets to a proposed arterial clearway be consulted as part of the process. He also confirmed that the principles of the code would be clearly articulated.

People were especially concerned about the conflict resolution process — for example, what happens if there is a conflict between a local council and VicRoads about the designation of a road for clearway purposes? The advice that is out for consultation at the moment indicates that before a clearway is implemented or an existing clearway's conditions are changed VicRoads has to advise the Minister for Transport of the decision and recommend that he seek comment on the proposal from the Minister for Local Government before he endorses or modifies the VicRoads decision.

So the opportunity now exists under this proposal for a local council which is potentially in conflict with the Minister for Transport to have an advocate to operate on its behalf and for the local government minister to enter into consultation and advise the Minister for Transport of the view of the local council as a third-party advocate. The process of appealing a decision by VicRoads is also detailed in section 7(2) of this code. It means that the municipal council may seek to resolve this matter in accordance with the dispute-resolution mechanism articulated in section 125 of the act.

It is a good bill and is widely supported. The government has listened and there has been extensive consultation, and from an inner city perspective local traders support this bill.

Mr WALSH (Swan Hill) — Having listened to the contribution from the honourable member for Richmond, it amazes me that a government that is supposedly green would cut down so many trees to produce this much paper to sort out the issue of clearways in his electorate.

The Nationals oppose the bill, and I will plead guilty to being one of the members of the National Party who voted in our party room to oppose it.

Ms Allan — Who wanted it?

Mr WALSH — No-one wanted it after we had a vigorous debate on the issue. To my mind any legislation that is brought into this house should deliver real outcomes for the people of Victoria. I cannot see how this bill delivers real outcomes for rural councils, which are the ones that I represent. In the comments I make in contributing to the debate I will start by apologising to those very worthy people who probably put a hell of a lot of work into researching and producing the bill, because I do not think it delivers the outcomes I have heard claimed in the arguments from the other side of the house.

When we do something in this house it should be about delivering outcomes for the people of Victoria, and it should be simple and enforceable; but from my reading of this bill all we will be doing is producing a lot of paper. Local councils will have to employ additional people to produce this paper, but it will not actually produce one safer road or one better outcome for the people who drive on the roads of Victoria, particularly country roads.

The councils I have talked to about this bill believe they will have to employ a minimum of two additional people to do the paperwork that is involved in the bill. We have had discussion about how they will develop a road hierarchy. They will have to set in place documentation detailing how often they will inspect those roads in any given period of time, whether it be every 3, 6 or 12 months, and they will have to make a commitment to have standards for the roads. They may have to grade some roads every 6 months or, if we are talking about gravel roads, every 12 months or whatever, but it will not ensure that we have better roads. It is principally about documentation so that people can say they will actually do something.

We have been told that it will not matter if there are different gradings for a road in one council compared to another. I am no lawyer, but I wonder if having a grade 2 road in the Shire of Yarriambiack will actually mean one thing and describing it as a grade 3 road in the Shire of Buloke will mean another thing. When we get to the cases that will test the legality of this legislation we will find that if we do not have commonality in the grading of our roads across country Victoria, councils will be at extreme risk of finding themselves in a litigious situation.

We all know about the high cost of maintaining the road infrastructure, particularly in country Victoria. We have thousands and thousands of miles of gravel roads out there, and we will find that councillors will adopt the minimalist approach in how they actually rate their roads. You will find that to ensure they cover themselves from a legal point of view they will rate a road at a lower standard than they would like to rate it. For example, they may decide to rate a grade 2 road as a grade 3 road to ensure that they do not get into the trouble they would if they did not have the money to maintain it at the higher grade; and where they would normally say they would inspect a road every three months, they will say they will inspect it every six months in case they do not have the time to get to inspect it more frequently. Additionally, where they would have graded it once a year the documentation will say once every two years, because they know that if they do not come back and do it as documented in

their road hierarchy they will be liable if there is an accident. So we will find in some ways that this will downgrade the maintenance of the roads and the road hierarchy in our shires.

We have all read a lot in the newspapers about the drought we have had in country Victoria. We all know that it is nigh on impossible for shires to maintain and grade gravel roads during a drought. You actually have to cart water, and for many of the shires in my electorate the cost of carting water over the distances needed to grade those roads is prohibitive. The amount of water needed to grade a gravel road in a drought costs an absolute fortune, particularly if it has to be carted a distance of 20, 30 or 40 kilometres.

So you will find that when they document their road hierarchy and the way they are going to do things they will actually dumb it down to make sure they cover themselves for those situations where they cannot grade those roads. Many members from the other side of the house have talked about the fact that this legislation will ensure that shires maintain their roads better. They say this will ensure that shires do greater — —

Business interrupted pursuant to sessional orders.

The ACTING SPEAKER (Mr Nardella) — Order! Under sessional orders the time for the adjournment of the house has arrived.

ADJOURNMENT

Rail: Warrnambool platform

Dr NAPTHINE (South-West Coast) — The issue I raise is for the Minister for Transport. The action I seek is for the minister to get off his backside and keep his election promise to build a rail platform for Deakin University at Warrnambool. I refer to an article published in the *Warrnambool Standard* of 27 November 2002 — and some members may notice that that was three days before the 2002 state election. It states:

> A train platform will be built at Warrnambool's Deakin University campus if the Bracks government is re-elected, transport minister Peter Batchelor promised yesterday.

Further on the article states:

> He estimated that 100 students would use the stop throughout the week, while Labor candidate for South-West Coast Roy Reekie said it would … benefit residents in Gillin Park, East Warrnambool and Allansford.

A couple of paragraphs further on the article says:

> Mr Batchelor said … he felt the station could be up and running within 12 months.

That is what the minister said in November 2002 — it is now 490 days later and not one sod has been turned, not one contract has been let, and no action has been taken. This is another Labor lie, this is another broken promise by Labor to country Victoria. This was actually a good policy that was supported by West Coast Railway. In fact the same article goes on to say:

> West Coast Railway corporate general manager Don Gibson said the new stop would 'shore up the existing market …. and make it easier for students to use trains rather than cars'.

The proposal is supported by Deakin University and by the Deakin University Student Association. It will provide students with safer and easier access to train services and save them travelling by taxi to and from Warrnambool station, which is some kilometres away. It is also supported by the growing populations of Gillin Park, East Warrnambool and Allansford.

What we have is a minister who made this promise in the dying days of the 2002 election, together with his Labor candidate Roy Reekie. He said that Roy Reekie would make it happen; but Roy Reekie has cleared off to Scotland. He has left the country! That is how bad he went. The Minister for Transport has not got the decency to adhere to his promise. He promised that a platform would be built at Deakin University and that he would have it up and running by November 2003. Months and months later no work has been done, no contract has been let, there has been no action at all.

I call on the Minister for Transport to keep his promise to Warrnambool and to Deakin University. I was there the other day and the students were asking, 'Where is the platform?'. They were saying, 'Peter Batchelor lied to us', as the Labor Party has lied to the people of South-West Coast.

Ethnic communities: event funding

Mr LIM (Clayton) — The matter I raise is for the attention of the Minister assisting the Premier on Multicultural Affairs. I ask that the minister financially support the hundreds of festivals and events that will be held across Victoria by ethnic community groups between June and December of this year.

Members of this house will probably be fully aware that the Victorian Multicultural Commission is responsible for administering the community grants program, which provides grants under nine different categories. Festival and events funding provides funds to assist with the organisation of events and festivals, which are

important not just for specific ethnic communities, but also for the broader Victorian community.

I cannot overstate the value of events and festivals in the multicultural community in Victoria. By the same token I cannot overstate the value of small grants to existing and newly emerging cultures. These small communities are struggling to organise their events, but with the assistance of the small grants they receive from the Victorian Multicultural Commission they can organise and share their festivities with the broader community. I refer particularly to the communities that come from the Horn of Africa and other parts of Africa to settle in Victoria. Without assistance from the Victorian Multicultural Commission their festival could never be shared with the wider community.

Another example which has now become a pattern in the south-east of Melbourne is the coming together of many well-established communities to organise a festival which is shared across the boundaries of South-East Asia. I am referring to the Songkran festival, the new year festival involving the communities of Sri Lanka, Cambodia, Thailand, Burma, Laos and India. In fact this coming Sunday there will be a big celebration at the Springvale town hall. A festival such as this cannot come into being without support and funding from the Victorian Multicultural Commission. I urge the minister to really look at increasing the funding for these festivals and to continue to support them so that that they can be shared with the wider community.

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

Heathcote-Rochester–Bendigo-Murchison roads: black spot funding

Mr MAUGHAN (Rodney) — I wish to raise a matter for the attention of the Minister for Transport. It relates to black spot funding for a notorious intersection just to the east of Heathcote, where the Heathcote-Rochester Road intersects with the Bendigo-Murchison Road, near Colbinabbin. It is an intersection that I know well, having travelled through it for more than 40 years, and it is one that I always approach with a great deal of caution.

The Bendigo-Murchison Road is a state highway and the north-south road, the Heathcote-Rochester Road, is the responsibility of the Shire of Campaspe. There is very poor visibility for northbound and eastbound traffic because the view is obscured by a hill.

Over the years there have been a number of accidents and many near misses. It has claimed three lives since 1996, and unfortunately on Sunday morning two people were tragically killed and one person was seriously injured at that intersection, and another person was admitted to hospital with injuries. I have a number of press cuttings that I will give to the minister to provide him with the details of that accident.

It is a very dangerous intersection. The visibility is poor for both northbound and eastbound traffic, and the warning signs are inadequate. The amount of traffic on that road has increased — firstly, because of the state highway that goes from Bendigo to Rushworth and through to Murchison, and secondly, because of the tremendous viticulture developments on the Mount Camel Range. It is a dangerous intersection for locals, and it is a death trap for people who do not know the intersection and come across it without adequate warning.

I therefore seek from the minister an undertaking that he will have VicRoads inspect the intersection. I have already written to both VicRoads and the Shire of Campaspe, but I would like the minister to ensure that VicRoads inspects that intersection and has a look at its accident record with a view to providing black spot funding to enable the necessary roadworks to be carried out as a matter of urgency. It is important that we make this intersection much safer and hopefully eliminate any further deaths and injury at this very dangerous and notorious intersection.

Sri Lanka: flood relief fund

Mr PERERA (Cranbourne) — Last year's heavy rains and floods in Sri Lanka devastated more than 500 000 people and involved the loss of 375 lives. Some 150 schools were severely damaged, and the education of over 166 000 students has been affected badly. The Sri Lankan community in Victoria has assisted the flood victims in a number of different ways in the past 10 months. I ask the Minister assisting the Premier on Multicultural Affairs to take steps to support the migrant people of the Sri Lankan community of Victoria in their efforts to help their country of origin.

The Sri Lanka Disaster Relief Fund was formed in Victoria about six months ago to help flood victims in Sri Lanka. The organisation identified two badly damaged schools situated in less affluent parts of the Ratnapura district in Sri Lanka for rehabilitation. The Sri Lanka Disaster Relief Fund has obtained permission from the Sri Lankan authorities to rename one school as the Victoria Sri Lanka Friendship School and the other one as the Melbourne Sri Lanka Friendship School.

The Victorian government's commitment to support such projects is a step towards not only building a good relationship between Victoria and Sri Lanka but also building a closer relationship between the Sri Lankan-born Victorian community and the state government. This is in line with the Victorian government's push to promote multiculturalism in Victoria. About 50 per cent of Sri Lankan-born Australians have chosen Victoria as their new and adopted home. Like all other migrant communities living in Victoria, when a disaster takes place in their country of birth the Sri Lankan community in Victoria is concerned about the people in their country of origin. Therefore it is important to recognise the impact that disasters in countries of origin can have on communities in Victoria.

The Sri Lanka Disaster Relief Fund organised a dinner dance on 20 March as the major fundraiser for the project, and the Minister assisting the Premier on Multicultural Affairs attended the function as the guest of honour representing the Premier. A number of members of Parliament from both sides of this house graced the occasion with their presence, and some of them contributed by buying raffle tickets and giving donations. I would like to thank the minister and all those MPs for their generosity. I also ask that the minister pass on to the Premier my appreciation for his message to the community on that night.

Victorian Civil and Administrative Tribunal: planning decision

Mr BAILLIEU (Hawthorn) — I raise a matter for the Attorney-General concerning the probity and operations of the Victorian Civil and Administrative Tribunal, the planning minister and representatives of the Department of Sustainability and Environment and the Shire of Melton and the application of new core planning provisions in green wedge land. I specifically ask the Attorney-General to investigate the processes associated with the decision of VCAT to rule out an application for a small lot subdivision of lot 3 Murray Road, Rockbank, and further to award costs against the applicant, Mr Eric Koutroubsas, who owns the property in question.

In December 2002 Mr Koutroubsas applied to the Shire of Melton for a subdivision. In July 2003 the shire approved the application, along with nine similar applications, and in August 2003 the shire approved more than 20 similar subdivisions. In August 2003 a third party via three different vehicles challenged those 31 approvals at VCAT. On 5 September 2003 at a VCAT directions hearing VCAT president, Justice Morris, directed that all cases should be heard on 15 October 2003. Curiously, the minister herself intervened and, with notice only to the objector, demanded prior consultation with herself prior to a VCAT decision. On 15 October 2003 a second VCAT member heard all the applications and upheld the shire decision in 27 of the 31 applications, also finding the third party to be vexatious, but delayed consideration of the other four cases, including Mr Koutroubsas's case, despite a protest made by him.

On 24 November new core planning provisions were introduced which changed the subdivision provisions, and on 8 December a VCAT member threw out Mr Koutroubsas's application, not on its merits but on the basis of correspondence from the shire's own lawyer claiming that VCAT could no longer consider the case. This was a staggering outcome given that the applications that post-dated Mr Koutroubsas's application had been approved and the third party representative was found to be vexatious.

Worse still, on 16 March VCAT made a decision to award costs against Mr Koutroubsas for a decision that was apparently made on 19 December 2003. How can an applicant whose proposal was approved by council and only overturned by delay and a change in the law be hit with costs? It is inequitable, it stinks and it should be investigated. To make matters worse, the shire lawyer stood before VCAT on 15 December 2003 and argued for another subdivision in the same area, and the application was approved. It is an extraordinary outcome. It would seem that a broiler farm in the Shire of Melton has been given preference in very dubious circumstances to a small lot subdivision which would have involved a dwelling.

On Luck Chinese nursing home

Mr STENSHOLT (Burwood) — The matter I raise is for the Minister assisting the Premier on Multicultural Affairs, and the action I wish him to take is to render every assistance to ethnic groups that wish to establish nursing homes.

On 15 March I attended the launch of the fundraising campaign for the development of the On Luck Chinese nursing home in Donvale. Many state and federal parliamentarians were there, including two state ministers, two federal ministers and numerous state members. However, the Deputy Leader of the Liberal Party, who is the local MP, was not present. That is not surprising, as he has opposed the Chinese community being permitted to build this much-needed home in Tindals Road.

I find his opposition surprising, coming from one who claims to be a supporter of multiculturalism. There are 14 000 Chinese Victorians aged over 45 and more than 5000 aged 65 or more, and I am proud to be a strong supporter of this development — unlike the member for Warrandyte. Yes, there are quite a few Chinese in my electorate, as indeed there are in many electorates in the area.

I see a split in the Liberal Party on this issue. The shadow Treasurer and member for Box Hill clearly does not share the shamed view of his deputy leader — maybe he wants his job — as he was at the dinner. Nor is the view of the Deputy Leader of the Liberal Party shared by his federal colleagues. Senator Kay Patterson said at the fundraiser, 'The Australian government is more than happy to be supportive' — but not the member for Warrandyte. She said, 'Anything is possible, anything is achievable' — but not by the member for Warrandyte. She said, 'I look forward to the opening of the On Luck nursing home', but I assume the member for Warrandyte does not look forward to it.

Dr Napthine — On a point of order, Acting Speaker, this is clearly an abuse of the adjournment debate. Under standing orders — and even under the new standing orders — the adjournment debate is an opportunity for members to raise issues requiring specific action within the jurisdiction of the minister responsible. This request does not meet those guidelines. The issue with regard to funding for nursing homes is a federal issue, and the member is clearly — —

Mr Pandazopoulos — It is a planning issue.

Dr Napthine — If it is a planning issue, why is he raising it with the Minister assisting the Premier on Multicultural Affairs? Clearly he is using a device to try to perpetrate some sort of political gain. It is a gross abuse of the process of the adjournment debate, Acting Speaker, and I ask you to sit him down.

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

Mr STENSHOLT — I congratulate president Fred Chuah of the Chinese Community Social Services Centre and chief executive officer Kim Chu — —

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

Rail: Cranbourne–Leongatha track line

Mr SMITH (Bass) — I have a very important request for the Minister for Transport. I ask the minister to take some action to eradicate the weed problems on the Cranbourne to Leongatha railway line. We are aware that the minister, in trying to prop up the failed so-called Independent Susan Davies before the elections in 1999 and 2002, said he would restore the passenger rail service to Leongatha. This promise along with many others has not transpired. The minister knew at the time that his own Department of Infrastructure said it was not financially viable to put the train back on, even if a big subsidy was paid by the government, yet he persisted with misleading the people in the area.

The minister may have stopped work, but unfortunately the weeds are still growing. The blackberries, the ragwort, the gorse, the thistles — you name them — are still growing, and this is causing problems because they are now growing into adjoining properties.

I want the minister to do something about this rail trail of disgrace. If the minister is not going to do something to put the train back on, then he should look at cleaning the weeds up from this rail track, or give the land to someone who cares — the local rail trail committee, which has done a magnificent job in the Gippsland area with some of the rail trails down there; the adjoining or abutting landowners, being the farmers who are now very much affected by the weeds; or the local councils, which might be able to make some decent use out of this land. I ask the minister to do something instead of just sitting on his hands.

Some local councillors are now questioning if this railway line is worthwhile putting back on. The minister's department knows that it is not worth while putting it back on. I know that it is not worth while putting it back on. The minister himself knows full well that it is not worth putting back it on. Susan Davies — or is it Sue Davies now? — knew it was not on. I ask the minister to do something about it, because he is driving the farmers down there, and the rest of us, mad.

Irabina Childhood Autism Services: funding

Ms MARSHALL (Forest Hill) — I rise tonight to bring to the attention of the Minister for Community Services the issue of intervention for children with special needs. The action I seek from the minister is an undertaking to ensure that children with autism attending Irabina Childhood Autism Services have access to high-quality early intervention services.

Irabina is an organisation with a long history in providing specialist support to young children with autism. I am very aware that the Bracks government is making a major commitment to providing better services to young children right across Victoria. I am

also aware that early intervention services are critically important for children with disabilities and developmental delays, including those with autism.

But I am also very aware of the demands on a service such as Irabina. Families in my electorate have contacted me and have put forward some very compelling arguments about the importance of their children with autism receiving quality services during these crucial early years. Families are worried that the service they are receiving at Irabina is being reduced and that this will mean their children are missing out on vital opportunities — opportunities that simply will not come their way again. Every parent wants the best for their child. When the child has autism it can often be very difficult for parents to know exactly just what that is going to mean and what possibilities and hopes there are for them to still hold on to. I believe the one critical link between receiving that diagnosis of autism and being able to continue to hold on to the hopes for a full and happy life in the community is the provision of effective, high-quality early intervention services.

Irabina is an agency that provides these services — not only to families in my electorate but to many other families as well. I would ask the minister to act to ensure that those families receive the support and reassurance they are seeking, and that their children receive the early intervention services that they desperately need.

Schools: head lice

Mr DELAHUNTY (Lowan) — I raise a matter for the attention of the Minister for Health. It could be put to the Minister for Education Services, but it is really under the Minister for Health's portfolio. It relates to head lice in schools and preschools. I have been contacted by parents, schools, kindergartens and even Department of Human Services caseworkers as well as school principals requesting a change to the head lice inspection in schools. I would like the minister to take action and review the regulations regarding the inspection of students and the management of head lice in schools.

I raised this matter this time last year. I quoted from an article that states:

> Now that the kids are back into their school routine, many parents may find they are fighting an insect that threatens to take over the household — lice.
>
> The blood-sucking intruders can create big problems.
>
> The wingless insects that live, breed and feed off the human scalp crawl from head to head and are most commonly found among schoolchildren and their families.

It is a very important issue. I am sure that members on all sides of this house have been contacted by concerned parents. I highlight for the information of many who would not realise it that head lice are not an agent for infectious disease, but they are included on schedule 6 of the health infectious disease regulations of 2001. Back in 1990 there were regulations that enabled a medical officer, a health surveyor or a registered general nurse who was employed by the council to inspect any child in the school or a children's service centre for head lice without parental consent. This power is no longer available under new regulations.

A letter I received on 12 March from Michelle Brooks of Wombelano says:

> I am writing to you with concerned frustration in regard to the current epidemic of head lice in our local school …
>
> I have spoken to our principal and many parents about this problem and they are as angry and fed up as I am.
>
> … I am sick and tired of having to treat the children's hair; they are sick of it, and short of shaving their hair off —

some might have done that —

> I don't know what to do about this problem.
>
> … lotions are prohibitive —

and very costly.

> My husband and I are almost to the point of removing our children from school until the problem is solved.

It goes on:

> Mr Delahunty, could you please bring this problem to the attention of the state government and please —

and I highlight it again —

> please don't let them pass this problem back to the parents.

Again I ask the minister to take action, because this is creating many problems for families, and in particular for the mental wellbeing and happiness of the children attending many of our country schools. Please give these parents some reasonable expectation of their children receiving a fair education.

Bali bombings: memorial

Mr CRUTCHFIELD (South Barwon) — My issue is for the attention of the Premier, and the action I seek is for him to facilitate the approval and construction of a permanent Bali memorial in Melbourne.

From the outset I want to make two points. Firstly, it is not intended to undermine the significance of the

commemorative garden in the parliamentary precinct. The Speaker has explained to me, and to the member for Mitcham, the inability of Parliament to facilitate a permanent memorial in the parliamentary precinct. It is not for me to disagree with the Speaker's ruling in that case.

Secondly, this is not my idea — it is not my idea at all. It is an idea that the Thornburgh family raised with the member for Bellarine and me late last year. The Thornburghs, for those of you who are not aware — Ray, Nola, Kellie, Jodie and Dean — lost their pregnant daughter and sibling, Stacey, as well as their son-in-law and brother-in-law, Justin, and his brother Aaron. They were from Geelong and were 3 of the 21 Victorians who died — 21 of the 88 Australians who died were Victorians**.**

I believe it is a worthy idea, and it is an easy one to commit to. Ray has confirmed to me that he spoke to many of the families when he was in Canberra and at subsequent occasions. He believes that the vast majority of families would support the construction of a permanent memorial that had on it the names of their loved ones, which was designed sensitively and which was displayed in a place that allowed all people to reflect, contemplate and question. As Ray reminded me, Canberra has a national memorial; New South Wales has one at Coogee Beach in Sydney; and Western Australia has one at Kings Park in Perth.

I was lucky enough to go over to Perth late last year to inspect the memorial at Kings Park. It looks out over the narrows of the Swan River near the city. It is a fantastic and very striking memorial — a stunning piece of architecture. I congratulate the Western Australian government.

I met with the Western Australian education minister, Allan Carpenter, and spoke about the process they went through. His message was that it is not a simple process at all, and that critical to its success was a strong and lengthy engagement with the families. He raised the matter of sensitivities. Not all of the families initially agreed, but they did in the end. What should the design be? Who will agree with it? Who should decide on the design? Where should it go? Personally I think it should go into the Royal Botanic Gardens; it would be an ideal place to reflect. The question is who should decide about that.

I again ask the Premier to facilitate a memorial and start the process. We need something somewhere forever.

Responses

Ms GARBUTT (Minister for Community Services) — The member for Forest Hill raised with me the issue of services for children with autism. I thank her for raising the issue. This government has a commitment to providing accessible, high-quality and affordable services for all young children and their families during their early years. We recognise those early years as absolutely vital. Early intervention services are of course a major component of that and are particularly important for children with developmental delay or disability.

In the last budget we provided an extra $6 million over four years to strengthen this sector, and that will allow over 300 more children to be accepted into these services. I have also released a vision for the early intervention sector developed by that sector with all the stakeholders involved and informed by the very best international research. It is true to say that in the past we focused on centre-based therapy, which often took a large amount of the child's time in their routine and was often very intensive. However, the modern research is telling us that that is not the best way to approach this; in fact it can do more harm than good because it takes the child out of their natural environment. It takes them away from other children; it segregates them in fact. It takes away the opportunities for them to learn from other children in natural settings for children — child-care centres or preschools, playgrounds and so on.

So what the research tells us is that the very best early intervention services are about supporting children in their normal, natural environments — in their preschools, child-care centres, maternal and child health services or wherever they may be. Early intervention services, then, should work with families, child-care workers and preschool teachers so they are able to develop the best responses so they can better assist these children in their community. It really becomes an exercise in community inclusion, and that has a lasting impact both on the community and on the child.

For those reasons, following that research and the development of the vision statement, the government has taken a number of steps to strengthen early intervention, particularly at Irabina childhood services. Firstly, we have changed the funding model — we have added funds — and we have developed a more outward-looking approach that picks up on the research and develops better programs. The measure is no longer the number of hours a child spends in therapy at a centre; the best measure is how effectively the service is able to help that child and their family in their natural environments.

Secondly, we have invested over $400 000 in a strategy to skill up early intervention services around the state, and to skill up child-care centres and so on, by letting a contract specifically for that training, and I will announce that shortly. Thirdly, in recognition of the extra demands at Irabina I have recently organised for it to receive an extra $50 000 so that children currently at that centre will not have their service changed in any way and to allow that agency — —

Dr Napthine interjected.

Ms GARBUTT — You do not know what you are talking about.

That will allow that agency to provide a service to new families on the waiting list. Fourthly, I offered Irabina a three-year transitional period so that it could move to the new model more gradually, but it has rejected that and has chosen to move to this new model immediately. However, I have still allocated the $50 000 to help Irabina in that way.

I assure the house that this government is acting to ensure that all children with autism throughout Victoria have access to the very best early intervention service, which will provide them with the best possible start in life.

Dr Napthine interjected.

Ms GARBUTT — You know nothing about it.

Mr BATCHELOR (Minister for Transport) — The member for Rodney raised with me the issue of an intersection in his electorate — the intersection of the Bendigo-Murchison Road with the Heathcote-Rochester Road. He raised this in the context of a recent tragic and terrible accident. The member for Rodney has a long history of being interested in improving the safety of roads in the area he represents and being supportive of road safety across Victoria, particularly in country Victoria.

It was a terrible accident. Fatalities occurred, and there should not have been a fatality. It is an intersection, and intersections in country Victoria are very dangerous by their very nature. I understand that the Bendigo-Murchison Road had priority and that the Heathcote-Rochester Road would have been most likely controlled by stop signs. I am not familiar with the intersection myself, but on the advice I have that appears to be the case.

At this stage the police reports are only initial reports, but VicRoads is apparently preparing a fatal accident report about the crash and will be trying to identify any treatments that can be put in place at this intersection to reduce the risk of accidents happening there in the future.

This intersection is in the Shire of Campaspe. I understand that both roads are declared main roads which means that the Shire of Campaspe is responsible for them. However, we shall use the resources of VicRoads and the information that comes from the police investigation to see what type of treatments ought to be considered in the future. The member for Rodney has raised this not as an attempt to score political points but to provide road safety improvements for his area, and we thank him for doing that.

I will undertake to have VicRoads try to prepare its report as soon as possible and, as I understand it, as a consequence to meet with the Shire of Campaspe or its representatives as soon as possible, perhaps later this week, to identify the appropriate modifications to signage and delineation to improve driver awareness of this intersection. I thank the member for Rodney for raising this issue tonight.

The member for Bass raised with me the issue of weeds on the old Leongatha railway line. He raised the problem the adjoining landowners are facing, and I understand the implications of that. I shall be taking that matter up with VicTrack to see what can be done to look at the issue of weed control. He also raised by way of supplementary comment the issue of the rail line reopening. I point out to him that this rail line was closed by his government and also that the country rail infrastructure was leased in 1999 for a period of some 45 years to Freight Australia. I am assuming that he is aware of that and that it has created some difficulties for this government in coming to agreement on upgrading and improving our country rail infrastructure.

Dr Napthine — That's crap.

Mr BATCHELOR — The member for South-West Coast says that is crap. Not only is he speaking in unparliamentary terms, but he knows that is true. How can he just sit there and say things that are palpably untrue and, again, unparliamentary? I am more offended by his saying things that are not true than the vernacular language he tries to disguise his inaccuracies in. I am not upset about his using the word 'crap', but I am upset about his sitting there and saying things which are not true.

Dr Napthine — You're the one who's telling lies. You know you're telling lies.

Mr BATCHELOR — The member for South-West Coast is trying to provoke me, Acting Speaker. Whenever anybody uses language such as 'crap' or 'lies' in this house, he is the first to take offence. Not only does he sit here and say things that are untrue, but he masks himself in the height of hypocrisy.

It is very typical of the poor old defeated former Leader of the Opposition, the failed Liberal leader, and if that is the sort of attitude that is inherent in his behaviour, you can understand why he was dumped. The only thing that is surprising is that they took so long in dumping him. I do not think they will be interested in trying to get him back either, notwithstanding his constant campaigning and undermining of his current leader, Robert Doyle.

In responding to the member for Bass I indicate that we will take up that issue about the weeds with VicTrack, but I would point out to him the difficulties this government has had in trying to get improvements to infrastructure over which it has no control. The interesting thing which he might not have caught up with is that the owners of Freight Australia, Rail America, have made an announcement that they have entered into conditional arrangement with Pacific National for the sale of their business. I would say to the member for Bass and the member for South-West Coast that as of this morning — and I checked my office before coming to Parliament — the government had yet to receive a formal application for change of control from either Pacific National or Freight Australia, but we expect one will arrive in due course.

When that advice is given to the government, we understand that not only is it conditional upon the Director of Public Transport on behalf of the state giving consent but it is also conditional upon approval by the Australian Competition and Consumer Commission. So that may or may not, in terms of the member for Bass and the issues he raised in the broader sense, assist in having resolved some of those issues in the future. I point out that Pacific National expects that it should take a couple of months to resolve this issue.

The member for South-West Coast raised with me an initiative that this government is taking in relation to Deakin University in Warrnambool. We are to provide a platform at or near Deakin University to allow the train service between Warrnambool and Melbourne to stop to let people off and take on passengers at the Warrnambool campus of Deakin University. The Department of Infrastructure is currently undertaking the planning and preparation for this initiative, and once that is resolved — it is not far off — we will undertake negotiations with the university, which is supporting this initiative, with West Coast Rail, which is equally supporting the initiative, and with Freight Australia, which is the owner of the infrastructure there.

The difficulty that I mentioned in responding to the member for Bass, which is also pertinent here, is that the infrastructure is not under the control of the state government. Therefore we cannot unilaterally, without prior agreement, make the sorts of upgrades that we would like to, not only here at the Deakin campus but at other locations across Victoria. We are looking forward to the benefits that would come in completing this project in that the early preparation and planning work has been undertaken, but we have yet to resolve a number of infrastructure issues with Freight Australia.

So I say to the people of South-West Coast that it will be the Labor government that will deliver this, no thanks to their local member of Parliament, who is not only a disappointment here in the chamber but is a disappointment in the electorate of South-West Coast. Why they tolerated him at the last election I do not know, but clearly they made an error, an absolute error, of judgment, which I am sure they will not make again.

Mr PANDAZOPOULOS (Minister assisting the Premier on Multicultural Affairs) — First of all, the member for Clayton raised with me the importance of the Victorian Multicultural Commission's festivals and events sponsorship program. He would be aware that there are two funding rounds every year: round 1 is in the first half year and round 2 is in the second half. To date we have provided over $700 000 in festivals and events funding since we have been in government. That has grown in recent years to half a million dollars a year. By the end of next financial year over $1.25 million will have been provided to ethnic community organisations and local government and non-government organisations that celebrate cultural diversity right across Victoria

As the member for Clayton highlighted, often community groups that celebrate diversity do not demand a lot of money. We also know, unfortunately, about the level of sponsorship from very large organisations and well-known brands, which just tend to not sponsor these kinds of events. We certainly have an education role to play in encouraging the private sector to be very much involved. Members of the private sector in local and ethnic communities do become involved, but because most of them run small and micro businesses their ability to be major sponsors in order to help offset the costs of the celebrations is not very high. That is why the Victorian government, through the Victorian Multicultural Commission, has determined that the festivals and events program is

important, and it is also why it has increased resources in recent years.

Just recently the VMC mailed out a letter to the 2500 organisations on its database and to members of Parliament saying that the round for the latter half of this financial year has opened. I remind members that applications for the round close on 30 April. There will be a quarter of a million dollars for this round and another quarter of a million dollars — —

An honourable member interjected.

Mr PANDAZOPOULOS — I am pleased that some members are working on it already. Last year's round 1 drew 177 applications, of which 154 received funding, so there is a high success rate. But there is also a very much higher demand rate, and the number of applications is accelerating.

I know the member for Clayton has had many wonderful community celebrations in his electorate that he and other members have supported, and I will just mention a few of those. There was the Sumnation festival, which was run by the Springvale neighbourhood house in Greater Dandenong just a few weeks ago; the Springvale Lunar New Year Festival, run by the Springvale Asian Business Association; and the Greek cultural festival in Clayton, run by the Greek Orthodox community there. The United Philippine Elderly Group ran an art and craft show, and the Oromo community ran its New Year Birra festival. They are just a few local events around the Clayton electorate, and they can be emulated across the board.

I encourage members to be involved. We look forward to receiving the applications and supporting communities right across the board. I am really pleased that so many members on both sides of the house have availed themselves of the opportunity. It is great to see so many events also being funded in country and regional Victoria, where the diversity is smaller — but again it is diversity that wants to be celebrated.

Mr Kotsiras interjected.

Mr PANDAZOPOULOS — Antipodes has got $10 000 — thank you.

Mr Kotsiras interjected.

Mr PANDAZOPOULOS — From the VMC.

The member for Cranbourne raised with me the tragedy of the floods last year in Sri Lanka, particularly their effect on the Ratnapura district. He highlighted the great fundraising efforts that we see often when natural disasters occur across the globe and diverse communities from the diaspora raise funds to support the communities in their country of origin. It is a great tradition. We have seen that consistently among many communities over many years, and it is great that the Sri Lankan community has the same sort of spirit. A few years ago we saw a huge fundraising effort by the Turkish community following the earthquakes around the Istanbul region and the Black Sea. The government provided some support for that project.

I know the member for Cranbourne, along with the Sri Lankan community, has been seeking assistance and that a lot of fundraising has taken place. He referred to a dinner that I was at the other night at the Moorabbin town hall, which again was supported by members from both sides of the house, and I commend them all for supporting this appeal.

There is also the vision of the local members of the Sri Lankan community, who intend providing a gift to rebuild two schools in Sri Lanka. They say that although the money they raise might not be a lot in Australia, it is a lot of money in Sri Lanka. In a sense they are to become friendship schools with Victoria and Melbourne, one becoming a Victorian friendship school and one becoming a Melbourne friendship school. The government wants to encourage that fundraising effort and be supportive of it. I am pleased to announce to the member a $10 000 grant to assist in that rebuilding effort, which I am sure will go a long way, with the many other tens of thousands of dollars raised by the Sri Lankan and wider Victorian community, to supporting this project.

The member for Burwood raised an issue for me in my capacity as Minister assisting the Premier on Multicultural Affairs, seeking my help in assisting ethnic groups looking to establish nursing home accommodation. There are many ways to do that. While this government is not responsible for funding nursing homes, in this case the commonwealth has gone through its processes, and this particular Chinese nursing home in Donvale received $1.1 million for 60 much-needed nursing home beds in a state that is massively underfunded for nursing home beds. There is an opportunity for me to be involved, and that is often through the Victorian Multicultural Commission advocating for the needs of communities, particularly when a lot of bureaucracy and barriers have been put in place. Ethnic communities are not necessarily always as informed as they need to be by government authorities, including local government. That is exactly what happened in relation to the proposed On Luck nursing home in Donvale. It received financial support from the

commonwealth government and must spend the money within two years.

Prior to the green wedge planning scheme amendments occurring, the organisation was also talking to and receiving verbal support from Manningham City Council. It certainly did not get negative comments from the council suggesting it should not proceed with the purchase of land prior to the planning scheme amendments. There are letters on record from Cr John Bruce, the former Manningham City Council mayor, highlighting that the land was bought prior to the planning scheme amendments. On 24 September 2002 a motion was moved by the council to amend condition 4 of the planning permit to delete the provision of a section 173 agreement limiting development on lot 1 to a single detached house. The council formally made a decision sending a signal to the Chinese community that it would be supportive of the application, but once the green wedge legislation was introduced it wanted to block it.

I have had presentations by the local Chinese community seeking my assistance, and I asked the Victorian Multicultural Commission to meet with it and make representations to the planning minister. That is the appropriate thing to do when you encounter such difficulty with the planning bureaucracy, as can sometimes occur. Certainly comments were made to me suggesting that the Chinese community has been confused by the member for Warrandyte, because he has been known as a former minister assisting on multicultural affairs and for his support for diversity. I have no doubt that that is the case, but I have been asked by members of the Chinese community how it is possible that the member for Warrandyte would not support something like this, particularly when it had been caught up in bureaucracy.

Our role as MPs is to assist when there are unfortunate situations and bureaucratic processes that get in the way. What this would have meant, if there had not been support from the Victorian Multicultural Commission and the Minister for Planning had not intervened, is that the nursing home would have been lost to Victoria and lost to the Chinese community — a fast-growing, ageing community with high demands in the eastern suburbs of Melbourne. That is why it has been supported. The situation is not as the member for Warrandyte said in the adjournment debate on 4 March this year, when he had a go at the planning minister about her intervention and how inappropriate that was. It was entirely appropriate to intervene, because the council had sent the signal that it would be supportive and then chose to walk away from the application. We are pleased to support it. I thank the member for Burwood and other members in the eastern suburbs, including the upper house MP for the region, Lidia Argondizzo, for their support. The shame is that the member for Warrandyte was not supporting it.

I have also been asked to comment on matters raised by other members. The member for Hawthorn raised a matter for the Attorney-General relating to probity issues, particularly around the Murray Road, Rockbank, issue that was considered at the Victorian Civil and Administrative Tribunal. I will pass that on to the minister.

The member for Lowan raised a matter for the Minister for Health about head lice in schools and preschools. I will pass that on to the minister.

The member for South Barwon raised a matter for the Premier — a very important issue about a permanent memorial in Melbourne for the Bali victims. That will certainly be considered by the Premier. It shows you the thoughtfulness of the member, and the family that has suggested this also needs to be commended. I know the member has raised their personal tragedy in this house and what it has meant for the Geelong and Bellarine region. I will pass that on to the Premier.

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

House adjourned 10.56 p.m.

Wednesday, 31 March 2004

JOINT SITTING OF PARLIAMENT

Senate vacancy

Honourable members of both houses met in Assembly chamber at 6.15 p.m.

The Clerk — Before proceeding with the business of this joint sitting it will be necessary to appoint a President. I call the Premier.

Mr BRACKS (Premier) — I move:

> That Judy Maddigan, Speaker of the Legislative Assembly, be appointed President of this joint sitting.

Mr DOYLE (Leader of the Opposition) — I second the motion.

Motion agreed to.

The PRESIDENT — Order! I thank honourable members for the nomination. I call the Premier.

Mr BRACKS (Premier) — President, I desire to submit the rules of procedure, which are in the hands of honourable members, and I accordingly move:

> That these rules be the rules of procedure for this joint sitting to fill the Senate vacancy

Mr DOYLE (Leader of the Opposition) — I second the motion.

Motion agreed to.

The PRESIDENT — Order! The rules having been adopted, I am now prepared to receive proposals for the appointment of a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston.

Mr BRACKS (Premier) — I propose:

> That Mr Mitchell Peter Fifield hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston.

I understand that Mr Mitchell Peter Fifield is willing to hold the vacant position if chosen.

In order to satisfy the joint sitting as to the requirements of section 15 of the commonwealth constitution, I also declare that I am in possession of advice from the Leader of the Opposition that the nominee is the selection of the Liberal Party, the party previously represented in the Senate by Senator the Honourable Richard Kenneth Robert Alston.

Mr DOYLE (Leader of the Opposition) — I second the proposal.

The PRESIDENT — Order! Are there any further proposals?

As no other members have been proposed, I declare that Mr Mitchell Peter Fifield has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston.

Mr BRACKS (Premier) — I move:

> That the President of the joint sitting inform the Governor that Mr Mitchell Peter Fifield has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston.

Mr DOYLE (Leader of the Opposition) — I second the motion.

Motion agreed to.

Mr INGRAM (Gippsland East) — I object to the process for filling casual vacancies, so I would like my dissent to be recorded.

The PRESIDENT — Order! The member for Gippsland East has asked that his dissent be recorded.

Mr SAVAGE (Mildura) — Likewise, I wish my dissent to be recorded on the same grounds.

The PRESIDENT — Order! The member for Mildura has asked that his dissent be recorded.

I congratulate the new senator for Victoria. There being no further business, I now declare the joint sitting closed.

Proceedings terminated 6.20 p.m.