PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Wednesday, 8 August 2007

(Extract from book 11)

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By authority of the Victorian Government Printer

The Governor

Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Minister for Mental Health, Minister for Community Services and Minister for Senior Victorians	The Hon. L. M. Neville, MP
Minister for Roads and Ports	The Hon. T. H. Pallas, MP
Minister for Education	The Hon. B. J. Pike, MP
Minister for Gaming, Minister for Consumer Affairs and Minister Assisting the Premier on Veterans' Affairs	The Hon. A. G. Robinson, MP
Minister for Industry and Trade, Minister for Information and Communication Technology, and Minister for Major Projects	The Hon. T. C. Theophanous, MLC
Minister for Housing, Minister for Local Government and Minister for Aboriginal Affairs	The Hon. R. W. Wynne, MP
Cabinet Secretary	Mr A. G. Lupton, MP

Legislative Assembly committees

Privileges Committee — Mr Carli, Mr Clark, Mr Delahunty, Mr Lupton, Mrs Maddigan, Dr Napthine, Mr Nardella, Mr Stensholt and Mr Thompson.

Standing Orders Committee — The Speaker, Ms Barker, Mr Kotsiras, Mr Langdon, Mr McIntosh, Mr Nardella and Mrs Powell.

Joint committees

Dispute Resolution Committee — (*Assembly*): Mr Batchelor, Mr Cameron, Mr Clark, Mr Holding, Mr McIntosh, Mr Robinson and Mr Walsh. (*Council*): Mr P. Davis, Mr Hall, Mr Jennings, Mr Lenders and Ms Pennicuik.

Drugs and Crime Prevention Committee — (*Assembly)*: Mr Delahunty, Mr Haermeyer, Mr McIntosh, Mrs Maddigan and Mr Morris. (*Council*): Mr Leane and Ms Mikakos.

Economic Development and Infrastructure Committee — (*Assembly*): Ms Campbell, Mr Crisp and Ms Thomson. (*Council*): Mr Atkinson, Mr D. Davis, Mr Tee and Mr Thornley.

Education and Training Committee — (*Assembly*): Dr Harkness, Mr Herbert, Mr Howard and Mr Kotsiras. (*Council*): Mr Elasmar, Mr Finn and Mr Hall.

Electoral Matters Committee — (*Assembly*): Ms Campbell, Mr O'Brien, Mr Scott and Mr Thompson. (*Council*): Ms Broad, Mr Hall and Mr Somyurek.

Environment and Natural Resources Committee — (*Assembly*): Ms Duncan, Mrs Fyffe, Mr Ingram, Ms Lobato, Mr Pandazopoulos and Mr Walsh. (*Council*): Mrs Petrovich and Mr Viney.

Family and Community Development Committee — (*Assembly*): Ms Beattie, Mr Dixon, Mr Perera, Mrs Powell and Ms Wooldridge. (*Council*): Mr Scheffer and Mr Somyurek.

House Committee — (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Mr Delahunty, Mr Howard, Mr Kotsiras, Mr Scott and Mr K. Smith. (*Council*): The President (*ex officio*), Mr Atkinson, Ms Darveniza, Mr Drum, Mr Eideh and Ms Hartland.

Law Reform Committee — (*Assembly*): Mr Brooks, Mr Clark, Mr Donnellan and Mrs Maddigan. (*Council*): Mrs Kronberg, Mr O'Donohue and Mr Scheffer.

Outer Suburban/Interface Services and Development Committee — (*Assembly*): Ms Green, Mr Hodgett, Mr Nardella, Mr Seitz and Mr K. Smith. (*Council*): Mr Elasmar, Mr Guy and Ms Hartland.

Public Accounts and Estimates Committee — (*Assembly*): Ms Graley, Ms Munt, Mr Scott, Mr Stensholt, Dr Sykes and Mr Wells. (*Council*): Mr Barber, Mr Dalla-Riva, Mr Pakula and Mr Rich-Phillips.

Road Safety Committee — (*Assembly*): Mr Eren, Mr Langdon, Mr Mulder, Mr Trezise and Mr Weller. (*Council*): Mr Koch and Mr Leane.

Rural and Regional Committee — (*Assembly*): Ms Marshall and Mr Northe. (*Council*): Ms Darveniza, Mr Drum, Ms Lovell, Ms Tierney and Mr Vogels.

Scrutiny of Acts and Regulations Committee — (*Assembly*): Mr Brooks, Mr Carli, Mr Jasper, Mr Languiller and Mr R. Smith. (*Council*): Mr Eideh, Mr O'Donohue, Mrs Peulich and Ms Pulford.

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

Parliamentary Services — Secretary: Dr S. O'Kane

MEMBERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

Speaker: The Hon. JENNY LINDELL

Deputy Speaker: Ms A. P. BARKER

Acting Speakers: Ms Beattie, Ms Campbell, Mr Eren, Mrs Fyffe, Ms Green, Dr Harkness, Mr Howard, Mr Ingram, Mr Jasper, Mr Kotsiras, Mr Languiller, Mr Lupton, Ms Marshall, Ms Munt, Mr Nardella, Mrs Powell, Mr Seitz, Mr K. Smith, Mr Stensholt and Mr Thompson

Leader of the Parliamentary Labor Party and Premier:
The Hon. J. M. BRUMBY (from 30 July 2007)
The Hon. S. P. BRACKS (to 30 July 2007)

Deputy Leader of the Parliamentary Labor Party and Deputy Premier:
The Hon. R. J. HULLS (from 30 July 2007)
The Hon. J. W. THWAITES (to 30 July 2007)

Leader of the Parliamentary Liberal Party and Leader of the Opposition:
Mr E. N. BAILLIEU

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

Leader of The Nationals:
Mr P. J. RYAN

Deputy Leader of The Nationals:
Mr P. L. WALSH

Member	District	Party	Member	District	Party
Allan, Ms Jacinta Marie	Bendigo East	ALP	Lindell, Ms Jennifer Margaret	Carrum	ALP
Andrews, Mr Daniel Michael	Mulgrave	ALP	Lobato, Ms Tamara Louise	Gembrook	ALP
Asher, Ms Louise	Brighton	LP	Lupton, Mr Anthony Gerard	Prahran	ALP
Baillieu, Mr Edward Norman	Hawthorn	LP	McIntosh, Mr Andrew John	Kew	LP
Barker, Ms Ann Patricia	Oakleigh	ALP	Maddigan, Mrs Judith Marilyn	Essendon	ALP
Batchelor, Mr Peter John	Thomastown	ALP	Marshall, Ms Kirstie	Forest Hill	ALP
Beattie, Ms Elizabeth Jean	Yuroke	ALP	Merlino, Mr James Anthony	Monbulk	ALP
Blackwood, Mr Gary John	Narracan	LP	Morand, Ms Maxine Veronica	Mount Waverley	ALP
Bracks, Mr Stephen Phillip [1]	Williamstown	ALP	Morris, Mr David Charles	Mornington	LP
Brooks, Mr Colin William	Bundoora	ALP	Mulder, Mr Terence Wynn	Polwarth	LP
Brumby, Mr John Mansfield	Broadmeadows	ALP	Munt, Ms Janice Ruth	Mordialloc	ALP
Burgess, Mr Neale Ronald	Hastings	LP	Napthine, Dr Denis Vincent	South-West Coast	LP
Cameron, Mr Robert Graham	Bendigo West	ALP	Nardella, Mr Donato Antonio	Melton	ALP
Campbell, Ms Christine Mary	Pascoe Vale	ALP	Neville, Ms Lisa Mary	Bellarine	ALP
Carli, Mr Carlo Domenico	Brunswick	ALP	Northe, Mr Russell John	Morwell	Nats
Clark, Mr Robert William	Box Hill	LP	O'Brien, Mr Michael Anthony	Malvern	LP
Crisp, Mr Peter Laurence	Mildura	Nats	Overington, Ms Karen Marie	Ballarat West	ALP
Crutchfield, Mr Michael Paul	South Barwon	ALP	Pallas, Mr Timothy Hugh	Tarneit	ALP
D'Ambrosio, Ms Liliana	Mill Park	ALP	Pandazopoulos, Mr John	Dandenong	ALP
Delahunty, Mr Hugh Francis	Lowan	Nats	Perera, Mr Jude	Cranbourne	ALP
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Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Powell, Mrs Elizabeth Jeanette	Shepparton	Nats
Duncan, Ms Joanne Therese	Macedon	ALP	Richardson, Ms Fiona Catherine Alison	Northcote	ALP
Eren, Mr John Hamdi	Lara	ALP	Robinson, Mr Anthony Gerard	Mitcham	ALP
Fyffe, Mrs Christine Ann	Evelyn	LP	Ryan, Mr Peter Julian	Gippsland South	Nats
Graley, Ms Judith Ann	Narre Warren South	ALP	Scott, Mr Robin David	Preston	ALP
Green, Ms Danielle Louise	Yan Yean	ALP	Seitz, Mr George	Keilor	ALP
Haermeyer, Mr André	Kororoit	ALP	Shardey, Mrs Helen Jean	Caulfield	LP
Hardman, Mr Benedict Paul	Seymour	ALP	Smith, Mr Kenneth Maurice	Bass	LP
Harkness, Dr Alistair Ross	Frankston	ALP	Smith, Mr Ryan	Warrandyte	LP
Helper, Mr Jochen	Ripon	ALP	Stensholt, Mr Robert Einar	Burwood	ALP
Herbert, Mr Steven Ralph	Eltham	ALP	Sykes, Dr William Everett	Benalla	Nats
Hodgett, Mr David John	Kilsyth	LP	Thompson, Mr Murray Hamilton Ross	Sandringham	LP
Holding, Mr Timothy James	Lyndhurst	ALP	Thomson, Ms Marsha Rose	Footscray	ALP
Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Thwaites, Mr Johnstone William [2]	Albert Park	ALP
Hudson, Mr Robert John	Bentleigh	ALP	Tilley, Mr William John	Benambra	LP
Hulls, Mr Rob Justin	Niddrie	ALP	Trezise, Mr Ian Douglas	Geelong	ALP
Ingram, Mr Craig	Gippsland East	Ind	Victoria, Mrs Heidi	Bayswater	LP
Jasper, Mr Kenneth Stephen	Murray Valley	Nats	Wakeling, Mr Nicholas	Ferntree Gully	LP
Kosky, Ms Lynne Janice	Altona	ALP	Walsh, Mr Peter Lindsay	Swan Hill	Nats
Kotsiras, Mr Nicholas	Bulleen	LP	Weller, Mr Paul	Rodney	Nats
Langdon, Mr Craig Anthony Cuffe	Ivanhoe	ALP	Wells, Mr Kimberley Arthur	Scoresby	LP
Languiller, Mr Telmo Ramon	Derrimut	ALP	Wooldridge, Ms Mary Louise Newling	Doncaster	LP
Lim, Mr Muy Hong	Clayton	ALP	Wynne, Mr Richard William	Richmond	ALP

[1] Resigned 6 August 2007

[2] Resigned 6 August 2007

CONTENTS

WEDNESDAY, 8 AUGUST 2007

Wednesday, 8 August 2007

The SPEAKER (Hon. Jenny Lindell) took the chair at 9.33 a.m. and read the prayer.

PARLIAMENTARY COMMITTEES

Membership

The SPEAKER — Order! I wish to advise members that I have received the resignation of Mr Lupton from the Law Reform Committee and the resignation of Mr Eren from the Rural and Regional Committee, effective from 8 August 2007.

BUSINESS OF THE HOUSE

Notices of motion: removal

The SPEAKER — Order! I wish to advise the house that under standing order 144 notices of motion 1 to 30 inclusive will be removed from the notice paper on the next sitting day. A member who requires the notice standing in his or her name to be continued must advise the Clerk in writing before 6.00 p.m. today.

PARLIAMENTARY COMMITTEES

Membership

Mr BATCHELOR (Minister for Community Development) — Arising from your announcement of resignations this morning, Speaker, I move by leave the following motions for the appointment of members to joint investigatory committees:

Law Reform Committee

That Mrs Maddigan be a appointed member of the Law Reform Committee.

Rural and Regional Committee

That Ms Marshall be appointed a member of the Rural and Regional Committee.

Motions agreed to.

PETITIONS

Following petitions presented to house:

Nuclear energy: federal policy

To the Legislative Assembly of Victoria:

The petition of residents of Victoria draws to the attention of the house the commonwealth government's promotion of a nuclear industry in Australia and the strong likelihood that Victoria will be selected as a site for the construction of a nuclear power facility.

The petitioners therefore request that the Legislative Assembly of Victoria reaffirm the opposition of the Victorian government to the creation of a nuclear industry in Victoria, including the construction of a nuclear power plant.

By Dr HARKNESS (Frankston) (15 signatures)

Peninsula Community Health Service: future

To the Legislative Assembly of Victoria:

The petition of the residents of the Mornington Peninsula draws to the attention of the house as a separately incorporated community health service, Mornington Peninsula community health service has a long and highly regarded history that has actively engaged the peninsula community in service planning and delivery.

We request that Peninsula Community Health Service remains as a declared community health centre under the Health Services Act.

For Peninsula Community Health Service to continue as a separately incorporated community health centre, and re-establish a board of management consisting of community members.

The petitions therefore request the Legislative Assembly of Victoria that the Peninsula Community Health Service should stand alone and are able to:

ensure the delivery of high-quality clinical services to consumers within a comprehensive clinical governance framework;

achieve the delivery of integrated community-based services within the context of current government health policy;

support the workforce by providing appropriate work environments, professional training and support, career development et cetera;

achieve sound financial management of government funding;

actively pursue the growth of community health services to the Mornington Peninsula community.

By Mr DIXON (Nepean) (58 signatures)

Tabled.

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

MEMBERS STATEMENTS

Melbourne Water: freedom of information requests

Ms ASHER (Brighton) — I wish to throw down the first FOI challenge for the new Premier, who says he is going to be more accountable, because the ALP is again shirking responsibility and accountability for its actions and hiding behind FOI. The case I am talking about is a request I lodged on 8 February 2007 requesting presentations made by Mr Bruce Rhodes and/or Mr John Woodland to the board of Melbourne Water from 1 July 2006 to 31 December 2006. The key issue here is that the government had been briefed about the severity of Melbourne's water crisis and, more importantly, what to do about it, but it suppressed both the information and action until after the election.

The FOI request revealed that there are three documents, two of which were issued prior to the election in terms of briefings to the board of Melbourne Water. One document, dated 17 November 2006, was titled 'Draft contingency supply actions' and the other, dated 11 November 2006, was a reservoir levels projection update. There was also a third document drafted by both people, being presentation notes, and titled 'Extreme drought contingency planning'. What has happened is that documents 1 and 3 have been refused and document 2 has been part refused on the ludicrous basis that they could cause confusion or unnecessary debate.

Macclesfield Primary School: Healthy Start program

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — Recently I had the pleasure of announcing a $6000 grant to Macclesfield Primary School under the Brumby government's $3.5 million Healthy Start in Schools program. Aiming to help students get fit and healthy, Macclesfield primary will use the grant to enlarge its canteen garden and create a fitness track for students. Canteens are an important part of any school, and Macclesfield primary is a leader when it comes to canteen reform.

Under the coordination of Kathy Maiwald, the menu is completely based on healthy eating choices and the Go for Your Life guidelines. The canteen commenced operation after a group of parents — Louise Mclnnes, Lyn Wailer, Fiona Mackay and Linda Alford — visited other canteens to assess their programs. Another parent, Sacha Brown, conducted a safe food handling course, and the decision was made to ensure the canteen became rubbish free. Students now get their lunch in reusable containers, which are returned to the canteen for washing and reusing.

I wish to commend the principal, John Chiswell, his teaching staff, the parent community and particularly the children of Macclesfield primary for their commitment to healthy eating and a healthy environment.

Rob Hauser

Mr MERLINO — Commendations must go to the chief executive officer (CEO) of the Shire of Yarra Ranges, Rob Hauser, who recently won the inaugural Yarra Ranges regional marketing chairman's award. The award acknowledges those who tirelessly work to promote the growth of the tourism, food, wine and agribusiness industries in the shire. I have known Rob since he became CEO in 1998, and there are few people who dedicate such passion and energy to developing and marketing both the Yarra Valley and the Dandenong Ranges. Rob is a most deserving winner of this award.

Global Timber Products: achievements

Dr SYKES (Benalla) — On Saturday, 28 July, I attended the celebration of the first year in business of Global Timber Products of Mansfield. This is a remarkable story of persistence and resilience in overcoming hurdle after hurdle. Fifteen months ago the company then known as Stakeman, which operated the Mansfield timber mill, got into financial difficulty. The timber mill was closed and 24 staff jobs were terminated. Greg Musgrave, an employee, suggested that the employees purchase the mill. Greg, Arnold Van Winden, John Hurley and Nigel Martin put their own money on the line, and, very ably assisted by Robbie Hinves and Kim Harrison-Hinves, they got the mill going again.

In spite of countless setbacks, the mill is now employing 13 full-time staff members and one part-time staff member, with a target of building this number to more than 20. Management and staff have worked extremely hard under very difficult physical, financial and emotional circumstances. They know the pressure of having their houses on the line. In addition to the people mentioned earlier, the other members of the Global team are Terry Kirley, Brett Kirley, Wayne Kirley, Alan Parker, Darren McLeish, Shaun Turner,

Shane Cummings and Stephen Coyne. There is a saying in boxing that a champion gets up off the canvas when others cannot. Congratulations to all at Global Timber Products. They have repeatedly got up off the canvas. They are true champions!

Recycling: Skilled Stadium project

Mr TREZISE (Geelong) — On Wednesday, 1 August, I had the pleasure of launching at the Geelong Football Club the Skilled Stadium public place recycling project. In essence the project will make Skilled Stadium the first Australian Football League venue to be Waste Wise certified, with best practice waste recovery systems and waste reduction processes. The project will involve the installation of new recycling bins throughout the stadium and a range of communication to encourage the correct use of bins by footy fans.

With the effective introduction of the program, gone will be the days when you just threw your wrappers or cans on the ground. Footy fans will be encouraged to do the right thing and put their rubbish in the right bin. Most Victorians now do the right thing at home and even at work. In fact, most people now actively look to recycle and understand the benefits, but this seems to be forgotten at the footy and other sporting events.

I take this opportunity to congratulate Sustainability Victoria, Alcoa, the City of Greater Geelong and, of course, the Geelong Football Club on their partnership and their contribution to this important recycling project. At the Geelong Football Club not only are supporters keeping a lid on their premiership aspirations, they are now going to keep a lid on their footy rubbish — both very wise moves!

Templestowe Cemetery Trust: plot reservations

Mr KOTSIRAS (Bulleen) — Recently it was brought to my attention that the Templestowe Cemetery Trust had sought additional money to reserve a plot of land for another 25 years for a couple who had paid for the plot 25 years ago. Having received an invoice for the payment of an additional $580 to reserve the plot for his parents for another 25 years, Jerry decided to query the invoice and sought assistance. A letter was sent to the Minister for Health, who investigated the matter and found that:

> The actions taken by the Templestowe Cemetery Trust were not in accordance with the … act, and (the individual's) right of interment is valid and he is not required to make any additional payment to the trust.

While this individual matter has been resolved and the cemetery trust has already contacted the individuals concerned, admitted the mistake and apologised for any distress and inconvenience caused, I fear there might be other residents who did not question the request for an extra payment and simply paid the extra money. Extra payments might have been received from the most vulnerable members of the community.

There are many vulnerable residents in Manningham for whom English is not their first language and/or who are senior citizens who do not want to be looking for a new cemetery at this stage of their life, so they simply pay the extra money even though they are not required to. I hope that the new Minister for Health investigates this matter and makes sure that no person in Manningham, or anywhere else, pays extra money.

Robert Johnston

Mr KOTSIRAS — I wish to also pay tribute to Robert Johnston, who passed away on 23 July. Robert was a loyal Liberal who served the local branches and the party with distinction. Robert served as my electorate council chairman for a number of years. To his wife, Suzanne, and daughters, Lisa, Stephanie and Edwina, I pass on my sincere condolences and those of the Bulleen electorate council. Thanks, Bob.

Hughesdale Kindergarten: fundraising

Ms BARKER (Oakleigh) — I pay tribute to the extraordinary efforts of the fundraising team of the Hughesdale Kindergarten in Freda Street, who work very hard to organise events throughout the year to raise funds for this great local kindergarten. In particular, the team worked very hard to organise the annual auction and trivia night, which this year was held last Saturday, 4 August.

St Patrick's Primary School hall was absolutely packed with people who thoroughly enjoyed the trivia questions and who were also able to purchase some great bargains by either participating in the auction or bidding using a silent auction system. The number of items available for purchase was phenomenal, and it was very clear that the fundraising team had put in an enormous amount of work to gather such a large number of high-quality items.

I congratulate the fundraising team, Leanne Cairns, Marg Clarke, Susan Close, Amanda Daemen, Angela Gardiner, Nicky Maheras, Jody McKenzie, Caroline Melzer and Sam Tipton. I particularly mention the fundraising coordinator, Nicole Firth, because as we all know, any successful fundraising effort has to be well

coordinated. There is no doubt that Nicole did a magnificent job.

I would also like to pay tribute to Mari Carlson, who this year celebrates 20 years at the Freda Street kindergarten. Mari is a great person who continues her dedicated care and education of local children. As Mari has said, her favourite part of the job is when she sees the joy in the face of a child when they realise they can do something which they did not think they could do. Mari has seen many young children she has taught grow up into lovely young people. I thank her for her care and work over the past 20 years.

Peninsula Community Health Service: future

Mr DIXON (Nepean) — At a recent packed public meeting, staff, clients, volunteers and concerned community members unanimously moved a motion that Peninsula Community Health Service not be merged with Peninsula Health. The amalgamation option has been put forward by a review of the service's governance by the Department of Human Services. The motion had bipartisan support, with a number of local Labor identities present at the meeting. I note, though, that the former health services board was stacked with Labor Party members who had to resign following their inept administration of the service, which resulted in the Minister for Health calling in an administrator. Following the release of the government's review, staff held a secret vote on the amalgamation option and overwhelmingly voted against any move to join with Peninsula Health.

The concerns raised at the meeting were that the service would lose its small community atmosphere, and there would be no guarantees on badly needed new buildings at Mornington and Rosebud campuses. It was said Peninsula Health has enough problems delivering services without adding to its responsibilities, and many staff have concerns regarding their future employment. Also, federal funding of drug and alcohol services would be jeopardised with the proposed change of governance.

The Minister for Health and the former health minister ignored my request for those who partook in the review process to see the documents that led to the department's left-field preferred option. I ask the new minister, when he has settled into his new position, to meet a local delegation, as I have requested previously.

Neighbourhood houses: South Barwon electorate

Mr CRUTCHFIELD (South Barwon) — All of us in this place have wonderful community organisations called neighbourhood houses. In 2002 I had two in my electorate — one in Torquay and one in Belmont. As of June this year there are now three, with a stand-alone centre at Grovedale up and going after funding from the City of Greater Geelong and the Brumby government. I have seen the centre grow from an extremely underutilised building to one which has a new vibrant neighbourhood house, complete with a myriad of activities for the growing Grovedale community to participate in. I wish Jillian Chapman well in her new role as coordinator of Grovedale.

I make special mention of the South Barwon community centre's role in helping to realise the Grovedale dream. In particular I would like to congratulate and thank retiring coordinator, Deidre Slater, for her untiring efforts over the last 18 months or so. Deidre should be justifiably proud of her time at South Barwon. I can attest to her diligence, hard work and her bubbly enthusiasm. When she started, her a role was a 15-hour-a-week position, although like many coordinators she spent much more time than that at her work. When she retired her role had been successfully boosted to 25 hours, the Grovedale centre was up and running, and South Barwon has been left in a strong and vibrant position. I also welcome Jan Rockcliff to her new role as coordinator. Finally, well done to Deidre. I hope she enjoys her semi-retirement with her grandchildren and family; she deserves it.

Water: dams

Mr JASPER (Murray Valley) — During question time yesterday I was appalled by the statement by the new Premier of Victoria that the government would not be supporting the construction of dams for water in Victoria. The availability of water in Victoria, and indeed in Australia, has been underpinned by dams constructed decades ago, without which the supply of water for irrigation, town and city supplies and even environmental flows would not have been maintained.

The massive Dartmouth Dam in north-eastern Victoria, which is supported by Snowy Mountains water, has ensured flows down the Murray system to support the food bowl of Australia, despite the dry conditions in recent years and the drought in the past 12 months. Logic tells everyone I speak to that with no dams built in Victoria since 1981, additional water storages are now required to take account of the increased population in the state. Water consumption needs have

increased since that time despite conservation measures and economic usage.

The new Premier must be forward thinking like the former Premier Sir Henry Bolte and commit to new or extended dams so they can hold water in times of excess rain, which can then be used as required. The Premier will be aware of the huge support shown for the completion of the water storage extensions which were originally projected for land purchased for the building of the Big Buffalo dam and Lake William Hovell. This has been recently supported by a petition with over 10 000 signatures from the people of Wangaratta, Myrtleford and surrounding areas. I call on the government to review its policy and build water storages in Victoria immediately.

Dr Eamon Spillane

Mr BROOKS (Bundoora) — I would like to pay tribute today to the exceptional contribution of Dr Eamon Spillane to the Diamond Valley community. Dr Spillane qualified as a doctor and obstetrician from University College Cork in Ireland and worked in England and Wales before emigrating to Australia in 1962. Dr Spillane and his wife, Elizabeth, raised 12 children at the family home in Watsonia and currently have 25 grandchildren and 2 great-grandchildren.

Dr Spillane first worked with Dr Jim O'Shea, before opening his own practice in October 1966 in Watsonia Road, and between 1968 and 1975 partnered with Dr Paul Clarke. He worked at a number of local surgeries from 1992 until January 2004, when he retired at the age of 79 due to ill health. For 25 years he was the medical officer for the Shire of Diamond Valley and he had a long association with the Diamond Valley Community Hospital.

For most of his working life he was on call 24 hours a day, and before the advent of mobile phones Mrs Spillane took all phone inquiries. One weekend there were 70 inquiries. I am informed that Mrs Spillane remembers the number because the tax office queried what she did to warrant being paid a small salary by her husband! It is estimated that Dr Spillane delivered thousands of babies during his career, having delivered many in England and Wales prior to emigrating to Australia, including one of his sons, Tim.

I know that Dr Spillane, who recently turned 82, retired from practice reluctantly and that he still rings former patients to see how they are. The care and compassion he showed so many residents in the Diamond Valley area is evident in the high regard in which he is held within that community. On behalf of my local community, I commend Dr Spillane for his work and wish him good health in the future.

Government: performance

Mr K. SMITH (Bass) — The first question time for the new Premier showed that nothing much has changed — just a change of deckchairs on the *Titanic*. It is the same old rhetoric: blame the federal government, blame the Kennett government and blame anyone except the last Victorian Treasurer for our increasing debt, our run-down public transport system, our overcrowded hospital system, our poor education system, our lack of water as we head towards another hot summer and our lack of police on the beat and in our police stations — and the lack of any real accountability to the people of Victoria from a government that is now led by a failed federal member who took state government as a second choice.

Yesterday the new Premier promised the people that the Parliament would be more open and accountable — and he failed at his first jump last night. It is apparent that he has been eating too much fig jam. The former headkicker and failed federal member who was beaten by Bob Katter in Queensland sitting in the chair beside him is the new Deputy Premier, who is making out that he is just a pussycat and trying to keep himself under control. Let me advise him: don't bother. We have got enough on him to sink a battleship — abusing the spoils of office and manipulating the legal system to suit his socialist agenda.

We look forward on this side of the house to the next three years and seeing this government further deteriorate under those two failures — and Labor members will have no-one to blame except themselves.

Stem cell research: heart disease

Ms CAMPBELL (Pascoe Vale) — Another adult stem cell research breakthrough — this time at the Victor Chang Cardiac Research Institute and Sydney's St Vincent's Hospital — has scientific and medical circles as well as heart disease patients and their loved ones abuzz with excitement. Trials involving the use of patients' own adult stem cells to generate new blood vessels and repair dead tissues in patients with severe heart disease have indicated great success.

According to the institute's Professor Bob Graham the trials showed that patients who previously needed large amounts of pain relief medication showed extremely positive results. In announcing the adult stem cell research results he said that most patients were:

> … experiencing a reduction in angina and finding they were able to reduce their intake of pain relief with marked improvements in some patients …
>
> This is an incredible result, especially when you consider that many of these patients had already undergone multiple surgeries to try and correct the defects causing their heart to malfunction and were on the maximum doses of conventional medicines, yet still experienced chest pain from even the slightest exertion.

The head of the institute's blood and stem cell research, Professor David Ma, also commented last weekend on how the hormone they have developed could stimulate blood vessels to grow in the heart as well as protect and rescue heart muscles from dying. Congratulations and thanks must also be extended to the MBF Foundation.

Aireys Inlet: sports oval site

Mr MULDER (Polwarth) — The matter I wish to raise concerns a recently released consultants report commissioned by the Shire of Surf Coast to identify a site for a sports oval at Aireys Inlet at a cost to ratepayers of $60 000. The report found that the 2.5-hectare site at Boundary Road and Gilbert Street would not accommodate a cricket or football ground and that a sporting reserve would impact negatively on the local environment. These are odd statements given that this site was the subject of a land deal with the Labor government whereby the Surf Coast shire traded inclusion of the Ironbark Basin in the Great Otway National Park for the Boundary Road site, purportedly for a sports oval — a deal which cost Surf Coast ratepayers around $2 million.

The Aireys Inlet community had a very reasonable expectation that as a result it would get the sports oval it had been seeking for over 20 years. Does the community feel ripped off? You bet it does! Labor took its land and the community got nothing in return. The people of Aireys Inlet would be justified in believing they were hoodwinked and left doubting whether there is any intention at all to allocate land for an oval, especially as the shire has now stated its intention to undertake another consultancy to investigate what other purpose this 2.5-hectare site could be used for.

Private land along Bambra Road has been identified by the shire as a possible location for an oval. It is time to stop the stonewalling and move this process forward. The new environment minister needs to take the opportunity to assist the Aireys Inlet community in getting its long-awaited oval.

Maribyrnong Park Football Club: achievements

Mrs MADDIGAN (Essendon) — Today I would like to pay tribute to the Maribyrnong Park Football Club, which plays in the Essendon District Football League (EDFL). With one game against Pascoe Vale to go, Maribyrnong Park is on top of the ladder. This is a fairly significant effort. Three years ago it looked as if it would not be able to continue as a football club. Under the EDFL rules all clubs have to provide junior teams as well as senior teams, and it was struggling to be able to get enough players to support its teams.

The fact that it has fought back from that position to be on top of the ladder, and has done it in fine form, reflects the great contribution by the committee and the players of Maribyrnong Park Football Club. The firsts have won 14 out of 15 games with a percentage of 255, which is a percentage any league club would welcome. However, just to go one better, the reserve team of Maribyrnong Park has won 15 games with a percentage of 458.

Mr K. Smith interjected.

Mrs MADDIGAN — One of the members interjecting surprisingly asks if the Labor Party is involved here. Oddly enough, I happen to be the no. 1 woman supporter of the Maribyrnong Park Football Club. It is a great football club in Essendon which has done a great job, and I look forward to its winning the premiership — in which case I shall report back to the member for Bass.

Alcohol: Hangover for Life campaign

Ms WOOLDRIDGE (Doncaster) — Up to one in eight Victorians is drinking at levels that place them at risk of permanent brain damage. On Monday this week arbias — Alcohol Related Brain Injury Australian Services — launched its Hangover for Life campaign, which will raise awareness about that fact, as there is little knowledge in the community about alcohol-related brain injury. In the two days since this campaign was launched it has already helped identify many Victorians who never even knew they had a problem.

This campaign is welcome, but what we know is that it will place incredible strain on our treatment sector. Under Labor Victoria's treatment sector is well under capacity. The Salvation Army, one of the state's largest service providers, says that the system is 50 per cent below capacity, and arbias says the treatment sector is in desperate need of more resources. But this Labor

government is refusing to properly resource the sector, and in fact has cut funding to drug services by more than 3 per cent this year. In the recent blueprint for alcohol and drug services Labor said that demand is increasing and Labor said that clients are becoming more complex — but it refuses to invest in any additional funding.

This awareness campaign will mean that demand for services will increase at an even faster rate, so we will have even longer waiting times for treatment and rehabilitation services. Labor must scrap its short-sighted position that there will be no new funding for alcohol services and genuinely invest in both raising awareness and adequate treatment services to ensure we minimise the growing incidence and impact of alcohol and the related brain injury.

Mansour Osanloo and Mahmoud Salehi

Mr CARLI (Brunswick) — Tomorrow, 9 August, the International Transport Workers Federation and the International Trade Union Confederation have called an international day of action over the arrest and detention of two Iranian trade union leaders. I too want to voice my concern and protest at the imprisonment of two trade union leaders in Iran.

Mansour Osanloo, president of the Tehran bus workers union, has been arrested three times over the past year and a half, and he continues to be in detention. He was arrested while travelling on a bus on 10 July. He has been charged with conspiracy against national security. Also Mahmoud Salehi, a founding member of the Saqez Bakery Workers Association and the Coordinating Committee to Form Workers Organisations, has been arrested and is being detained. He has major health issues, and it seems his health is dramatically deteriorating as a result of inadequate health care.

There is an international movement to seek the release of these two trade union workers and to ensure that the rights of trade unionists and the right to organise in Iran are protected. This involves numerous activities around the world, particularly putting pressure on Iranian authorities.

Quinn McGennisken

Mr NORTHE (Morwell) — I rise today to congratulate a young woman from the Morwell electorate, Quinn McGennisken, on her success in the Australian Brain Bee Challenge. Sixteen-year-old Ms McGennisken took first place in the challenge, Australia's only neuroscience competition for secondary students. A student at Lavalla Catholic College in Traralgon, Ms McGennisken triumphed over her all-male competitors in the individual section of the national final. She will now represent our country at the International Brain Bee Challenge to be held in America next March. Ms McGennisken must have spent a significant amount of time and effort preparing for the event, and I am sure the house will join me in commending her. She and her family should feel very proud.

Ms McGennisken is a wonderful example of the bright young people who can be found in regional Victoria. As well as achieving academic success, she is a keen athlete and also finds time to assist with the family business. Ms McGennisken has expressed a desire to pursue a career in neuroscience, wanting in particular to help those affected by mental illness. The Nationals have successfully championed a parliamentary inquiry into the decline in the higher education participation rates of country students. We are pleased that all parties have come onboard to address this disturbing anomaly. The inquiry is vital if we are to ensure that regional students like Ms McGennisken are given every possible opportunity to achieve their full potential. Quite obviously such students have much to offer, and ultimately that benefits both their immediate communities and the state.

I congratulate Quinn on her national title and wish her good luck in the international championship next year.

Buffalo Soccer Club: dinner dance

Mr SEITZ (Keilor) — Last Saturday night I was the guest of the East Timor community, and more specifically of the Buffalo Soccer Club, which operates in the western suburbs. I congratulate the club and in particular its president on organising the evening and on the enthusiasm and encouragement shown by the East Timorese in the western suburbs in promoting the sport and looking after their own community. It was an evening dinner dance, as it is traditionally called, but the organisation had many entertainers from all over Australia there, and they all turned up voluntarily. Singers and dancers performed and entertained the community. It should be described as a gala night.

This soccer club operates in the Moonee Valley council area but is looking to settle in Brimbank as the Timorese community moves out to new estates and new areas in my electorate of Keilor. They are upgrading their homes and are naturally looking for bigger homes or to build modern places as they establish themselves in Keilor. I congratulate them all. It was a great pleasure for me to be present.

Rail: Narracan electorate

Mr BLACKWOOD (Narracan) — Once again the rail commuters of Narracan are being treated with pure contempt by this Labor government. During 2006, while waiting for the arrival of the 'farce' train, commuters were constantly subjected to delays, cancellations and overcrowding. The 'farce' train has arrived late and way over budget, and still Gippsland commuters are facing uncertainty with at times very inadequate services. Is it too hard for the government to provide extra carriages at peak times or on days of historical high demand — for example, high-profile Australian Football League games at the MCG or Telstra Dome?

The Premier may need reminding of what he wrote in a discussion paper in 1997. The now Premier stated that the Labor Party, which was then in opposition, would make representations to V/Line to ensure country timetables were better distributed so that transport users had better access to the required timetables and modal linkages. I wonder what happened to this promise to regional Victorians. Another broken promise! It does not matter whether it is rail or road, the Labor government has let regional Victorians down. Also in 1997 the new Premier called for a rural roads recovery package. He stated that not maintaining country roads not only was economically irresponsible but also ignored the steady increase in road fatalities. As the new Premier of Victoria it is time for him to stick to his word and show some genuine concern for the safety of country rail and road users, and in particular the people of Narracan.

Cranbourne-Frankston Road: duplication

Mr PERERA (Cranbourne) — Last week, together with the Minister for Roads and Ports, I had the privilege to formally announce another $30 million for the duplication of Cranbourne-Frankston Road. The funding will duplicate the road between Hall Road and the Western Port Highway. The funding will be used to duplicate a 3.5-kilometre section of Cranbourne-Frankston Road which is the last remaining section to be duplicated. It is very exciting news for my constituents.

The $30 million budget boost will have significant benefits for the local community, providing high-standard transport infrastructure in the area. It is a boost for freight operators who regularly use those roads to move goods around Melbourne and beyond. The duplication of this vital transport route will provide a huge boost to safety in the area, physically separating oncoming traffic and creating a safer right-turning environment, which will lessen the potential for crashes. The Cranbourne-Frankston Road is the main arterial connecting Cranbourne and the transit city of Frankston, and the Brumby government has once again delivered.

To date the Brumby government has committed more than $90 million towards the duplication of Cranbourne-Frankston Road, including the duplication and signalling of Sladen Street. During the time of the previous Kennett government the duplication of Sladen Street was strongly canvassed by the locals, but the incumbent government completely ignored the calls for road improvements in my electorate.

Women's Forum Australia: Get Real

Ms LOBATO (Gembrook) — I wish to advise the house of and encourage all members to attend an exciting forum organised by Women's Forum Australia called Get Real, to be held at the Melbourne town hall at 7.00 p.m. on 18 August. Women's Forum Australia, of which I am a proud member, is an organisation committed to the advancement, wellbeing and freedom of all women, conducting and sponsoring research about social, cultural, health and economic issues relevant to women and promoting for women and men a positive balance between family commitments and participation in the workforce.

The DEPUTY SPEAKER — Order! The time for members statements has now ended.

GRIEVANCES

The DEPUTY SPEAKER — Order! The question is:

That grievances be noted.

Portland hospital: future

Dr NAPTHINE (South-West Coast) — I grieve that this city-centric state Labor government has turned its back on country Victoria. I will refer specifically to the plight of the Portland hospital as an indicator of the plight of many country hospitals and the complete neglect by the Brumby Labor government of the deadly ganglioneuritis virus outbreak, which is decimating the south-west's multimillion-dollar abalone industry.

In recent years this Labor government has closed wards, closed beds, cut services and significantly reduced the Portland hospital's share of the state health budget. Indeed since 1999 the Portland hospital has got 22 per cent less funding than other Victorian hospitals. The hospital has lost key medical specialists, including

obstetricians and gynaecologists, an orthopaedic surgeon, anaesthetists and a physician. More recently the CEO (chief executive officer) and director of medical services have resigned. The hospital is clearly in crisis. But it is not Robinson Crusoe in that regard, because many other country hospitals face the same dilemma.

The Portland community has held a number of public meetings and has raised real concerns about the future of its hospital under the state Labor government. Portland is a growing community, with a population of 11 000 and a service catchment area of 25 000. It has major industries, including Portland Aluminium, the wind energy industry, engineering businesses, a deepwater international port, a major fishing fleet and growing tourism. It is a growing centre, yet the state government seems intent on closing beds, cutting services and turning the local hospital into an ambulance transfer station.

At a public meeting in Portland on 18 July the interim chief executive officer, John O'Neill, admitted that the hospital is losing $1.8 million to $2 million a year and that, due to the lack of specialists, in the past few years patient numbers have dropped by 33 per cent. The interesting thing that the interim CEO announced on that night was that under her special powers the then Minister for Health had pushed through Parliament the appointment of two ministerial delegates to the board of Portland District Health. It is the appointment of these two delegates that gives a clear indication of the government's plan for the future of the hospital. The two delegates appointed specifically by the then minister are Mr Michael Rhook and Dr Heather Wellington. The appointment of Dr Heather Wellington in particular gives a clear indication about the future that this government plans for the Portland hospital and for many other country hospitals across the state.

Who is Heather Wellington? What we know is that she is a rolled-gold Labor mate. Heather Wellington stood for Labor preselection in 2001, and she was up to her eyeballs in accusations and counteraccusations of branch stacking in that preselection. She has been involved in preselections since then. We know that the then Minister for Health appointed her as the chair of the Peter MacCallum Cancer Centre and that previously she was appointed by the Labor Party to the board of Barwon Water.

What we and the government also know about Dr Wellington is that she is the Dr Death of Tasmanian country hospitals. She led the review that advised the closure and downgrading of many country hospitals across Tasmania. An article in the Hobart *Mercury* of 25 May says this about the Tasmanian government:

> The response of the state government, following advice from highly regarded Victorian health planner Dr Heather Wellington, has been to reform the entire structure and way Tasmanians will access health services and hospitals over the next 10 to 15 years.
>
> The Mersey hospital will lose its crisis and … care capabilities to become a specialist elective day surgery hospital …
>
> The North West Regional Hospital at Burnie will become the only acute and emergency surgery hospital servicing the north-west and west coast.

Further it says:

> … Rosebery Hospital, in the centre of the west coast mining district, will no longer be staffed by a doctor and nurse 24 hours a day.
>
> The small rural hospital at Ouse in the Upper Derwent Valley will no longer have a permanent doctor …

An article in the Hobart *Mercury* of 3 August says:

> Dr Wellington, a lawyer and doctor, was the key expert behind this year's future health plan, which initiated the changes at the Mersey.

On 7 June the Hobart *Mercury* described Dr Wellington as the consultant who prepared and developed the plan. On page 48 *Tasmania's Health Plan* says:

> High acuity inpatient, intensive care and emergency services will be consolidated on the Burnie campus. The Mersey campus will refocus on … day-only services; low-risk … services … aged care and subacute rehabilitation … non-inpatient … services.

What Dr Wellington said in Tasmania in effect was, 'Close the country hospitals and make people drive to the regional hospitals'. That is Dr Wellington's plan. She is Dr Death, the toecutter of country hospitals across Tasmania. Now Dr Wellington has been specifically appointed by this government as its delegate to the board of Portland District Health. What message does that send to the Portland community? What message does it send to country hospitals across the state? The message it sends is that they are doomed. Dr Death, the toecutter of country hospitals, has been appointed to close down the hospital and force people in Portland to travel 110 kilometres to Warrnambool to get basic hospital services, to have any surgery done and to get any inpatient services. That is what she did in Tasmania, and the government knew that that is what she did in Tasmania.

The government specifically chose its rolled-gold Labor mate, a person involved in Labor Party preselection shenanigans and a person whose views

about hospital services the government knew, as its ministerial delegate on the board. At the first board meeting that she attended she told the board, 'Don't worry about trying to recruit new specialists. We should adopt a different strategy'. She knows what strategy the government is trying to adopt. Its strategy is: 'No bed-based services in Portland. You'll have to drive 110 kilometres to Warrnambool for services'. This government is about closing hospital services across country Victoria. There is no doubt that Dr Wellington is on a mission from the Brumby Labor government and the new Minister for Health, and the mission is to relocate services.

It is not the first time that this government has been down that track. We remember the Hume hospital services plan of 2003 proposed by the Clearview Consulting Group, which was exposed as wanting to close down smaller country hospitals and country services and consolidate them in so-called regional centres. We are not talking about small towns here; we are talking about Portland, which has a catchment of 25 000 people. No wonder the Howard government had to step in to save the Mersey hospital in Tasmania and protect the people of that area. The Howard government may have to step in and save the Portland community from the Brumby Labor government, which wants to close services.

As a hospital board member said to me, at least the Tasmanian Labor government had the guts to spell out its plans to close local hospitals. The Victorian Labor government is doing exactly the same in a sneaky, underhand way. It is closure by stealth. Portland and every other country hospital ought to be quaking in fear at what Dr Wellington and the new Minister for Health and the Brumby government are going to do to them. They have shown their hand by appointing Dr Wellington to the Portland hospital board.

Abalone: virus

Dr NAPTHINE — I also wish to grieve about the issue of abalone. I quote from the *Sunday Age* of 29 July. It says:

> Australia's multibillion-dollar abalone industry could face ruin — and is blaming Victorian government inaction for allowing a deadly virus to jump from contaminated farm stocks to the world's last unspoilt wild abalone fisheries.
>
> About 500 jobs in Victoria alone are at risk from the virus, which in less than a year has devastated key fisheries scattered along 200 kilometres of the state's south-western coast.

Further it says:

> The Victorian abalone fishery is the most valuable commercial fishery in the state, with $75 million in exports, mostly to Asia.

Harry Peeters, the executive officer of the Western Abalone Divers Association, is reported in the same article as saying:

> This is the worst environmental disaster ever seen in the south-west of Victoria.

That is backed up by the comments of Victorian National Parks Association spokeswoman Megan Clinton which were reported in the Warrnambool *Standard* of 30 July 2007:

> Considering the implications for an industry worth $75 million a year and the potential impacts on the marine environment it is a worry the government is not doing more.

She said this could be devastating for the environment and the industry.

The sequence of events is that in 2005 there were high mortalities among abalone at several aquaculture farms in Victoria, mainly in south-west Victoria. In January 2006 the disease was diagnosed as a herpes-like virus causing ganglioneuritis, and the disease and the virus had never been seen before in abalone in Australia. In March and April 2006, after a period of remission, there were more deaths at an aquaculture facility near Port Fairy. In May 2006 the disease was found for the first time in wild abalone at the Craggs near that aquaculture facility. It has now spread over 200 kilometres, from Cape Bridgewater to Childers Cove. It is now in marine national parks and is threatening the abalone industry from one end of Victoria to the other.

It is interesting to note some of the areas where the government has failed. Fisheries notice no. 4 of 2007 was issued. It says:

> The objective of this notice is to protect abalone brood stocks around Port Fairy affected by a herpes-like virus.

The notice came into operation on 1 April 2007, and that is appropriate as it was April Fools' Day. When you look at the fisheries notice you see it covers:

> An area along the Victorian coastline west of Port Fairy that includes marine waters. The area is bounded by the high-water mark from point 1 (approximately 1 kilometre west of Craggs car park) to point 6 (Killarney beach car park).

The fisheries notice of 1 April 2007 covers a certain area, but the problem is that the virus is already well outside that area. It goes from Cape Bridgewater to Childers Cove, which is 200 kilometres, and the fisheries notice does not even cover that area. There is no law preventing people taking diseased stock out of

many affected areas, because those areas are not covered by a fisheries notice. The government is so neglectful and negligent that it has not even issued a fisheries notice or introduced a control system or quarantine system to stop people moving the virus. There have already been some significant shifts in the virus, which seems to indicate that it has been transported by people, either recreational divers or poachers, or by some other means.

There is also a lack of research. I quote from an email I received from Melanie Curtis, the acting manager corporate affairs with the Department of Primary Industries (DPI), in answer to my request about how much money had been spent on this enormous and significant disease outbreak which has affected our no. 1 fishery:

> Expenditure for the last financial year was $432 786.

Less than half a million dollars has been spent on research into a new disease which has never been seen before and which is affecting a $75 million industry. It is threatening the very existence of that industry and costing hundreds of jobs, and yet all that DPI can spend, and all the minister and this government can spend, is less than half a million dollars. It is an absolute outrage. What is the government doing? What is the Minister for Agriculture doing? This is from a document presented by the executive of Fisheries Victoria: 'What's next — passive surveillance'. That means they are doing nothing while this disease spreads along the coastline.

Mr Nardella — What would you do?

Dr NAPTHINE — First, what you need to do is make sure that the area is appropriately quarantined. That would be a good start. You need appropriate signage. Perhaps you need to ban recreational fishing. You need to invest in research. You need proper epidemiology, because we do not even know where the virus came from. The epidemiology is deficient. We do not know whether it is an exotic disease or an endemic disease. We have not even done the basics on this disease nearly two years later. We have no plan for the recovery of native populations. We have no plans to properly implement systems in our aquaculture to make sure that it is safe into the future. We have no action from this minister or this government on this major issue.

The minister is negligent, the government is incompetent and the industry is suffering. The industry is suffering significantly and there has been nothing done to control this disease, nothing done to help the industry. There is even a sense of animosity between the government and the industry, rather than a sense of cooperation in working on this issue. This is an absolute recipe for disaster.

I am a veterinarian. I have worked with the Department of Primary Industries, and I have worked on exotic disease outbreaks before. I understand the need to work with the community to have good epidemiology, good science, good research and appropriate implementation of legislation, regulations and quarantine systems to control diseases. None of that has happened here. The minister ought to resign, because he is so incompetent on this issue.

Liberal Party: Albert Park and Williamstown by-elections

Mr NARDELLA (Melton) — Today I grieve for the Leader of the Opposition and for the Liberal Party for not running candidates in the upcoming by-elections for Albert Park and Williamstown. The decision by the 19 faceless people of the Liberal Party administrative committee not to run candidates makes the opposition leader a lame duck who makes George W. Bush actually look good. This decision is the opposition leader's Iraq; that is how bad this decision is.

It is not just me saying this. The *Herald Sun* editorial of 4 August states:

> The Liberals were given a golden goose and traded it for a lame duck.

Thursday, 2 August 2007, was a black day not only for the opposition leader but for all the parliamentary Liberal Party members of this Parliament, who were totally humiliated by the organisational win. It also makes the opposition leader's position within this Parliament untenable and unsustainable. He will be replaced in due course because of this decision.

The Leader of the Opposition brought in the cavalry, the posse, to the administrative committee meeting. He brought in the Deputy Leader of the Opposition, the honourable member for Brighton, to support him, he brought in the Leader of the Opposition in the Legislative Council, the Honourable Philip Davis, and he brought in the Deputy Leader of the Opposition in the Legislative Council, the Honourable Andrea Coote — but still he could not get his wish to have a Liberal Party candidate running in the by-election for Albert Park.

That was the preferred position he put to the administrative committee and the position he announced to the papers, with all that fanfare. He brought in those people to his administrative committee

meeting, but he got rolled two to one. Sixty-six per cent of the people who voted on that administrative committee voted down the position of the Leader of the Opposition, voted down the position of the parliamentary party here. It was a disgrace, and it makes his position untenable.

This would not have occurred under the leadership of others. It would not have occurred under the leadership of the member for South-West Coast, who, when he was Leader of the Opposition in this Parliament, got his way through the organisational wing of the Liberal Party. It would not have happened if the member for Polwarth or even the new member for Malvern were leaders of the opposition, because they have some credibility with their organisational wing. But here we have a lame duck opposition leader who cannot even get a simple request through his administrative committee.

The decision made by the administrative committee makes the opposition leader look weak and absolutely not in control of the situation. For days he was pumped up, just like he was before the previous election, and he was going to challenge the new Brumby Labor government. He was going to forcefully put the position of the Liberal Party with the support of his members and his supporters out there at Albert Park. Then he was done in like a dirty dog by the members of the Liberal administrative committee.

He said that he wanted the opportunity to challenge the Brumby Labor government right from the beginning, but his organisational wing, which he does not control, has humiliated him. It is fractious, disunited and venal. Its members said no to the Leader of the Opposition. They overruled their leader on this very critical test and challenge to his leadership, and they also have let down the members of the opposition here in this Parliament.

To see that you only have to look at the *Australian* of 4 August and the comments of a Liberal Party member of the administrative committee who said Mr Baillieu had 'been made to look like a goose, publicly, and he's brought it on himself'. This decision highlights the factionalism and the disunity within the Liberal Party. It highlights the battle between the Costello-Kroger faction and the Kennett-Baillieu faction within the administrative committee and within the party. The winners out of this have been the members of the Costello-Kroger faction, who have humiliated the other faction and the members of the Liberal Party in this Parliament.

The opportunity was there for the Liberals to fight. The opportunity was there for them to put their policies before the people of Albert Park — and Williamstown if they had the guts — and to explain the things they would do for those constituents. But they did not have the guts. The administrative committee — the 19 faceless people — voted down the opposition leader.

There have been many instances where the Labor Party has, both in government and in opposition, challenged the forces of evil — the Liberal Party — in this state. I was the campaign director for the Kew by-election in 1988, when Tim Muffett was the Australian Labor Party candidate. Let us make a comparison. That was a seat where the Liberal Party's two-party preferred vote at the 1988 election was 61 per cent, and we still challenged. There was also the Benalla by-election following the retirement of the Honourable Pat McNamara, the former Nationals leader. At the 1999 election the then National Party achieved a two-party preferred vote of 57.41 per cent, yet we won it from that party at the by-election.

Best of all we had the Burwood by-election in 1999 following the retirement of the Premier, the Honourable Jeff Kennett. At the general election in 1999 he achieved a 56.7 per cent two-party preferred vote. We won the seat at the by-election. It is now a Labor seat. We did the hard work — we put our policies before the people — and we won the by-election, and to the chagrin of the Liberal Party we held it in 2002 and 2006 with Burwood Bob. That is what they call him, because he is out there fighting for his residents at every opportunity.

The top-up was the 1998 Mitcham by-election, when we were in opposition. This direct comparison shows what the opposition might have done in the Albert Park by-election. In 1998, following the retirement of the Honourable Roger Pescott, there was a 16 per cent swing towards the Labor Party. We won that seat following the election of the now Minister for Gaming. In actual fact he changed the course of history, because we were prepared to put in the hard work. Yet Liberal Party members have no policies; they are policy lazy and are not prepared to do the hard work. Those are not my words, they are the words of the Honourable Robert Doyle, the former Leader of the Opposition, following the defeat at the last state election. Liberal Party members are too lazy to get off their behinds to do the hard work and to challenge the Labor government — the Brumby Labor government — when it counts.

Opposition members will go to their graves not knowing whether they could have won Albert Park or Williamstown. They will go to their graves not knowing whether, if they had put in the hard work or done the hard yards, they could have taken that seat off

us at this opportunity. They will go to their graves knowing that they were not prepared and were too scared to challenge the Brumby Labor government because it would have highlighted the divisions within the Liberal Party. On 12 May 2006 the Leader of the Opposition said to Kathy Bowlen from the ABC, 'Every election is winnable'. He continued by saying that 'the party would be putting in the hard work', which leads me to the next point.

Maybe the administrative committee of the Liberal Party recognises that the parliamentary Liberal Party wing and its leadership cannot put in the hard work and cannot do the hard yards. It is signalling to the community that the 19 faceless people know that their parliamentarians are lazy, good-for-nothing, factionalised bludgers who could not go out and convince anybody to vote for them. They would run out of steam in a by-election, if they challenged, and they would be found wanting. The committee did not want its members of Parliament shown up in these crucial times. They have not done the hard policy work over the last seven and a half years; instead they are out there fighting each other.

The Liberal Party's administrative committee could have thought that both electorates, Albert Park and Williamstown, were Labor seats that were on the wrong side of the Yarra River. If they did, they made a mistake. I have before me *Melway* maps which show that Williamstown is on the wrong side of the Yarra — I am happy to table *Melway* maps 55 and 56 — so I can understand why they made that mistake. But if they had done some research they would have seen that *Melway* maps 57 and 58 show that the seat of Albert Park is actually on their side of the Yarra, where they claim their seats and their members are. The Liberal Party's administrative committee could have mistakenly thought that Albert Park was also on the wrong side of the Yarra.

The administrative committee would also have considered the dirty, underhand, sleazy deal that the Liberal Party has with the Greens as well as the continuance of the unprincipled preference deal they made at the last state election. The Liberal Party is prepared to play dead and let the Greens have a go at both Albert Park and Williamstown. Cr Janet Rice, the Greens party member, who will get a clear run in Williamstown, was reported in the *Herald Sun* of 6 August as saying that she wanted to 'create history'.

This sleazy deal between the Greens and the Liberal Party continues as an unholy alliance in this Parliament. In the upper house the Greens party has voted with the Liberal Party, The Nationals and the Democratic Labor Party against the Labor Party and against the Bracks Labor government over 66 per cent of the time, and it will continue to do so against the Brumby Labor government. This unprincipled party, with the support of the Liberal Party, even voted to defeat the nuclear plebiscite bill, which was touchstone legislation. It was an unprincipled position and has been a disgrace for the Greens party ever since.

Ms Munt — It is the left wing of the Liberal Party.

Mr NARDELLA — It certainly is the left wing of the Liberal Party, as the honourable member for Mordialloc just pointed out. The Liberal Party has had a proud history. It has done the hard work in the past, but now it is letting down its members and its supporters. For Liberal members the position of the federal government is much more important than their position here in Victoria. They are Liberals first when it comes to the Prime Minister, the Honourable John Howard, and Victorians last when it comes to their Victorian party and their supporters.

The Liberal Party's state president, Dr Kemp, who is a Costello supporter — and a Howard supporter — has allowed the Leader of the Opposition to become a lame-duck leader. Liberals here will need to make a decision on how to save themselves. They will need to go through a leadership change and get a real leader. Maybe it will be the member for South-West Coast or the member for Polwarth or the member for Malvern. I want to end by saying that there is a Liberal running for these seats, and his name is Mr Cop-out!

Water: Victorian plan

Mr WALSH (Swan Hill) — What a fascinating contribution from the main attack dog of the Labor Party. A chihuahua! Couldn't it roll out something better?

I grieve for the people of northern Victoria, and the reason I grieve for them is that they are continually deceived by the Brumby government when it comes to the facts on water issues. The Brumby government is totally without shame in what it will say about water. Water policy is being done by media release and photo opportunity, and not by facts. Promises that have been made have never been honoured, and the Labor government has a track record of broken promises when it comes to its commitments on water.

If you go back to before the 2002 election, you will see that the Labor Party said it would provide an initial cash injection of $320 million in 2002–03 to establish the Victorian Water Trust and that, as required, additional

funding for the water trust would be available from dividends received annually from Victoria's water authorities. After the election in 2002 the Minister for Water at that time said the state government would provide more than $1 billion over 10 years for water infrastructure projects across Victoria, covering most of the state's 220 000-kilometre channel and pipeline system, and deliver water savings of up to 200 billion litres per year. He said $160 million of the $320 million in Victorian Water Trust funds would be invested in irrigation and environmental projects over the next four years.

If you go to the 30 June 2006 budget papers, you find that only $80 million of that $160 million that was promised in 2002 has actually been spent. If you go searching for the 200 000 megalitres of water that was supposed to be saved, you find there is no accounting that can prove whether it has been saved or not. We believe that the savings have been minimal against what was promised in those commitments.

The promise of the top-up from the public sector dividend funds received from the Victorian water authorities is laughable. There has been no top-up at all. Since being elected the Labor government has collected in excess of $1.8 billion in public sector dividends from the water authorities, but none of that has been used to top up the Victorian Water Trust. Despite the promise of that $1.8 billion flowing back into irrigation infrastructure, it has not been done.

Fast-forwarding to August 2006, the then Minister for Water had another major press conference at which he announced Goulburn-Murray Water's Watertight 2020 project which, according to the minister's press release, was going to save 400 000 megalitres of water. That particular project has never been implemented. If it had been, we would not need to have the discussion about the food bowl modernisation project. In October 2006 the government said in the central regional sustainable water strategy that it would not take water from north of the Divide to south of the Divide. What did we have immediately after the election? We had a broken promise: the government is going to take water from north of the Divide to south of the Divide.

If you drill down to the details of that particular project, you will see the government is supposedly going to put in $600 million of its own money, as it says. But is that actually new money, or is it just a cobbling together of existing commitments that have never been honoured? There is still a substantial amount of the $320 million allocated in 2002–03 to the Victorian Water Trust that remains unspent. Is the $600 million on top of that or does it include that? There was an announcement of $40 million to upgrade the irrigation infrastructure in the Golden-Broken district. Is that $600 million on top of the $40 million that was already there, or is the $40 million actually part of the $600 million?

There was $50 million allocated out of the 80:20 deal for system reconfiguration. Is that $50 million included in the $600 million or is the $600 million on top of that? The financial accountability of the Brumby government is so obtuse and so clouded in political spin that we will probably never know the truth. The Nationals believe the $600 million that the government has promised is nothing more than a cobbling together of previously unspent commitments of the Labor government. There will be little or no new money going into this project. It is all about political spin.

If you go to promises about savings, you will see that when the food bowl modernisation project was first announced there were statements made by the Labor government that 900 000 megalitres of water lost in the system could potentially be saved, but subsequent documentation reduced that figure to 870 000 megalitres. Then the next lot of documentation said 780 000 megalitres could potentially be saved. What is even worse is that these figures are not based on actual losses that have been calculated over a number of years, they are derived from government computer modelling. This computer modelling does not take into account the fact that quite a bit of the irrigation system uses rivers and lakes as carriers, and you cannot pipe rivers, and you cannot pipe lakes. I will come back to the issue of lakes a bit later.

Any estimation of potential losses should be taken from where the irrigation distribution system starts to the farm meter. It should not take into account what could potentially be saved in the rivers and lakes. Internal documents obtained by The Nationals show that the actual loss out of the system in 2005–06 was only 662 000 megalitres of water, not the 900 000 megalitres that the Brumby government has been claiming could potentially be saved. In 2006–07, 548 000 megalitres was potentially lost out of the system, not the 900 000 megalitres the Brumby government has been talking about.

As can be seen, it is very hard for anyone in northern Victoria to ever believe any claim that is made by the Brumby government when it comes to water. The fact is that only 548 000 megalitres of water were lost in 2006–07 compared to the 900 000 megalitres the government has been claiming — something like two-thirds of the original claim of the Labor government. Of that 548 000 megalitres potentially lost out of the system, the evaporative component of the

Kerang Lakes and Kow Swamp account for something like 100 000 megalitres. In particular the Kerang Lakes are Ramsar-listed wetlands, and I would find it very hard to believe that the Brumby government is ever going to propose closing those lakes down to save that water. If you take that 100 000 megalitres off the actual savings, the losses in the system are less than half of what the Brumby government is claiming.

A significant proportion of the figure that is left is made up of what the government is going to call savings from improved water metering. There is a claim that the Dethridge wheels that have been used to measure water over time are inaccurate and that something like 160 000 megalitres of water are supposedly lost through inaccurate metering. But if you read the Goulburn-Murray Water paper on the study of Dethridge wheels, you will see that it only sampled 13 of 18 000 wheels that make up that particular irrigation system. Any mathematician or statistician would say that making changes based on a sample of 13 out of 18 000 is just absurd. How can you believe this government when it is basing its facts on a sample of 13 out of 18 000? We believe that the government's potential savings are grossly exaggerated.

Taking a specific example, the government says the modernisation of the Shepparton irrigation district will result in savings of 50 000 megalitres of water which will be shared by 38 000 megalitres of water going to the Living Murray and 12 000 megalitres going to Melbourne. If you look at the actual losses, you see in 2005–06 there were 62 000 megalitres of water lost in the Shepparton system, but in 2006–07 there were only 30 000 megalitres of water unaccounted for in that system. Less water was unaccounted for than the government claims it is going to be able to save. How can you ever trust the Brumby government when it comes to facts on water issues?

On the best estimation that The Nationals can make, if you upgraded the whole Goulburn-Murray system, at best you could save 247 000 megalitres of water. That includes 100 000 megalitres of water from improved metering, which would in the end take water from farmers. That is for a total upgrade of the system, not the half-baked, half-funded proposal that the Brumby government is putting forward at the moment. It would require at least double the money that the Brumby government is currently offering to upgrade the system.

Let us look at what this government has promised since it came into office. There was a promise to meet Victoria's share of the Living Murray initiative. Victoria was required to find 214 000 megalitres of water for its share in that project. So far 120 000 megalitres of water savings have been found to meet that promise, and that is from the 80:20 sales pool deal. There are no savings there; it is a straight deal to get water out of the sales pool. The other 24 000 megalitres that has been accounted for is from Lake Mokoan. The Lake Mokoan project has not been delivered yet, but if it were, that would make 144 000 megalitres of water that has supposedly been found to go towards the 214 000 megalitres we have promised to the Living Murray. That still leaves Victoria 70 000 megalitres short on its promises to the Living Murray.

If you go to the commitment to the Snowy, you see that this government was elected in 1999 with the support of the Independents, based on the fact that it was going to put water back into the Snowy. There was a promise that 249 000 megalitres would be returned to the Snowy. To date only 195 000 megalitres has been found. That leaves this government 99 000 megalitres short on its promise to the Snowy, and I would be interested in knowing what the member for Gippsland East feels about the government's broken commitment on the Snowy. That leaves the Labor government 169 000 megalitres of water savings short on the promises it had already made before it started to make promises to Melbourne.

If you add up all those figures and add in the 75 000 megalitres that has been promised to Melbourne, you find that the potential savings if you upgrade the whole system — not just half, as the Brumby government has promised — is 3000 megalitres of water that will be left over for the environment and the irrigators. All that would be left after all the promises that have been made would be 3000 megalitres, and farmers would have lost 100 000 megalitres in improved metering in the transition to this proposal.

If you look at the situation you will see that the irrigators will have had the pleasure under the Brumby government of paying $100 million to lose 100 000 megalitres of water, so why would anyone support the food bowl modernisation project? I think that will be brought to the fore tomorrow, when we see the number of people who turn up on the steps of Parliament to lobby against that proposal.

You might ask, 'Where can Melbourne get its water from?'. Melbourne and Geelong currently pump 370 000 megalitres of wastewater out to sea at Gunnamatta, at Werribee and at Black Rock. That should not be wasted water; in my mind it is wastewater that could be new water for Melbourne to use into the future. Do not have a food bowl project; get Melbourne to utilise its wastewater. It is also a fact that

something like 500 000 megalitres from rain and stormwater runs off Melbourne into the sea every year. Melbourne is like one great big roof with all that asphalt and concrete and all the roofs on its buildings. Let us look at how we can have local solutions for local problems so that that water can be harvested and utilised here in Melbourne, rather than taking water out of a stressed catchment in northern Victoria to supply Melbourne's unquenchable thirst for water.

In conclusion, how can anyone ever trust the figures on water that the Brumby government puts forward? It is without shame, and it is without fact in anything it says. I condemn the Brumby government for what it is going to do to northern Victoria by taking water from a stressed catchment and piping it to the city of Melbourne, which has the 10 worst water-wasting areas in Victoria.

Liberal Party: Albert Park and Williamstown by-elections

Mrs MADDIGAN (Essendon) — Today I grieve for the democratic processes in Victoria, particularly for the electors of Williamstown and Albert Park, who have been denied the opportunity of expressing their views on election day by the Liberal Party administrative wing.

If you think about it, in Victoria we have had 150 years of democratic and responsible government, with elected representatives supporting both their community and their party's policy. Perhaps I should remind members of the Liberal Party of Tony Blair's words:

> We are not the masters. The people are the masters. We are the servants of the people. What the electorate gives, the electorate can take away.

What the electorate gives, the electorate takes away.

In this house we hear a lot of discussion about democracy and its benefits. We hear from the government how it is supporting democracy, and we often hear from the Liberal Party and opposition members that the process is not democratic enough. But what is the main pillar of democracy? It is having elections. That is what democracy is all about. It is so that the people can express their view on what policies they support and who they would like to lead them for the next few years. To have a strong democracy you must have political parties that are committed to that principle and are prepared to make an effort to support democracy.

If you think about it, there are many countries in the world whose residents would be delighted to have the opportunity of putting candidates up for election. We, and perhaps the Liberal Party, take democracy for granted because we have been very lucky that the 150 years of democracy in this state have been untroubled by coups, by attempts by the military to overthrow the government or by any serious civil unrest. That is not the case for many other countries in the world. I think there would be many people — we have seen people die in their efforts to seek democracy — who would be amazed to think that a country that does have free and open elections has political parties that choose not to participate.

In this country more than others there is a certain ludicrous element in political parties not putting up candidates, because we have compulsory voting. I think we are one of only two places in the world where voting is compulsory, and compulsory voting has been supported, as far as I am aware, by both major parties in this house for a long period of time. We are saying, supported by the Liberal Party, 'We believe that you must go and vote. We believe that so strongly that, if you do not go and vote, we will fine you for not doing so'. How can a party believe in compulsory voting and say, 'You must go and vote', but then decide not to put up a candidate? That is saying to the people who may wish to vote for the Liberal Party, 'We do not care about your vote. We do not really support democracy. We only support democracy when it suits us'.

The other thing about democracy that came up in the discussions of the Liberal Party is that elections cost money. That is so true. No-one ever said democracy is a cheap form of government. If you want a cheap form of government you have fascism or a dictatorship. Democracy is an expensive process. Most people would believe that democracy is such a good form of government that it is worth the expense the community goes to. Other members may have had a different experience, but I must say that I have very rarely heard people complain about the cost of elections.

I think people see it as being a necessary expense to support and encourage a participatory democracy in which all people have the right to vote — and it is 'all people'. Once again we are different from some other countries, in that everybody over 18 years of age gets a vote. Women did not get the vote until 1908, but now we have a situation where everybody is entitled to cast their vote on which party should represent them in the seat in which they reside.

Democracy, once in place, is not necessarily there forever if it is not supported. I was a bit surprised — although in retrospect less so — by some comments made by former Premier Jeff Kennett, who supported

the decision of the administrative wing of the Liberal Party not to contest the seat of either Albert Park or Williamstown. He had an interesting insight on democracy. According to the *Herald Sun* of 3 August he said:

> The ALP caused the by-election. There is no reason why we should want to be involved.

What an extraordinary comment from an ex-Premier. He is suggesting that if they do not start the election process, the opposition parties should not be involved. As I understand it, seeing that it is normally the Premier who goes to the Governor to seek the date for the next election, on the basis of Mr Kennett's logic the opposition would never contest any seats. Mr Kennett also said, 'Why send good money after bad?'. What does that mean? Does that mean that the former Premier, Mr Kennett, thought the Liberal Party should not have spent money on the last state election? That is about the only conclusion you can reach. He has a very interesting view on how democracy should operate in this state. It is not a view, I am glad to say, that is shared by other political parties or other leaders.

Let us have a look at the two seats that are under question now and the reasons the Liberal Party has given for not contesting them. My colleague the member for Melton has already outlined the Labor Party's involvement in by-elections. The reason the Liberal Party has given is that it will not contest elections in what are safely held Labor seats. That of course is not true, and it has not always been the policy. Perhaps the best example of that was the by-election for Thomastown. Thomastown was a safe Labor seat.

I will say that at the time of the Thomastown by-election the Labor Party was somewhat on the nose in the general electorate. Even so, the Liberal Party put up a candidate in Thomastown, and there was a swing against the Labor Party of 25 per cent. The Labor Party still won that seat, thus proving that it was a safe Labor seat; however, it shows that election results in by-elections cannot be predetermined. It shows that the Liberal Party in the past, when it has thought it can win a seat, has been prepared to put up a candidate, even if it is a safe Labor seat, as Thomastown was.

It makes it even more curious to look at the two seats where there will be by-elections later this year. We will look at Williamstown first, because if the Liberals' argument held anywhere, it would be here. Williamstown is a stronger Labor seat than Albert Park. However, once again, if there were a swing against the Labor Party of 25 per cent in Williamstown, as there was in Thomastown, the Labor Party would lose that seat. If you look at the voting patterns over the last two elections, you see that the Labor Party has declined in Williamstown and the Liberal Party has increased. The increase has only been marginal, but certainly if you are getting 25 per cent in that electorate, I would have thought that probably at least 25 per cent, if not more, of the Liberal voters who voted in the last election would be extremely annoyed that the Liberal Party has not been interested enough to give them the opportunity to vote again. I think they will be extremely cross about that.

Looking at Albert Park, we find it is an even more obscure decision by the Liberal Party, because it would be very difficult to claim that Albert Park is a safe Labor seat. If you look at the figures from the November election last year, you see that John Thwaites from the Labor Party got 41 per cent of first preference votes — by no means a clear majority. The Liberal Party got 35 per cent of the vote and the Greens got 20 per cent of the vote. When the preferences were distributed the Labor Party ended up with about 59 per cent and the Liberal Party 40 per cent, which shows that a significant number of the Greens preferences went to the Liberal Party.

That vote in 2006 was a substantial decrease in the Labor vote from the election before, in 2002, and a substantial increase of votes for the Liberal Party. To suggest that Albert Park is a safe Labor seat is clearly wrong. The Liberal Party ended up with 40 per cent of the vote after preferences were distributed in Albert Park. That is a significant vote in anybody's language. The Liberal Party's suggestion that it is a safe Labor seat that it does not wish to contest at the by-election really lets down the large number of people — I may not agree with them — who may wish to cast their vote for the Liberal Party.

As the Liberal Party stood candidates in the state election in these two seats, I think some of those voters would come to the conclusion that the Liberal Party only cares about the seats of Albert Park and Williamstown when that will support its vote in the upper house. Obviously at state elections all parties contest lower house seats to ensure that they maximise the vote for their upper house candidates. I think the people of Albert Park particularly, and Williamstown, can feel that they have been really badly treated by the administrative wing of the Liberal Party.

It sends a strange message to people, does it not? As an anecdotal indication, the other day some people who were talking to me down in Puckle Street — where I live, and the centre of the universe — were expressing concern that the Liberal Party seemed to be controlled by people other than the parliamentary party.

Mr Dixon interjected.

Mrs MADDIGAN — For most of the community the parliamentary party is the public face of the political party to which they belong. The member for Nepean interjected, saying, 'Like the Labor Party'. It reminded me of the ads we had many years ago, when Arthur Calwell was the leader of the federal party, about the 12 faceless men. But I think there are people in Victoria now who think that the Liberal Party acts on the same sort of basis. I feel a bit sorry for the Leader of the Liberal Party, because from his comments I think he was keen to contest the by-elections. The poor old opposition leader has been sold down the drain to a certain extent by the administrative wing of his party. Of course it is not elected to represent the people of Victoria. The administrative wing of the Liberal Party has not been elected by anyone, apart, presumably, from Liberal Party members. It is not the public face of the Liberal Party, and it makes the Liberal Party in this house look weakened and makes the political party look weak.

By-elections are a great opportunity for parties to assess how they are going. By the time we have this by-election — it will probably be September, October or November, or somewhere around there — we will be almost a year into the term of this government and a quarter of the way through the term of the Parliament. One would have thought that any political party would welcome the opportunity to get from the people of Victoria a clear assessment of how it is travelling. One would have thought that if the Liberal Party were serious about trying to wrest control of the Victorian Parliament from the Labor Party in 2010 it would welcome the opportunity to put up a candidate in a by-election and see what sort of response it got to its policies. By-elections are a great way of finding out exactly what the community thinks and for parties to assess how they are travelling and what sorts of policies they may want for the future.

The sad thing for Liberal Party members is that it is not only the people of Albert Park and Williamstown who see them as failing the state, failing their electorates and failing the Liberal Party but people right across Victoria. If you look at the newspaper comments over the last few days, you will see that what people are saying about the Liberal Party's decision on this is fairly damning.

I refer to an article by Paul Gray in the *Herald Sun* of 6 August, which states:

> By refusing to take part in these by-elections, the Liberal Party is effectively saying to voters: you don't count.

The *Age* editorial of Monday, 6 August, states:

> The state opposition has squandered the initiative against a weakened Labor. Waving the white flag in by-elections invites the retort: put up or shut up.

The letters to the editor about this are not just from Albert Park and Williamstown but from right across the state. One says:

> Memo Ted Baill-out: You have to be in it to win it.

That was from somebody called Andy in Melbourne. Another one states:

> The Liberal Party decision to not contest the Labor seats of Williamstown and Albert Park strikes at the heart of democracy. Voters should always be entitled to a real choice.

That was from David Pym in Monbulk, a long way from either Albert Park or Williamstown. That is just from one day's letters in the 50/50 column of the *Herald Sun*. If you look at the responses in the papers over the last few days, you will see that there is a very strong and almost unanimous view that by not putting up candidates for Albert Park and Williamstown the Liberal Party is not participating in the way that Victorians would expect it to in order to support a strong, effective and continuing democracy. It is a sad day for democracy and a sad day for representative government in Victoria.

Port Phillip Bay: channel deepening

Mr DIXON (Nepean) — I am tempted to grieve for the people of Bass, because when the current Premier was the Leader of the Opposition the Labor Party wimped out of putting forward a candidate in the Bass by-election in I think 1997, but I will not digress. Instead I will grieve for the residents of the Mornington Peninsula in particular and, more generally, for the residents of Victoria, who will be seriously affected by some aspects of the channel deepening project.

This morning I wish to talk about five areas: the process involved in the supplementary environment effects statement; the so-called best practice that has been touted; the dredging of the Rip and comments from some experienced Port Phillip pilots regarding that; compensation for businesses on the Mornington Peninsula that will be seriously affected by the project; and some recent misinformation from the Minister for Roads and Ports.

I will start off with the process. As we know, the first environment effects statement did not work — it did not add up and was lax — so a supplementary environment effects statement process had to take place. The old panel, which did all the work and which

said that a second environment effects study had to be done, was not invited to take part in the new study, even though it had built up a lot of expertise. As part of the process employed by this so-called open and accountable government which the Premier says we now have, only some selected witnesses were allowed to appear before the panel, and no cross-examination was allowed.

Equipment, even down to the level of dredges and work huts, has already been ordered in anticipation of the project going ahead. So the process is just not above board and just not open. There is a predetermined outcome: you just need to listen to the recent statements by ministers and the Premier, who talk about the project as if it were a fait accompli. The process, especially the supplementary environment effects statement process, certainly points to that.

As for the so-called best practice process, a term which is easily used, the information in the supplementary environment effects statement document fails to support the argument for best practice. For example, it talks about the work on plume mitigation in the northern end of the bay, which is good, but there is absolutely no mention of how plume mitigation will work or if there will be any in the southern end of the bay. You could hardly call that best practice.

The appendices attached to the study talk about the technical aspects of the dredging process and the actual dredge that will be used. That has not changed in the last five years. Think of all the other technology that has moved on in the last five years, yet in that time there has been absolutely no improvement in the technology that will be used in dredging the bay. I hardly call that best practice. What we basically have is a 19th century dredging process. Little has changed, yet this is the process that will be used. The only thing that is best practice about it is that the boat, the *Queen of the Netherlands*, had been in dry dock and has been made bigger. I would hardly call that best practice.

I quote from a submission from Mr Dennis Bertotto, who appeared before the panel and who has investigated best practice dredging techniques. In describing one — he gave this information to the Port of Melbourne Corporation two years ago, but the corporation has not acted on it, probably because it would cost more money — he stated:

> The dredging process —

that is, the up-to-date dredging process —

> uses … a suction or cutter … head. There is an additional pipe to feed water from the hopper to around the suction head so that about 85 per cent turbid water is reused as part of the process. When the hopper is nearing water capacity and discharge is needed the marine environment turbid water is passed through the hydrocyclones to remove the turbidity.

He went on to say that the Port of Melbourne Corporation had had an opportunity to investigate and could have effected changes when the *Queen of the Netherlands* was in dry dock for works. Yet it did not do that.

At a recent conference in Melbourne the Permanent International Association of Navigation Congresses, known as PIANC, came up with two recommendations regarding the disposal of the spoil. It said that at the dumping ground off Mount Martha the spoil should be placed so that the final surface is undulating. The plans are for a flat-level dump, whereas best practice, which is being talked about all the time but which is not being delivered, requires that that surface be undulating. That would help the long-term settlement of turbidity, yet it will not happen. Also at the conference it was recommended that the rock spoil from the Nepean bank — that is, the rock from the Rip — should be placed in suitable areas and not covered by sand, as is planned, as this will provide significant habitat for other species. In other words, if you are excavating rock, you should put it somewhere to make an artificial rip. At least do something useful with it and do not bury it in spoil. Again best practice is not going to be used.

I move on next to the excavation of the Rip. Currently there is a 14-metre-deep channel through the Rip that is 245 metres wide. That same width is going to be excavated down to 17 metres. Basically there is going to be a gutter which will be seriously affected by the tides, even more so than before, with much larger ships moving through it. The simple physics is that if you have larger ships, you need a wider channel. But that is not what we are getting, and it is not just a tiny movement. I refer to a quote from an expert on this, that there is an exponential growth in the effects of tides and winds on ships as they get larger.

Four Port Phillip pilots who have just recently retired have come out and put a lot of question marks over the very narrow width of this channel for the larger ships. Brian Todd, a recently retired Port Phillip pilot, says:

> On the basis of these incidents and many others over the 17 years I piloted at Port Phillip I can state unequivocally that to ignore the widening of the great ship channel to include the eastern and western channels will —

not ‘might’ —

> result in grounding of a >12 metre ship. There is no margin of safety in a 245-metre-wide channel when large ships are

> routinely steering 20 to 25 degrees off course to maintain a course —

through the Heads.

To quote another just recently retired Port Phillip pilot, Geoffrey Beevers:

> At present a deep draft ship may stray into the inner western … or into the inner eastern channel … without any certainty of running aground.

That is currently what happens.

> In contrast once dredged for deeper ships, those ships will likely or certainly run aground if they deviate from the canal, as they inevitably will. This was demonstrated in the simulation trials.
>
> …
>
> It is important that the size of the new generation of deeper ships is not seen in terms only of their increased draft, which to a layman may not appear great, but recognise that the abandonment of the panamax beam limitation means that the sheer bulk and manoeuvrability of the bigger ships in the tidal streams will increase exponentially.

In other words, even though it might be that an extra 2-metre depth on a ship does not look a lot because it is all under water, the effect of tide, water, weather and wind on a ship of that size increases exponentially. They are very dangerous to manoeuvre, especially in these confined spaces and in the little gutter that is going to be produced by the dredging at the Heads. The channel width needs to be doubled at least. The cost is going to be extraordinary. In fact the pilots are saying that even if it were doubled, you should only take in these large ships through slack water.

I wish to touch on the compensation for local businesses. The dredging schedule has come out. I am talking especially about the diving industry on the Mornington Peninsula, which is worth about $60 million annually to the Victorian economy. It is going to be seriously affected. In fact people will not be able to dive for 12 months mainly because of the turbidity in the water where they are diving and because there will be two ships dredging at the same time. There will be large areas of turbid water and movement of that water down to the Heads, which is where the diving takes place. On top of that there are very large exclusion zones not only around where ships are actually dredging but where they might be moving to dredge. There is a massive exclusion zone around the ships. These are the prime diving sites in Victoria, and they are going to be excluded. There will be no diving there for 12 months.

The diving industry has said to us that it is a fait accompli. The whole thing is a farce, but the industry wants compensation. It cannot operate for 12 months, and there might even be a shoulder time leading up to and after the 12 months when the industry will not be able to operate. The dolphin swim operators, recreational fishermen, charter fishermen and a whole lot of other people will be affected. There will be flow-on effects on other businesses in the area. They are going to lose business for 12 months, and they need to be compensated. The Port of Melbourne Corporation and this government are responsible for that. If these companies go out of business, it is their responsibility and the companies should be compensated. The government is totally quiet on this aspect.

The final area I wish to talk about refers to misinformation or lack of knowledge by the Minister for Roads and Ports, who is the minister responsible for this project. In this place on Thursday, 19 July, the member for South-West Coast asked the Minister for Roads and Ports:

> … will the minister guarantee that the supplementary environment effects inquiry will not make a decision on the channel deepening project until this review is completed and fully considered?

In part the minister's answer was:

> … there is no ongoing review or activity arising out of the SEES process other than that the panel hearings will make recommendations to government.

It is very important that he said there is no ongoing review or activity arising out the process. I beg to differ, and I am going to give quite a few examples. For example, at the inquiry hearing on 18 June Mr Jeremy Gobbo, QC, on behalf of the Port of Melbourne Corporation, said:

> The geology of this area —

he was talking about the Rip area —

> is currently the subject of review.

He also went on to say:

> The results of this investigation will be provided to the inquiry when complete.

Yet the minister said there was no ongoing review or activity. On Monday, 16 July, Mr Gobbo told the inquiry, referring to Mr Raisbeck at Sinclair Knight Merz:

> He's not able to complete the work but he has done a fair amount of work and it's been further considered by various other consultants at the moment.

That again flies in the face of the minister's comments that there is no ongoing review or activity happening.

A supplementary report that was presented to the inquiry from Cardno Lawson Treloar on 13 July says, in part:

> A subsequent report will address potential changes to the waves in the entrance and sediment transport in the entrance … Modelling of these aspects is under way at the time of writing. A further report will also be prepared.

Yet the minister has said that there is no ongoing review or activity taking place. Further, in a letter to Nick Easy of the Port of Melbourne Corporation, Mr Raisbeck from Sinclair Knight Merz said:

> POMC has engaged SKM to review the results of recent bathymetric surveys that indicate continuing accretion and scouring is occurring in the trial dredge area at Rip Bank. This letter is a summary of the results of this review to date.

Yet the minister has said that there is no ongoing review or activity happening. The letter also says:

> SKM is currently waiting on additional survey information to be completed, prior to finalising its report. Peer review of the report is also currently being conducted. The final report will be available following the completion of these items.

Yet again the minister has said in this place that there is absolutely no ongoing review or activity taking place. Either the minister was misleading this place or he does not know what is going on.

I think it might be the latter, because it is typical of the attitude of this government. This project is going to go ahead. The government does not care about what the experts are saying about certain aspects of the project. There is no compensation at all mentioned for the peninsula businesses that will be affected. There is no best practice happening — it is very easily said by this government that it is all best practice. The minister is not even aware of the process that is going on. A new panel was specially selected, but none of its members have expertise in this area. There is no cross-examination of the panel, and only selected witnesses are allowed to appear before it. The comments made by the Premier and the ministers show the outcome is a fait accompli. The whole process has been a farce. The government seriously needs to consider the aspects I have raised today.

Information and communications technology: broadband access

Ms GREEN (Yan Yean) — Today I rise to grieve for the families and businesses in the Yan Yean electorate who are being let down by a federal government which has consistently ignored the appalling lack of access to modern, high-speed broadband. Anyone in this house who works in the 21st century would know that this is an absolutely essential part of infrastructure in the home and in business. It is the mark of a country that is heading into the 21st century.

For the past five years I have been told by families in my electorate of the problems they have been experiencing in accessing what should be a normal part of community and business life. In the last year it has become the top issue of concern for people in my electorate. As a state member you have to deal with many concerns on behalf of your local community. I take up these concerns on their behalf, but I have found that, due to the lack of a champion on this federal government issue of access to high-speed broadband, I have needed to champion this.

The federal member for McEwen, Fran Bailey, has been silent on this except when it has occasionally been pointed out to her that it is a problem. People in the community have been asking, 'Fran Bailey, where the bloody hell are you?'. She is the federal Minister for Small Business and Tourism, and anyone who works in small business or the tourism industry knows how pivotal access to high-speed broadband is. The tourism industry says that most people are now booking their holidays via the internet. They will go and visit a website, and if they cannot connect in a reasonably short period of time, they will go elsewhere.

The lack of high-speed broadband means the many tourism businesses operating in the state electorate of Yan Yean and across the federal electorate of McEwen — the beautiful areas of Nillumbik and the Upper Yarra, the Macedon Ranges and the Mystic Mountains in Kinglake — are not getting the business they should be getting. The numerous small businesses that have been established and are setting up in my electorate, many from homes, are not able to progress because they do not have access to high-speed broadband.

What has the federal government, this mean and tricky government, this government that is stuck in the 20th century, done? Nothing sets that government and the Labor Party apart more than the issue of broadband. The Prime Minister says he has not even used email. We have a federal Minister for Communications, Information Technology and the Arts who had the temerity to say in the media six or eight weeks ago that there was no evidence that anyone in metropolitan Australia had problems accessing high-speed broadband. I am here to tell that minister that she is absolutely wrong.

Dr Sykes — Why don't you go and tell her to her face?

Ms GREEN — The member for Benalla asks whether I would like to tell Helen Coonan that to her face. If she would let me know when she visited Diamond Creek — —

Dr Sykes interjected.

The ACTING SPEAKER (Mrs Powell) — Order! The member for Benalla knows that interjections are disorderly.

Ms GREEN — Earlier this year the federal member for McEwen finally started to realise that she had a bit of a problem here. In March she had the federal communications minister announce a national plan. This was the 16th plan in the time that government has been in office. None of the earlier plans have delivered, but this was the 16th plan. It provided $162.5 million to fix broadband black spots. At the time the *Diamond Valley Leader* said '"Bandaid" fails to connect'. I could not agree with it more. The manager of Pro-Bit Computers, Rudi Leibel, who runs a business in Diamond Creek, said at the time that 'parts of St Andrews, Kangaroo Ground and Christmas Hills struggled to get access to broadband'.

I could add Diamond Creek to that list. My electorate office moved to Diamond Creek recently, and I am also a resident of Diamond Creek. My staff said the broadband speed in South Morang was not very good, but they have been wondering if there was something wrong with the Parlynet computers. The Parliament was not able to explain the problem, so I rang Telstra. I asked what access I have in Yan Yean Road, Diamond Creek, which is about 22 kilometres from Melbourne. It is ISDN (integrated services digital network). Far from even ADSL (asymmetric digital subscriber line), which the federal government tries to tell us is broadband but internationally is not broadband at all, ISDN is what my office has access to and what other businesses in the area have access to. This is completely inadequate in the 21st century. The average speed on ISDN is 128 kilobytes per second, while 21st century broadband should be in excess of 12 megabytes per second and really up around the 50-megabyte-per-second mark.

I think the federal member for McEwen realised in February or March that she might have had a bit of a problem, and that is why she had Helen Coonan come and visit. However, we know that the week after Helen Coonan's visit to Diamond Creek the federal Labor Party announced a plan which would truly deliver high-speed broadband to Australia at a 21st century standard. Fran Bailey must have thought, 'I did the survey just before the last election and I asked people what their priorities were'. However, one thing she did not ask, and this was at the time the sale of Telstra was before the federal Parliament, was whether people wanted her to vote to sell Telstra. She did not ask them, but she voted to sell it anyway, without any thought for what might happen in the outer suburbs of Melbourne.

Some members of The Nationals have been interjecting during my contribution to this debate. I would commend some of their colleagues in other states, because they have stood up for the regions and been able to get some additional access for their constituents. This has not happened in the outer suburbs of Melbourne, and has not been done by the federal member for McEwen, Fran Bailey. I recently got in my letterbox the latest contribution from the federal member for McEwen proposing her 17th plan: Opel coverage — electorate of McEwen.

The plan has an interesting map which includes the names of most localities. It states what the 17th plan on broadband of this mean and tricky Howard government is supposed to deliver. Surprisingly to me, Diamond Creek — where I live and where my office is, and so I do not know whether I should take it personally — which is a sizeable township like Colac and is 22 to 25 kilometres from Melbourne on the metropolitan train line, is not even named on the map. The largest centre in the federal electorate of McEwen is not even named on the map.

According to the shading on the map, Diamond Creek, as I can work out where it should be, has existing ADSL2+ coverage. I can tell Fran Bailey that that is wrong, because two weeks ago Telstra told me that in my office I have ISDN. Again Fran Bailey is not to be believed. Other shaded areas on the map indicate where the you-beaut, new Opel wireless, or WiMAX, service will be available. The plan refers also to satellite coverage and the Australian broadband areas where people would get the $2750 subsidy. Why would anyone believe that they would get that subsidy?

Prior to the last election, as the federal minister for small business, Fran Bailey talked about a plan called HiBIS, or the higher bandwidth incentive scheme, which she said would give access to broadband to people who could not do so. I have had complaints from numerous small business people that that was just a lie. Whether they are in Yan Yean, Christmas Hills, Kangaroo Ground or Doreen — a large, growing suburb — they cannot get access to the subsidy under the current plan, so why would people believe members of the federal government about a future plan?

Fran Bailey is a member who has let down her community not just on the broadband issue but in every area of communications. There are numerous mobile phone black spots across the electorate, which I have referred to before. In fact there are parts of the McEwen electorate just outside my electorate of Yan Yean, in the electorate of Seymour — areas around Toolangi and Flowerdale — that do not have access to even Melbourne metropolitan or regional Victorian television. They rely on Imparja out of Darwin. Why would anyone believe this federal government when it has such a lack of credibility in this area?

There are bright spots on the horizon for my local community. I have run three broadband forums and have been really pleased with the support I have had from other Labor Party figures, including the former Minister for Information and Communication Technology, now the member for Footscray, who gave very good advice at a forum in Doreen, which has assisted some local families within the limitations of the available technology. The Victorian government has recognised that the federal government has had a gap in this area and has struck its own deal with Telstra to have high-speed broadband available to all schools in Victoria under the government's SmartONE program, so at least children will have access to that in our schools — but not when they go home to do homework, which is shameful.

I thank our duty Senator for McEwen and federal Labor shadow minister for communications, Stephen Conroy, for the time he has taken in speaking to people in my electorate and listening to their concerns and then feeding that into Labor's broadband plan, which is forward looking. Even the Liberal Party's pollsters are acknowledging that the community is seeing Prime Minister Howard as old and out of touch and Kevin Rudd as forward looking. Labor's broadband plan can be believed.

I place on record also my thanks to Adam Delacorn, who has been my parliamentary intern this year. Because of my concerns about access to broadband and the lack of action by the federal government and the lack of interest in particular from the federal member, Fran Bailey, Adam has prepared an excellent report entitled *21st Century Broadband? Unequal Access to the Digital World*, which is available in the parliamentary library. I commend Adam as the joint winner this year of the President's prize. Those assessing the reports that have been done have seen that his work in this area has been very good. I wish him well in the future and hope his work will be a significant contribution.

I think it will be, because not enough research has been done into the lack of broadband access in Melbourne's outer suburbs and the outer suburbs generally. I put the federal government on notice that this is an issue that its members cannot hide from anymore. Fran Bailey cannot put this issue in her bottom drawer, along with the results of the survey of people she does not listen to. This issue will certainly feature in the minds of my constituents when they are determining whether they want a mean and tricky, backward-looking Prime Minister or a leader for the future in Kevin Rudd.

I would also like to wish well Rob Mitchell, the Labor candidate for McEwen. Rob and I have been doorknocking, particularly in the Doreen area. I know that he is taking up the concerns of families in that area and that, like me, he has recognised what an issue broadband is. I know that if in the next election he is elected to the federal Parliament he will be an absolute champion of broadband access for my community. I wish him well and hope to see him in the federal Parliament as a member of the Rudd government, which will deliver broadband to my community.

Victorian Environmental Assessment Council: river red gum forests report

Mr WELLER (Rodney) — I rise to grieve for the people of northern Victoria, given the Victorian Environmental Assessment Council's river red gum forests investigation report that was released in July. The report has some recommendations that affect firewood collection, the timber industries, stock grazing, camping, duck hunting, water, fire and sustainable management of the multiple use of our natural resources.

One of the first recommendations in the report is about how firewood collection will be limited. Before the 1999 election the Bracks government promised natural gas to rural Victoria. Unfortunately the communities of Cohuna, Nathalia, Picola and Barmah are all still waiting for natural gas — another broken promise.

Honourable members interjecting.

Mr WELLER — Add up all the broken promises! Nathalia, Picola, Barmah, Gunbower, Leitchville and Cohuna are all towns in my electorate that are yet to receive natural gas. People in most of those towns rely on firewood for their heating. Unlike the Bracks government, which was going to dry out the north, the Brumby government is going to freeze us out as well. During the cold nights of July we will have no heating for the little old ladies of Nathalia because they have no natural gas and they will be denied their red gum.

There has been a vibrant timber industry along the Murray River for as long as white man has been here. It has been sustainably managed, as members have heard before. If the report recommendations to take out 80 per cent of the red gum industry of northern Victoria are adopted, there will be a loss of 90 jobs and a horrendous effect on the greenhouse gases put out by Victoria. If we were to change from red gum rail sleepers to concrete sleepers, the greenhouse gases would be many, many times those resulting from the production of red gum sleepers.

Stock grazing has been a tradition in the Barmah Forest for more than 140 years. Up to 13 000 cattle have been grazed in the Barmah Forest. The Barmah cattlemen have worked with many governments over the years in managing the forest sustainably. In the past few years there have been 800 cattle, and last year because of the drought, there were only 500 cattle — on 75 000 acres. That is very sustainable and should be allowed to continue. If you take the cattlemen out of the forest, you will be doing away with 16 jobs in the rural economies, and taking 500 to 600 cattle out of the forest will take several million dollars out of the rural economies. It has been a tradition that has gone on for 140 years.

If you attend the Barmah Forest between Melbourne Cup weekend in November and Easter time and Anzac Day, you will find Barmah actually becomes busier than Bourke Street. It is a popular place for camping, and these proposals recommend that we diminish the ability to camp on the Murray in the Barmah Forest. It is the lifeblood of the area. The towns of Barmah, Picola, Nathalia and Echuca all benefit from the camping in the forest, yet this proposal is to do away with that. Duck hunting will be reduced under this proposal. The recommendations mean that 3950 duck hunters would be affected, and they would take 19 jobs away from that area. Once again this would reduce employment in the regional area.

There is yet another recommendation in the river red gum forests investigation proposal, and that is that coarse, woody debris be increased from 20 tonnes per hectare to 50 tonnes per hectare. We have already seen what an environmental disaster this is in the waiting. We have seen in the high country what happens where we have taken away the grazing and where we have taken away the rights of people to collect firewood. In the middle of January, or in any other month when it is 43 degrees, a dry electrical storm will go through and there will be a massive environmental disaster. It will be a hot fire the likes of which have never before been seen in the Barmah area.

We have already had the Picola CFA (Country Fire Authority) members writing letters to the minister explaining their hesitance about going into the forest if such a management scheme were put in place, and quite rightly so. We have seen the voracity of the fires in the high country when massive amounts of fuel have been allowed to build up on the ground and have caused a massive outbreak. We saw the fire in the Barmah Forest last December, so it is proof that it can actually happen.

We need to have multiple use of these areas and to use them sustainably, as we have been doing over the last 140 years. I will quote from the river red gum forests investigation draft report, in which one proposal is for a 4000-gigalitre flood every five years. The assumption has been made that of course it will not hurt, but then the investigation says that there are some important qualifiers, and I think we need to understand the qualifiers. The first qualifier is:

> … to our knowledge there have been no transactions over 20 GL in the past and VEAC recommendations involve acquiring 40 times that amount each year. There is no analysis which informs us of the likely impacts on water prices of these quantities being withdrawn from irrigation.

Well I can tell you — anyone can tell you — that 40 times would drive the price very high. The price would be an astronomical, and it does not bear thinking about. Forty times the amount that that has ever been purchased before would drive the price to a point that is many times the limit it is now at. It would be detrimental to the production of northern Victoria when it comes to jobs.

The second qualifier is:

> … none of the 500 GL per year —

another broken promise —

> of water under the Living Murray agreement has been recovered to date and only about half of it has appeared on the eligible measures register.
>
> The political economy of acquiring the equivalent of up to an additional 800 gigalitres per year would require extensive analysis and negotiation between three state governments and the commonwealth.

We want the government to negotiate rather than play politics. When it came to the national water plan, on the first day that it was announced we heard the then Premier say that we would probably sign up to that. Then we saw him back away from it at 100 miles per hour, because he saw an opportunity to play politics rather than to get on and show assurances for northern Victoria. I return to the report:

> Third, while the quantities involved represent only about 7 per cent of the average annual total inflows to the Murray River below Darling River … they represent 30 per cent of Victoria's 2004–05 total allocation …

What that means is that you would wipe out the communities of Swan Hill, Kerang, Echuca and Cobram. The Murray system has a third of the water used in Victoria. There would be no water coming into the Murray irrigation area or the Torrumbarry irrigation district, which covers those towns on the Murray. Again, returning to the report:

> Fourth, the implications for storage of the environmental water have not been addressed — the requirements of the draft VEAC recommendations represent about 40 per cent of the total storage available in the system.

Last night in the Parliament we heard the Premier say that there will be no more dams. Where are we going to store the water to build up 3.2 million megalitres, which is equivalent to the capacity of the Hume Dam? And where is the water for irrigators going to come from in a year when there is 3.2 million megalitres sitting in the storages?

Honourable members interjecting.

Mr WELLER — It will not. There will not be water for irrigation. The Hume Dam will become an environmental reserve, and there will be no water for irrigation. The report continues:

> Fifth, the logistics of storing and delivering the quantities of water suggested will require extensive analysis of a complex system.

I can tell you that you cannot get enough water down from Dartmouth. It would mean emptying Lake Hume, and then only what you could get from Dartmouth to Hume would be allowed into the system. It continues:

> Sixth, any reallocations of water in the Murray–Darling Basin will need to take account of forecasts made about the effects of global warming.

Here we are making the decision to take 800 gigalitres plus another 75 gigalitres for Melbourne, yet we are also talking about climate change, when there might not even be that much water. The next qualification states:

> Seventh, the social and economic impacts of withdrawing large quantities of water from irrigation have not been assessed. Approximately 60 per cent of … VEAC's draft recommendations are enjoyed by people in Melbourne —

here we are, taking wealth from the north and depositing it in Melbourne again —

> while only 5 per cent accrue to those in the study area.

In contrast, all the costs come out of northern Victoria. We are taking wealth from northern Victoria and depositing it in Melbourne. This Melbourne-centric government is proposing to further pillage the areas of northern Victoria using this VEAC report.

I will in summary talk about the proposal that will have a major impact on the ability of people in northern Victoria to keep their home fires burning. There will be a reduced availability of red gum firewood for people who have no alternative. We have no natural gas — another broken promise! The timber industry has been prosperous in that area. It is an integral part of communities such as Koondrook, Echuca and Picola, and it is also integral where we have timber cutters in the likes of Barmah and Gunbower, which have been sustainable for over 140 years.

I turn to the stock grazing tradition. We returned water to the Snowy River to save the Man from Snowy River. What about the Man from Barmah Forest? Under this proposal 140 years of tradition of riding out into the Barmah Forest and rounding up cattle will be no more. We need to remember the heritage of Victoria and protect my Man from Barmah Forest.

Camping between the months of November and March, which actually generates enormous amounts for the economies of Echuca, Nathalia, Cohuna and Gunbower — they are all very dependent on camping — will be reduced and will cost jobs in those vital areas of northern Victoria.

I feel for fire brigade members. I am a member and a past secretary of the Country Fire Authority brigade in Lockington, and I know the hours that CFA members put in and the passion they have for the CFA. The brigade members of the Picola CFA have for more than a century protected houses and other personal assets as well as environmental assets in the Barmah area from fire. They have shown, rightly, their concern by writing to the minister and saying there is an environmental disaster waiting to happen — or even worse, the potential loss of life — if we send firefighters in to try to put out a fire in the Barmah Forest when we have increased the fuel load on the forest floor from 20 tonnes per hectare to 50 tonnes per hectare. Lives could potentially be lost through people trying to protect the environment and the surrounds.

I finish with a quote from the report:

> Overall, the towns of Cohuna, Koondrook, Nathalia and Picola are likely to be the most sensitive to any job losses (and potential population losses).
>
> At an individual level there are also a range of potential impacts of the loss of employment for individuals and their

families, including poverty and financial hardship, reduced future work opportunities, reduced participation in mainstream community life, strains in family relationships, and intergenerational welfare dependency.

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

Greens: performance

Ms RICHARDSON (Northcote) — Today I grieve for Greens party supporters and voters. I grieve for the erosion of democracy in this state at the hands of the backroom political deal-makers in the Greens party and the Liberal Party. I grieve for the Greens party itself, which has been overridden by party machinists and careerists who have sacrificed the environment and principles of social justice in pursuit of their own personal agendas.

I grieve for the residents of Albert Park, who are the latest victims of the unholy alliance between the Liberal Party and the Greens party. We know that the decision not to stand candidates in the by-elections was initially opposed by the Leader of the Opposition. On 3 August he declared, 'I was keen for the fight. I wanted to have the fight', but in the end the Leader of the Opposition's views were deemed irrelevant. Even he recognised that fact and sat mute at the meeting of the executive of the Liberal Party. Liberal Party committee members urged him to express his view, but still he remained silent. The Liberal Party preferred to see him publicly humiliated rather than disappoint their political allies, the Greens, because in making this decision not to field candidates the Liberals have left the door wide open for their new allies, the Greens.

On its own this decision might not have raised too much suspicion, but the alliance between the Greens party and the Liberal Party is now well documented and understood. It began, of course, a week before the 2006 state election when the Liberals agreed to preference the Greens in the four inner city seats in exchange for the Greens directing half their preferences to the Liberals in 28 seats. It is no surprise to me that the Leader of the Opposition's own seat was a beneficiary of this deal, because Liberal headquarters was clearly worried that he could not win this seat on his own without the support of the Greens. When the public was made aware that the Greens had done a deal, the party vehemently denied it, but this plan came unstuck when its national leader, Senator Bob Brown, stated on 23 November:

> When Greens come up with a sensible, mature arrangement that gets the Greens the preferences in those four Melbourne seats, I say good on them; that's a sign of political maturity.

Following a near meltdown of the Greens headquarters switchboard, Bob Brown was smartly brought into line by the Victorian Greens political machinists. He then went on to fudge questions whenever asked about the deal, and so the big lie began. Even the Greens own candidates were duped by the lie coming from the Greens inner cabal.

I well remember the Greens candidate in Northcote explaining to me, straight faced, that no deal had been done with the Liberal Party because the Greens would not do such a deal. Sadly I think she truly believed that statement. You can imagine then how confronting the statewide Greens party how-to-vote card is — I have a copy here if anyone is interested — to the party faithful, and it was also backed up by the Liberal how-to-vote card that directed preferences to the Greens in the four inner city seats. There had to be an explanation.

In a bid to bury the truth, and once enough time had elapsed after Bob Brown's truthful acknowledgement and congratulatory message, the Greens party changed tactics by claiming that it had actually issued an open ticket to give voters a choice. Of course this is what Greens voters like to hear. They are told that their party is different from other political parties, that their party does not do deals with other political parties and that it certainly does not do deals with the Liberals.

However, this explanation did not stack up either. An open ticket is what the Liberals were handing out at the pre-poll stations in the four inner city seats prior to the deal being done. An open ticket places a no. 1 in the box next to the party's name and leaves all other boxes blank for voters to indicate their preference. That is not what the Greens did. Moreover, in the 28 seats where the Greens party directed half its preferences to the Liberal Party, it indicated this preference flow on the right-hand side of the Greens how-to-vote card. I feel certain that this was done at the insistence of the Liberal Party, as we know that this placement is of greatest benefit.

Even at pre-poll stations in the state seat of Scoresby the Greens were handing out a ticket that preferenced Family First, then the Liberals and lastly the Labor Party. Fortunately public scrutiny of the deal turned many voters off the Greens, and those that remained supporters were careful not to blindly follow the preference guide that benefited the Liberals. However, the Liberals did still benefit from this arrangement. An analysis of those seats where the Victorian Electoral Commission has published preference distributions shows that the Liberals received 2.5 per cent more Greens preferences in the split ticket seats than in other seats.

No doubt discussions are now taking place between the Liberal Party and the Greens party about how they may work together to see the Prime Minister, John Howard, remain in power. I, for one, will be watching the how-to-vote cards from the Greens very carefully to see what comes of these discussions, because we know where these discussions led us following the last state election. They led to a permanent and fulsome alliance between the Greens and the Liberal Party in the other place. The reform of the upper house by the Labor government enabled Greens voters to support the election of three Greens members of Parliament to the Legislative Council. But these voters were in for a shock when Greens MPs began to exercise the mandate that was provided to them. In division after division in the other place the Greens MPs slavishly vote with the Liberal Party against the Labor Party.

The count now stands at a whopping 69 per cent support for the Liberal Party position against Labor in the other place. It was worse: until March it was 100 per support for the Liberals. Then something happened to a member for Northern Metropolitan Region in the other place, Greg Barber. He deviated from his alliance with the Liberals — just the once — and supported Labor for the first time. This ruffled no feathers amongst the Liberals because the Greens members immediately reverted to their 100 per cent support of the Liberals until 19 April. Up until that point they had supported Labor just once out of 22 divisions in the other place.

Pressure from Labor led to Greens supporters telling Greg Barber and his cronies to pull their heads in. Even their supporters were wondering what was going on with the three Greens MPs now dubbed 'the mini Liberals'. The Greens MPs then started to vote with Labor for a change, not out of care for the environment but out of care for their own political skins. In the meantime, in a bid to deflect criticism, Greg Barber claimed that this voting record was all about transparency and scrutiny of the Labor government. But like his claims about preference deals, this just does not stack up, for when the Greens were given the chance to protect Victorians from John Howard's plans to build nuclear power stations in Victoria, they voted with the Liberal Party — again — to defeat the nuclear prohibition bill. Labor is now the only party in Victoria committed to a nuclear-free state. The Greens have put their alliance with the Liberal Party ahead of the environment and ahead of the interests of the people of Victoria. No wonder Greg Barber was told to pull his head in.

Let me give another example of the Greens failure to act in the interests of the environment. In June the other place considered a bill that among other things was to remove stamp duty on cars valued at $57 000 or less. The Greens put up an amendment to remove stamp duty on all hybrid cars — never mind that this would exempt cars valued at $122 000 with fuel economies worse than some non-hybrid cars. The amendment was lost. The Greens responded by voting against the stamp duty relief for cars up to $57 000, thereby excluding popular and fuel-efficient hybrid cars such as the Toyota Prius.

What members can see displayed here is the Greens MPs' willingness to discard their so-called environmental principles no matter what the cost. Fortunately wiser heads prevailed, the tax relief was passed, and the Greens were left in a tiny, sulking minority. Consumers wishing to purchase hybrid cars valued at under $57 000 have benefited from stamp duty relief — no thanks to the Greens — while luxury hybrid cars that are unable to demonstrate a benefit to the environment compared to smaller, less expensive cars do not receive stamp duty relief. What was the Greens agenda here? It was not a concern for the environment. Rather it appears it was a concern for those who can afford luxury cars — a position so far removed from their oft-stated claim of being pro-environment and promoters of social justice and economic justice for all.

Remarkably the slavish devotion of members of the Greens to the Liberal Party position in the other place very nearly resulted in their own gagging. On one occasion in the other place the Greens sought to make an amendment to a bill. When it was put that the amendment be debated, Labor indicated that it was willing to have the debate, but the Liberals sought to gag the debate and moved against the amendment. What then occurred was that the Greens fell back to their default position and moved to vote with the Liberal Party — in other words they were gagging the debate on their own amendment. Government members very kindly pointed out to the Greens the absurdity of their position and told them they were actually voting to gag themselves.

This craven voting behaviour by the Greens has not been restricted to divisions in the other place. Throughout the committee selection process the Greens continually defaulted to supporting the Liberals — for example, the Greens declined to support Labor's nominee for the chair of the Outer Suburban/Interface Services and Development Committee so they could support the Liberals. They were completely humiliated when the Liberals declared that they did not have a candidate. This is not being green; it is being ingratiating. Why has this alliance been formed? It has

been formed because the Greens and the Liberals share the same goal — that is, the destruction of the Labor Party.

Greg Barber hungers for the day when he is sitting at the cabinet table, and he does not care about how he gets there. We all know that the Greens are internally divided. There are the ideologically pure environmentalists on the one hand and the social justice travellers who also care about the environment on the other. But in Parliament the Greens are led by Greg Barber, who is neither. This one-time war games enthusiast is just another political operator trying to find a cause to latch onto. In short he lacks a guiding political compass.

In truth there is actually one cause that he is wedded to and one cause that he does believe in, and that is the destruction of the Labor Party. The craven politicking of the Greens is betraying the ideals of thousands of people who thought they were advancing the causes of the environment, social justice and a nuclear-free Victoria. These voters have been badly let down, and I grieve for them. But the deal-making continues. I return to Williamstown and Albert Park. Anyone contemplating voting Green in the upcoming by-elections needs to take into account the deals being made between their party and the Liberal Party. They must take into account the voting record of Greg Barber and his offsiders in the other place, voting 69 per cent of the time with the Liberal Party in divisions. They must choose between a party that governs for all Victorians and a party of the fringe, a party with one clear aim: the destruction of the Labor Party.

I grieve for what these deals mean for democracy in this state, because of course we have two major parties that contest the elections and ordinarily two major parties that contest by-elections when they arise from time to time, and yet this deal has knocked out the second major political party in the state from even considering contesting a by-election at this time, in spite of what the Leader of the Opposition has said. I grieve for Greens supporters who are confronted with the subversion of their political party into a mini Liberal Party. I believe the time for dishonesty is over. It is time for the Greens and the Liberal Party to reaffirm what they truly stand for.

In fact yesterday we had many statements from members opposite about what the Liberal Party actually stands for and some reflection upon where it is that members want to go and the direction they want to move forward to. They also talked about how young Liberal Party members are imbued with a sense of liberalism and want to further the interests of the state. It is time, I think, for the Liberal Party to reflect on that and attempt at least to represent its voters and represent its own interests. The Greens and the Liberal Party need to reaffirm what they truly stand for. It is time for them to put the interests of the people of Victoria and the environment ahead of their own ambition for power at any cost.

Question agreed to.

STATEMENTS ON REPORTS

Public Accounts and Estimates Committee: budget estimates 2007–08 (part 1)

Mr WELLS (Scoresby) — I would like to speak on the Public Accounts and Estimates Committee report on the 2007–08 budget estimates, part 1. It is a big report and a very important report. This inquiry gave the committee a chance to ask some of the ministers a number of questions, and they were very tough questions at times. It is just a pity we did not get some of the answers we were after.

Mr Batchelor interjected.

Mr WELLS — There might have been a couple of exceptions. The issue that I would like to raise is that of unallocated capital. This issue was raised by the Liberal members when questioning the then Treasurer on 4 May. I refer to the verified transcript at page 7 of the report. Before I go into detail, on 19 December in the Parliament the then Treasurer defined the unallocated provision as the amount of cash available for expenditure that year against the TEI (total estimated investment). He said:

> Typically the rule of thumb used by the Department of Treasury and Finance is that the TEI will be around three times the unallocated provision.

The budget was handed down on 1 May. Then on the Wednesday the then Treasurer went on radio 3AW and was questioned about whether the state had the money to be able to pay for large water infrastructure projects over the coming years. He told listeners to 3AW that there was $3 billion in the budget ready to fund the water infrastructure that Victoria so desperately needs and went on to say:

> … over the next four years there is just under $3 billion of what we call unallocated capital. It's all paid for going forward. It's all built in.

What he told the Victorian community was that over the next four years there was going to be an amount of $3 billion that could be used for building water

infrastructure projects. This confused some members of the Public Accounts and Estimates Committee because — —

Mr Stensholt — It only confused you. It did not confuse anyone on our side.

Mr WELLS — He was misleading when he said — and I will repeat it for the member for Burwood — that over the next four years there would be $3 billion of what he called unallocated capital. This was of concern to some on the committee, because we totalled the amount of money in the budget papers over the next four years, and in budget paper 2, page 45, the total amount of unallocated provisions for future applications — that is, unallocated capital — totals $1.6 billion.

There is a huge difference between what the Treasurer was saying at the time and what was actually in there. Maybe he made a mistake in saying 'over the next four years', because it is quite clear that when you extrapolate the figures, going further into the next term of government, you get to $3 billion. In fact I think it is about $2.9 billion when you extrapolate the full formula. But you have to go into 2011–12, 2012–13 and 2013–14 before you get the $2.9 billion of unallocated capital.

What the Premier was saying at the time when he was Treasurer was clearly misleading. After we looked at those figures we very carefully went back and worked out our own set of figures to make sure we got the $2.9 billion. Using the formulas that were given to us by different sources we extrapolated those figures, and it was clear that the money was not available over four years but would be more likely to be over eight years.

I was also interested to learn that on 31 October 2006 the then Premier said, when talking about funding:

> This means our policies are funded without a single additional dollar of debt — every promise made by Labor will be delivered within the budget.

Is it not funny that we are going to go from $3.5 billion to $15.3 billion?

Public Accounts and Estimates Committee: report 2005–06

Ms GRALEY (Narre Warren South) — It is quite a challenge to get up and speak after the deputy chair of the Public Accounts and Estimates Committee, who is clearly still wondering how to read the budget papers accurately.

I am going to talk about the Public Accounts and Estimates Committee. The key function of this committee is to act on behalf of the Parliament in relation to the Auditor-General and report to Parliament on the activities of the Victorian Auditor-General's Office. One of the things I am very pleased to report to the Parliament about is the Auditor-General's draft annual plan. I suggest that members of Parliament get a copy of this, because not only is it an excellent document — —

The ACTING SPEAKER (Mr Ingram) — Order! Would the honourable member inform the house which report she is referring to.

Ms GRALEY — The Public Accounts and Estimates Committee annual report, which refers to the Auditor-General's plan, and that is what I am speaking on this morning. The reason to have a good look at this report is the fact that included in the plan for the first time is a prospective program of audits for the period 2008–09 through to 2010–11. This program will be annually reviewed and will be open to some changes obviously as the needs and demands of government are altered.

It is a unique way of making sure that what government does is correctly audited, now and in the future. We know that the Bracks and Brumby Labor governments have a proud history of supporting the Auditor-General's office. I do not need to remind people in this chamber of our proud tradition of support for an independent Auditor-General, especially after the planned debunking of the Auditor-General by previous governments.

If you look at the plan carefully, you will see that the *Growing Victoria Together* document — of which anybody can get a copy and see what is planned for the state of Victoria in the future — is a guiding document. The headings of 'Thriving economy', 'Quality health and education', 'Healthy environment', 'Caring communities' and 'Vibrant democracy' are used as signposts for this government to measure its performance and make sure it is delivering for the people of Victoria in a financially responsible and socially caring manner.

The document then goes on to talk about what the Auditor-General plans to audit in the future. As can be seen from quite a few of the pages, there are some really good projects on board. This is not just for this year; we are talking about things like the effectiveness of responses to indigenous health and education, reviews of local government spending, especially the demands that local governments face with the

increasing costs of providing infrastructure and services for a growing population and the decreasing funding they are getting from the federal government. There are also things in which The Nationals are very interested — for example, the Wimmera–Mallee pipeline and the goldfields super-pipe will also come under scrutiny.

It is very interesting to see what the Auditor-General plans for 2008 and 2009, right through to 2011. There are some very fine examples of things that the general population of Victoria will be interested in and also people in this house. There are things such as metropolitan transport planning. I know that issues around public transport are raised consistently in the house, and we are aware of the needs of the population of Victoria for good planning in these areas. We are also aware of making sure that that those plans are strategically followed up and delivered in a financially responsible way.

There are also things like a review of the school curriculum by the Victorian Curriculum and Assessment Authority. Many people are interested in what goes on in Victorian schools. In fact, many people internationally are interested in what goes on in our schools. The Auditor-General will be taking an intense interest in our schools. He is interested not only in the curriculum, but there are some auditing reviews going on around the gigantic infrastructure building program that the former Bracks government and the current Brumby Labor government have committed to.

I commend the report to the house. It is a good document in terms of providing transparency and accountability. It also provides a very good planning tool for those interested in the auditing process.

Public Accounts and Estimates Committee: budget estimates 2007–08 (part 1)

Mr DELAHUNTY (Lowan) — I rise today to speak on part 1 of the Public Accounts and Estimates Committee report on the budget estimates. I will focus on the part of the report which contains the transcript of the former Minister for Health, which was given to the committee on 8 May. Page 3 of that transcript highlights the workforce challenges faced in the state of Victoria by service providers, the government and all concerned. I quote the minister:

> We are also facing challenges in the workforce. That is partly because of a lot of different trends: the ageing of the health workforce; the reduction in working hours — particularly doctors are not following the old pattern of being available and working 24 hours a day, 7 days a week …

That is very true, particularly in country Victoria, as the Acting Speaker would know. It is creating enormous challenges in the provision of health services in country Victorian communities.

The Nationals recognise the economic and social significance of country hospitals and other public health-care facilities in rural and regional communities, as well as the fact that these facilities are primary treatment centres for sick and injured people. I do not believe that the state government is doing enough to recruit and retain health professionals, and I particularly focus on doctors.

There is a great program in western Victoria which is working very well. It is an on-call system which covers doctors. I trust the new Minister for Health will make sure that service does not fall over. It provides great support for the 72 doctors in my region and other regions so that they are not called out 24 hours a day, 7 days a week. There is appropriate support from other doctors within the region to meet the demand.

Not enough is being done to retain country doctors. We know that South Australia has a great on-call system, which is better than the one we have in Victoria. We also know that the Queensland government is throwing the bank at trying to attract our doctors. We have lost doctors from Horsham in my area, and we have lost doctors right across rural and regional Victoria to those states. The Nationals remind the state government — as the former minister outlined in her statement to the Public Accounts and Estimates Committee — that more work needs to be done. We say to the government that it should not wait for a crisis, but do it now. We are in a good position. Victoria is recognised as being one of the best health-care providers in Australia, but we do not want to fall behind the pack. Again I state that I do not believe the state government is doing enough.

Since 1999 we have lost over 20 obstetric services across country Victoria, and that is a concern. We are losing mental health services; they are being centralised in metropolitan Melbourne or Geelong. Many country people are not able to access these mental services unless they travel long distances. We need more support for the Victorian patient transport assistance scheme. We particularly need to increase reimbursements and also look at making the doctors forms simpler. This week when I was down at Sheepvention, people told me that the doctors will not fill these forms out because they are too complicated and take up too much time. The state government needs to do more about those kinds of things.

Today I highlighted the reason we need to do more. I put out a press release with the heading 'Snapshot shows that hospitals would not cope with major emergencies'. In that press release I drew attention to a report which says that emergency rooms in Victoria's health system are overcrowded and would struggle to cope with a large-scale disaster or terrorist attack. That is happening in country Victoria. We saw the tragic accident at Terang. We trust and hope that that will not happen again. However, these things do happen.

The snapshot put out by the Australian College of Emergency Medicine has highlighted that we have major problems in the 13 metropolitan and regional tertiary hospitals in Victoria. It stated that 388 patients were being treated, 192 were waiting for beds — of which 155 had been waiting for more than 8 hours — and 77 patients were still waiting to be seen by medical staff. It again highlights that, despite all the work we have been doing, we still have major problems in our country hospitals.

The Nationals have always said that our health-care principles are that all Victorians, including those living in country Victoria, are entitled to top-quality health care within their community and a range of specialist medical services within their region. We need to do more work, particularly with regard to the air ambulance helicopter. South-west Victoria does not have such a service. I spoke about the Victorian patient transport assistance scheme, and we need to do more work on that. More importantly, the new minister must ensure that he funds the full cost of enterprise bargaining agreements.

Environment and Natural Resources Committee: production and/or use of biofuels in Victoria

Mr BROOKS (Bundoora) — I would like to comment on the Environment and Natural Resources Committee's report, entitled *Inquiry into the Production and/or Use of Biofuels in Victoria*, of October 2006. Can I say from the outset that I think the committee did a great job in producing this report. As someone who is not an expert in the use of biofuels and who does not have a particular interest in that area, I found the report very easy to read. For someone from a lay perspective, it certainly gave a very easy-to-read and competent account of biofuels in Victoria and Australia.

I was particularly interested in a couple of matters in the report. I found it quite interesting that in Germany there is already extensive use of biodiesel. Any future investigation would warrant a closer look at how that fuel distribution system works in Germany. I was also interested to note that the report sets out that the fossil fuel use in the transportation sector in Australia accounts for 15 per cent of all greenhouse gas emissions. The report includes estimates that by 2010 greenhouse gas emissions from the Australian transport sector will increase by 40 per cent from 1990 levels, and by 2020 transport sector emissions will be 70 per cent higher. One can see from those figures that even the slightest improvement in greenhouse gas emissions in the transport sector would in fact have a noticeable impact on greenhouse gas emissions in total in this country.

The report goes on to cover issues around the development of new technologies in biofuels. A submission from Bioenergy Australia informed the committee that technologies based on gasification of biomass and synthesis to form fuels such as methanol, dimethyl and hydrogen have been developed. Yields from these fuels are reported to be twice those of biodiesel or ethanol production on a per hectare basis. Volkswagen and Volvo are investigating those forms of technology.

It also goes on to talk about work that is being done in the United States. People may recall the State of the Union address by the United States President in relation to his plans to replace, if not more than 75 per cent, a significant proportion of the oil imported from the Middle East with alternative fuels. Among his strategies were the development of hydrogen-fuelled vehicles and the increased use of biofuels. The point is that there are emerging technologies and that any policy direction we take in Victoria should keep an eye on the fact that some of those emerging technologies may be more beneficial in the future.

One of the drawbacks, if you like, in the use of biofuels in Victoria has been shaken consumer confidence after some negative publicity around petrol retailers in Sydney mixing ethanol into petrol supplies without indicating the fact to consumers. Consumers were very concerned about the potential damage those fuels could cause to their engines. I note a couple of studies cited in this committee report. One suggested that 10 per cent ethanol-blended unleaded petrol did not appear to promote any abnormal or detrimental impact on engines, whereas another report on a 20 per cent ethanol blend by Orbital Engines for Environment Australia found there was high-engine-speed knock, a stripping away of deposits in fuel systems and problems with plastics inside the fuel systems of the vehicles that were inspected.

There is also the drawback of the theoretical loss of 3 per cent of energy in ethanol-blended petrol compared to unleaded petrol. This means essentially that ethanol is slightly more expensive than unleaded petrol. I note the government's response to the tabling of the report and the trial by the Department of Infrastructure on the use of biodiesels in heavy vehicles.

Public Accounts and Estimates Committee: budget estimates 2007–08 (part 2)

Ms WOOLDRIDGE (Doncaster) — I wish to comment on the Public Accounts and Estimates Committee's (PAEC) report on the 2007–08 budget estimates, and I will refer to part 2. Pages 5 and 6 of section 4.13 highlight this government's failure to keep its promises when it comes to ice or crystal methamphetamine. Back in February Labor finally acknowledged that we have a problem. A full six years after the National Drug and Alcohol Research Centre said methamphetamines were readily available to users, Labor launched its so-called pre-emptive strike on ice with funding of up to $14 million.

Since then I have waited with bated breath to hear from the minister about exactly what these funds would be spent on. Finally, three months after the announcement, I have found out. On page 6 of section 4.13 of part 2 of the PAEC report, the Minister for Mental Health detailed the various parts of the so-called pre-emptive strike. There will be $100 000 for an information brochure for patients, which no doubt will be nice and glossy; $30 000 will be spent telling phone counsellors about ice; and there will be $100 000 to tell drug and alcohol workers about ice. She has also said that an amphetamine task force has been established, treatment guidelines have been launched and $1 million is to go to an awareness campaign. There will be new laws banning precursor chemicals.

I would like to dig a little deeper into these aspects. Firstly, the amphetamine task force had already been established prior to February's pre-emptive strike, and the minister was simply parachuted in to chair it. The treatment guidelines were also being developed well before the February announcement of their March release. The $1 million for the awareness campaign was actually an election promise, not only for ice but also for marijuana, and the so-called new laws banning precursor chemicals were already set to come into force this year.

The only new initiative for this war on ice are a brochure and not enough cash for training telephone counsellors and drug workers. With great fanfare back in February Labor announced these funds of $14 million — it headed the news and went straight to the front page. But if we fast-forward six months, what do we actually have? We have a pathetic, feeble response consisting largely of some loose change. What a dud, and what a con job!

The minister said she was waging a war on ice. This is not a war; this is just GI Jane with her popgun! The fact of the matter is that 114 000 Victorians use ice every year, and there are approximately 16 000 dependent users in Victoria. We also know that up to 40 per cent of regular users develop psychoses or other mental illnesses. That means there are over 6000 Victorians with ice-related mental illness. The minister said in the Public Accounts and Estimates Committee hearing that the 'war on ice' was to ensure the drug 'did not get a foothold in our community'. I would be very interested to hear the minister's definition of 'foothold'. I would have thought that over 16 000 dependent users would equate to a foothold. That is practically one addicted ice user on every street in the Victorian community.

Since 2001, when ice use first became widespread, Labor has been urged to act. Back in 2004 the Drugs and Crime Prevention Committee recommended specific treatment services for ice and methamphetamine users. Labor rejected this recommendation. As a result of this short-sightedness there are still no ice-specific services operating in this state. As well as the links between ice, psychosis and mental illness that I have mentioned, recently the Monash Medical Centre revealed that its alcohol, drugs and pregnancy team treats up to 40 babies every year who are seriously troubled by the effects of parental ice use. Complications include premature births and dangerously low birth weights.

Just after the minister's announcement at the PAEC hearing, it was revealed that the federal government had decided to take the unprecedented step of fully funding two specific methamphetamine clinics in Victoria. As members will know, drug treatment services are the domain of the state government, but because Labor and the minister have been so derelict in their responsibilities, providing only the meagre funding outlined in the PAEC report, the federal government has been forced to bail them out.

Ice use is a massive community problem that will require far more than just some loose change to fix. The state Labor government must fulfil its commitment of what was a rock-solid promise of $14 million to combat ice. The minister's lack of delivery of the commitment to combat ice is an insult to all Victorian families and communities struggling to cope with the devastating effect of ice use and addiction.

It shows once again that this government will do anything in its shameless pursuit of a headline. Instead of repackaged and recycled announcements and funding, let us have some genuine new initiatives and some genuine new funding to change the outcomes in regard to ice and amphetamine use in Victoria.

Law Reform Committee: de novo appeals to the County Court

Mr SEITZ (Keilor) — I wish to talk on the Victorian Law Reform Committee report on de novo appeals to the County Court. The committee did a splendid job. It found that making changes to de novo appeals to the County Court would cause a backlog in the Magistrates Court. The report looks at the situation from an historic perspective. As many members in this house would know, our legal system came to us from the law of 17th century England. In 1851 the separate colony of Victoria was established. In 1851, when our general session courts were also established, we had a justice of the peace (JP) system operating in virtually all jurisdictions. That allowed for appeals against JPs' decisions in a general session court, depending on the situation.

As of recent times JPs operated voluntarily in the Magistrates Courts. That was changed by the Cain government, and a magistrate was appointed to listen to those cases. In a Magistrates Court there is no jury; there is a summary decision by a magistrate. Under the JP system there were two justices of the peace sitting there and making decisions. As we know, the largest number of cases — whether they be criminal cases, such as petty thefts, or anything else — are dealt with in the Magistrates Court. That is an important part to note.

A big percentage — up to 98 per cent — of the criminal sentences that are imposed each year in Victoria are for cases dealt with in the Magistrates Court. As Parliament has given the Magistrates Court and magistrates further powers, it is appropriate to keep the de novo appeal to the County Court going so that a difficulty is not created with the Magistrates Court's ability to cope with a further workload.

Currently the Magistrates Court has about 54 locations in metropolitan and regional areas throughout Victoria. It is the most suitable and most economical court to deal with the offences that are described in the Magistrates Court Act, such as recklessly causing injury, threatening to inflict serious injury, assaults, indecent assaults, drunkenness and dangerous driving. A variety of offences — when the legislation was first brought in they did not exist in Victoria — have been added and continually added, so it was appropriate to review the situation. Although some people were critical of it, the committee found that the system of de novo appeals to the County Court should not be changed.

People who have been found guilty in the Magistrates Court are always coming to see me in my electorate office for advice and assistance. The only thing I always say is that they can appeal to the County Court, because that is open to them, depending on the legal grounds. They can have a full hearing in front of a magistrate, and where there is a de novo appeal the matter is dealt with by one judge, not by a judge and jury. The judge hears the case that is put to him and makes a decision accordingly. However, in most cases they discover that the cost of preparing the documentation and having a barrister represent them in the County Court is a bit exorbitant.

The ACTING SPEAKER (Mr Ingram) — Order! The honourable member's time has expired. The time for making statements on committee reports has now ended.

LAND (REVOCATION OF RESERVATIONS) BILL

Statement of compatibility

Mr BATCHELOR (Minister for Community Development) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Land (Revocation of Reservations) Bill.

In my opinion, the bill, as introduced in the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will provide for the revocation of:

the public purposes reservation relating to the bed and banks of Lake Condah, in order to transfer that land to the Gunditjmara people;

the reservations relating to certain lands at South Melbourne, Daylesford and Beechworth; and

the revocation of a Crown grant of the Roman Catholic Orphan Asylum at South Melbourne and the revocation of a Crown grant for benevolent asylum purposes at Beechworth.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill.

Section 12 of the charter which protects the right to freedom of movement is relevant to the bill. Section 12 stipulates that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

The right's broad focus is to protect against arbitrary restrictions on people's ability to move freely. A particular aspect of the right is protection of people's ability to choose their own route when exercising their right to move freely within the state. Whether the right applies depends upon how land that has been reserved for public purposes has been used. The bill will touch upon this aspect of the right.

Presently, subject to some constraints on access, the open areas of the land and beds of Lake Condah are available to people to choose as part of their route when moving freely within Victoria.

When the bill removes the public purposes reservations for Lake Condah the public's ability to enter and pass through these areas will be limited. This consequence can be perceived as a limitation on the right to freedom of movement protected by section 12 of the charter.

Section 20 of the charter, which protects against deprivation of property other than according to law, also requires consideration in the context of this bill. This is because clause 7(a) of the bill provides that on the removal of reservations lands are deemed to be unalienated lands of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests. In doing so, this clause could be perceived to take away proprietary interests, which would amount to a deprivation of property in contravention of section 20 of the charter. However, there will not be any deprivation of property, because there are no leases or other proprietary interests in the lands affected by clause 7(a).

For these reasons, it is not expected that this bill will deprive any person of property rights protected by section 20 of the charter, and, accordingly, there will not be a limitation of the rights protected under section 20.

2. Consideration of reasonable limitations — section 7(2)

To the extent that the right to freedom of movement will be limited, I consider that the limitation will be reasonable, in accordance with section 7(2) of the charter. I provide the following reasons for this view.

(a) the nature of the right being limited

The right to freedom of movement is a fundamental human right which protects against restrictions on people's ability to move freely within the State. The right is not an absolute right at international law, and under the charter may be subject to such reasonable limitations as are demonstrably justified in a free and democratic society.

(b) the importance of the purpose of the limitation

The aspect of the bill which will limit freedom of movement is the revocation of the public purposes reservations for Lake Condah. On 30 March 2007 the Federal Court made a consent determination for Gunditjmara native title. The purpose of this aspect of the bill is to enable the completion of a native title settlement package under which the state government has agreed to transfer freehold title of the Lake Condah Reserve to the Gunditji Mirring Traditional Owners Aboriginal Corporation.

The proposed native title settlement furthers section 19(2) of the charter which provides that Aboriginal persons and their community must not be denied their right to enjoy their identity and culture, maintain their distinctive spiritual and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

It is of high importance that the negotiated settlement proceeds to further reconciliation between the indigenous and non-indigenous community.

(c) the nature and extent of the limitation

The limitation resulting from this bill will only affect people insofar as their current restricted ability to move freely through the bed and banks of Lake Condah may be limited as a result of the native title settlement. From investigations for the mediation in the native title claim, historically limited public access occurred, due to restricted access points and seasonal inundation. People will still be able to move freely elsewhere, including around the perimeters of this area. All other aspects of the right to freedom of movement — including Victorians' rights to freely enter and leave the state, to choose where to live, and to move around the state — will remain unaffected. Having regard to the overall breadth and nature of the right to freedom of movement, the extent of the limitation is considered to be relatively negligible.

(d) the relationship between the limitation and its purpose

The revocation of the public purposes reservations for Lake Condah is necessary for the native title settlement. This is a proportionate legislative response to the objective of completing that settlement. Accordingly, the resulting limitation on the right to freedom of movement is also a proportionate outcome.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means available to achieve the purpose of facilitating the native title settlement.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it will not limit the property rights protected by section 20, and, although it will limit the right to freedom of movement, the limitation is reasonable.

PETER BATCHELOR, MP
Minister for Energy and Resources

Second reading

Mr BATCHELOR (Minister for Community Development) — I move:

That the bill be now read a second time.

The purpose of this bill is to change the status of four Crown land reserves located at Lake Condah in south-west Victoria, South Melbourne, Daylesford and Beechworth. These changes are required to meet government commitments to the Gunditjmara native title settlement, facilitate refurbishment of the former St Vincent's Boys Home at South Melbourne and disposal of surplus facilities at the other locations.

Public purposes reserve Lake Condah

On 30 March 2007 the Gunditjmara native title claim was settled by agreement between the Gunditjmara people, the state and all the other 170 respondent parties to the claim. Part of the approved settlement package included agreement to transfer the Lake Condah Reserve and two additional parcels of Crown land adjoining Lake Condah to the Gunditjmara People.

The bed and banks of Lake Condah were permanently reserved for public purposes by order in council dated 23 May 1881. This bill will revoke part of that reservation which is necessary to allow the granting of the land to the Gunditjmara people.

The state is legally committed by the settlement to deliver up the land to the Gunditjmara people.

237 Cecil Street, South Melbourne

This land is permanently reserved and subject to a restricted Crown grant for Roman Catholic orphan asylum purposes. The bill revokes the reservation and related Crown grant; it also removes the Roman Catholic Trusts Corporation as trustee of the land.

On 31 October 2006 the Premier entered into a memorandum of understanding with the Roman Catholic Trusts Corporation and MacKillop Family Services Ltd committing all parties to remove reservations and trusts to which 237 Cecil Street, South Melbourne, is subject. The rationalisation of the legal status of the site provides the Roman Catholic Trusts Corporation and MacKillop Family Services with the certainty they require to invest in the refurbishment of existing buildings. It also allows the Minister for Finance to sell or transfer the remainder of the site for the development of a key piece of social infrastructure, such as age care and/or child care.

Permanent reserve for asylum purposes at Daylesford

The Daylesford Ladies Benevolent Society approached the Minister for Finance concerning the purchase of the site it manages as committee of management at 26 East Street, Daylesford. A historic building at the site straddles the boundary of the permanent reserve for asylum purposes and freehold owned by the society.

The building is longer used by the society. Once the reservation is removed the society hopes to purchase the Crown land and consolidate it with their freehold land. They will then sell the consolidated parcel as part of the rationalisation of its activities in Daylesford.

The bill will revoke the permanent reservation over the land and will facilitate the sale of the land to the Daylesford Ladies Benevolent Society, allowing it to proceed with the rationalisation of its activities.

Permanent reserve for benevolent asylum purposes at Beechworth

The bill also revokes the permanent reserve and related Crown grant for benevolent asylum purposes at Beechworth.

This land is part of the former Beechworth Hospital site, which occupies several parcels of land including freehold that is now surplus to the requirements of the Department of Human Services since the establishment of new facilities.

Following revocation it is intended to sell the land at valuation based on the highest and best use.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debated adjourned until Wednesday, 22 August.

CONFISCATION AMENDMENT BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, I make this statement of compatibility with respect to the Confiscation Amendment Bill 2007.

In my opinion, the Confiscation Amendment Bill 2007, as introduced to the Legislative Assembly, is compatible with human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The object of the Confiscation Act 1997 ('the act') is to ensure that 'crime does not pay'. It seeks to achieve that object by depriving criminals of their ill-gotten gains, disrupting criminal enterprises and deterring criminal activity.

The act establishes a regime for the restraint of property that may have been used in, or derived from, criminal activity (to prevent its dissipation) and the forfeiture of such property.

The act also allows a person with an interest in property to apply to have that interest excluded from a restraining order (so that the applicant may dispose of or otherwise deal with their interest) or forfeiture (so that it is not transferred to the state). Such applications may relate to property restrained for the purposes of forfeiture or property subject to forfeiture.

The bill amends the act to clarify the scope and operation of its provisions relating to applications for, and the making of, exclusion orders. More specifically, the bill amends the act to:

make clear that exclusion orders can only be made in relation to an applicant's interest in the property, rather than the entire property;

insert a definition of 'derived property' and include that term in provisions relating to the exclusion of property from automatic or civil forfeiture. This set of amendments makes clear the original policy intent that criminally acquired property cannot be excluded from restraint or forfeiture merely because it is not tainted by the specific schedule 2 offence with which the defendant has been charged or is reasonably suspected of having committed;

provide that the 'effective control' test (which is one of the grounds on which a non-defendant applicant must satisfy a court in order to obtain an exclusion order) is to be applied at the time the defendant[1] is charged or his or her property restrained, whichever occurs earlier. This amendment is designed to address arguments that where, for example, a defendant is in custody, he or she no longer has effective control of the property;

make clear that transfer of an interest in property for less than market value is not a sufficient basis on which to have a property interest excluded from restraint or forfeiture; and

ensure the appeal provision of the act covers all decisions concerning exclusion orders to address the Court of Appeal's identification of some 'gaps' in the *Director of Public Prosecutions v. Phan Thi Le*.[2]

The bill also amends the act:

to clarify that the procedure applying to appeals against sentence are intended to apply to appeals under the act, rather than the principles laid down in *House v. The King*[3] on the appellate courts' approach to appeals against the exercise of discretion by trial judges; and

to assist in the interpretation and application of provisions concerning 'property', which is defined in s. 3 of the act to include 'any interest in any … real or personal property'.

Human rights issues

As indicated in the overview above, the principal focus of the bill is on amending provisions relating to applications for, and the making of, exclusion orders from either restraint or forfeiture under the act. Broadly, the ability of any person with an interest in restrained or forfeited property to apply for an exclusion order provides an avenue for such people to assert their right to property.

The bill makes four (sets of) amendments to the exclusion order provisions. Two of these (sets of) amendments may engage human rights under the charter. The following analysis examines each of these amendments and considers whether they engage with any human rights and, if so, whether any limitation to those rights is reasonable.

1. Scope of excluded property: validation

The first series of amendments makes clear that an application for an exclusion order and any exclusion order made under the act relates to the applicant's interest in the property, rather than the whole property. These amendments do not adversely affect an applicant's right to property.

New section 176 of the act inserted by the bill validates those amendments in relation to exclusion orders previously made. New section 177 of the act inserted by the bill requires pending applications for exclusion orders to be determined in accordance with the amended provisions. That is, new sections 176 and 177 provide that the amendments apply to the amended provisions as though they had always been so amended (other than in the case of the parties in *DPP v. Phan Thi Le*). These provisions reflect the manner in which the courts had construed and applied the amended provisions prior to the Court of Appeal's decision in Phan Thi Le and are intended to clarify the original policy intent underlying these provisions.

As the amendments do not create a criminal offence, they do not engage the right against retrospective criminal laws in s. 27 of the charter.

2. Derived property

The second set of amendments involves the insertion of a definition of 'derived property' in section 3 of the act. 'Derived property' is defined in the bill as property:

(a) used in, or in connection with, any unlawful activity by —

[1] Here, and for ease of reference throughout this statement, the term 'defendant' is used to include, in the case of civil forfeiture, a person reasonably suspected of having committed a schedule 2 offence (e.g.: a serious drug or fraud offence).

[2] [2007] VSCA 18 at paras. 10–11.

[3] (1936) 55 CLR 499.

(i) the defendant; or

(ii) the person who is suspected of having committed a schedule 2 offence; or

(iii) the applicant for an exclusion order; or

(b) derived or realised, or substantially derived or realised, directly or indirectly, from any unlawful activity by —

(i) the defendant; or

(ii) the person who is suspected of having committed a schedule 2 offence; or

(iii) the applicant for an exclusion order; or

(c) derived or realised, or substantially derived or realised, directly or indirectly, from property of a kind referred to in paragraph (a) or (b).

The 'derived property' amendments relate to the automatic and civil forfeiture regimes. Those regimes in turn relate to schedule 2 offences, that is, to offences at the very serious end of the scale, often involving organised or systemic criminal activity.

These amendments will ensure that the policy objective of targeting the long-term accumulation of wealth through criminal enterprise underlying the automatic and civil forfeiture regimes is not undermined.

The derived property amendments do not expand the type of property that can be included in an application for a restraining order. Rather, once a restraining order is in place, the amendments limit the circumstances in which exclusion orders may be made, by requiring an applicant to satisfy the court that the property is not derived property or the applicant had no knowledge or reason to suspect that the property was derived property.

Given there is a narrowing of the exclusion order provisions, there is a possible impact on charter rights.

2.1 Right to property (s. 20)

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with the law.[4]

Section 20 only prohibits a deprivation of property that is carried out unlawfully. As the act is, and the bill if passed will be, a law made by the Victorian Parliament, any deprivation of property that occurs as a result of the 'derived property' amendments would take place under powers conferred by legislation, in accordance with the law. There is an implied limitation on the power to make laws depriving persons of property that the laws must not do so in an arbitrary manner. 'Arbitrary' in this context may mean 'capriciously', 'unpredictably' or 'inconsistently': in other words, lacking in reason or proper policy justification. In this case, the 'derived property' amendments form part of a systematic process of improving the operation of the existing provisions to enable law enforcement authorities to more readily identify and confiscate proceeds of crime, particularly where large amounts of profit are generated. The definition of 'derived property' and the powers to deprive a person of such property are confined and structured, formulated in a precise manner and accessible to the public. In this sense, the amendments cannot be said to be arbitrary.

Arguably, the right to property protected by article 1 of the first protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms casts a more onerous requirement than that laws depriving persons of property not be 'arbitrary'. In Europe, the courts have held that article 1 comprises three distinct rules:

(1) the principle of peaceful enjoyment of property;

(2) the principle that the deprivation of possession of property must be in the public interest and subject to the conditions provided for by law and by general principles of international law;

(3) the principle that states are entitled to control the use of property in accordance with the general interest and to secure the payment of taxes or other contributions or penalties.

Principles (2) and (3) have been interpreted to require a 'fair balance' to be struck between the interests of the state and those of the individual. While this may impose a more onerous requirement than that any deprivation must not be arbitrary, the European Court of Human Rights has repeatedly held that confiscation and forfeiture do not breach art. 1 of the European convention.

Based on this approach by the European court, the 'derived property' amendments cannot be said to be incompatible with the right to property under s. 20 of the charter.

3. Effective control

The third series of amendments clarifies the operation of the 'effective control' test in applications for exclusion of an interest in property from a restraining order or forfeiture by non-defendant applicants. The amendment will require the applicant to satisfy the court that his or her interest in the restrained or forfeited property was not subject to the effective control of the defendant at the time the defendant was charged or his or her property restrained, whichever occurred earlier. These amendments are designed to address arguments that where, for example, a defendant is in custody, he or she no longer has effective control of the property.

The concept of 'effective control' of property is important to the efficacy of the confiscation regime. Section 9(1) of the act provides:

> for the purposes of this act, property may be subject to the effective control of a person whether or not the person has an interest in it.

Experience with the legislation that the act replaced[5] showed that persons could circumvent that regime by divesting themselves of their illegally acquired assets as gifts to family and friends or by making it appear that other people (natural or legal) have control over those assets. Section 9 in the

[4] This right is derived from article 17 of the Universal Declaration of Human Rights.

[5] Crimes (Confiscation of Profits) Act 1986.

current act is intended to enable the courts to look behind company and trust arrangements to determine who really is in control of the property.

The proposed amendments clarify the application of the 'effective control' test, but make no substantive policy change. They do not engage any of the human rights under the charter.

4. Transfer of property for sufficient consideration

Currently, the act requires that a non-defendant applicant for an exclusion order must prove, among other things, that his or her interest in the property was acquired from the defendant for sufficient consideration. In Phan Thi Le, the Court of Appeal held that 'natural love and affection … constitute(s) 'sufficient consideration' for the purposes of s. 52(1)(a)(v) of the (confiscation) act', i.e.: the relevant provision for the exclusion order in that case. That interpretation also extends to applications for exclusion of the applicant's interest in property from restraint or other forms of forfeiture under the act where sufficient consideration is also required.

The fourth amendment inserts the following definition of 'sufficient consideration' in section 3 of the act:

> … in relation to property, means consideration that reflects the market value of the property and does not include —
>
> (a) consideration arising from the fact of a family relationship between the transferor and transferee;
>
> (b) if the transferor is the spouse or domestic partner of the transferee, the making of a deed in favour of the transferee;
>
> (c) a promise by the transferee to become the spouse or domestic partner of the transferor;
>
> (d) consideration arising from the transferor's love and affection for the transferee;
>
> (e) transfer by way of gift.

This new definition makes clear that transfer of an interest in property for less than market value is not a sufficient basis on which to have a property interest excluded from a restraining order or forfeiture. It is consistent with the original policy intent indicated in the second-reading speech for the Confiscation Bill that '(t)he bill enables a court to restrain and confiscate tainted property that has been transferred for less than full value'[6] (emphasis added). That requirement is designed to prevent criminals shielding criminally acquired property (including the proceeds of the sale of property for market value) from forfeiture by transferring it to other (often related) parties for less than market value.

The insertion of this new definition and its operation in the act's exclusion order provisions may engage three rights under the charter: the right to privacy (s. 13); protection of families and children (s. 17); and the right to property (s. 20).

4.1 Right to privacy (s. 13)

Section 13(a) requires that a public authority must not unlawfully or arbitrarily interfere with a person's family or home. The insertion of a definition of 'sufficient consideration' engages this right to the extent that where property is the subject of a restraining order or forfeiture, that may at a later stage[7] lead to the confiscation of a person's home or the eviction of a family from a property where they reside. However, the operation of the forfeiture scheme will ensure that the interference with privacy as a result of the forfeiture of property will occur on a case-by-case basis in discrete and defined circumstances under powers conferred by statute. Accordingly, the interference with privacy is lawful and not arbitrary, and there is no limitation on the right to privacy in section 13(a) of the act.

4.2 Protection of families and children (s. 17)

Section 17 of the charter provides:

> (1) Families are the fundamental group unit of society and are entitled to be protected by society and the state.
>
> (2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Section 17(1) protects the integrity of the family unit. Section 17(2) accords special protection to children as is needed by reason of being a child. Children are, by reason of being a child, reliant upon their parents to provide the essentials of life.[8] The loss of property has the potential to impact upon the ability to provide those essentials.

The amendments will prevent a family member, who has acquired an interest in property directly or indirectly from a defendant for less than market value, from having that interest excluded from restraint or forfeiture. Such an interest may be in the family home. The purpose of the provisions are to prevent criminals from thwarting the confiscation regime by transferring criminally acquired or derived property to another person including family members. Without this amendment, criminals will be able to use such 'less than market value' transfers to shield their criminally acquired assets from forfeiture.

However, whilst the provisions extend to the family home, the amendments should be considered in the context of the courts' broad powers under the act to ameliorate the impact of restraining orders or forfeiture on any person, including family members and children of a defendant. These powers can be applied to ensure that families and children are not placed in financial hardship by reason of the operation of the confiscation of property.

[6] The Hon Jan Wade MP, Attorney-General, 'Confiscation Bill: Second reading', Victoria Parliamentary Debates Assembly (13 November 1997), 1146, 1149.

[7] i.e. once the period for making an exclusion order has passed or an exclusion order application has been refused.

[8] In relation to the corresponding right in article 24 of the ICCPR, the United Nations Human Rights Committee has commented that the measures required 'although intended primarily to ensure that children fully enjoy the other rights enunciated in the covenant, may also be economic, social and cultural': general comment 17.

For example, in relation to restraining orders, a court under section 14(4) of the act may make a restraining order that:

> … provide(s) for meeting … the reasonable living expenses (including the reasonable living expenses of any dependants) … of any person to whose property the (restraining) order applies if the court … is satisfied that these expenses cannot be met from unrestrained property or income of the person.

Further, section 26 of the act allows a court to make such further orders in relation to restrained property 'as it considers just', including, but not limited to, the type of order envisaged by section 14(4). Affected family members with an interest in the restrained property may apply for such an order. In addition, family members without a legal interest in the property may, with the leave of the court, apply for such an order.

In relation to forfeiture, section 45 of the act permits a court, where it is satisfied that 'hardship may reasonably likely be caused to any person by' the forfeiture of property to:

(a) … order that the person is entitled to be paid a specified amount out of the forfeited property, being an amount that the court thinks is necessary to prevent hardship to the person; and

(b) … make ancillary orders for the purpose of ensuring the proper application of an amount so paid to a person who is under 18 years of age.

These broad existing powers for the courts to make appropriate orders are consistent with the protection of families and children under section 17 of the charter.

The amendments are therefore consistent with the rights in section 17 of the charter.

4.3 Property rights (s. 20)

In light of the Court of Appeal's interpretation of the 'sufficient consideration' requirement in Phan Thi Le, the new definition arguably restricts the right to property by increasing the scope of the property that may be subject to restraint and/or forfeiture. That is, any interest in property acquired by a person other than the defendant for less than market value cannot be excluded from restraint or forfeiture. In that sense, the amendments could be regarded as increasing the level of restriction on the right to property of persons with an interest in restrained or forfeited property.

However, the definition of 'sufficient consideration' is formulated precisely to guide those who apply the law. Further, the power to deprive a person of property to which this amendment relates will take place under powers conferred by legislation. The definition of 'sufficient consideration' and its operation in determining exclusion orders sought by non-defendant applicants are confined and structured, formulated in a precise manner and accessible to the public. In this sense, the amendments cannot be said to be arbitrary. For these reasons, any resultant deprivation meets the conditions of a deprivation of property which is 'in accordance with law' and therefore the definition of 'sufficient consideration' and its use in the exclusion provisions does not limit the right to property under section 20 of the charter.[9]

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because the amendments in the bill either:

> do not raise human rights issues; or
>
> to the extent that some amendments do raise such issues, these amendments do not limit human rights.

ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

Put simply, the object of the Confiscation Act 1997 ('the act') is to ensure that 'crime does not pay'. It seeks to achieve that object by depriving criminals of their ill-gotten gains, disrupting criminal enterprises and deterring criminal activity.

The act establishes a regime for the restraint of assets that may have been used in or derived from criminal activity (to prevent their dissipation) and for the forfeiture of such assets.

The act also allows a person with an interest in property to apply to have that interest excluded from a restraining order (so that the applicant may dispose of or otherwise deal with their interest) or forfeiture (so that it is not transferred to the state). Such applications may relate to property restrained for the purposes of forfeiture or subject to forfeiture.

The bill amends the act to clarify the scope and operation of its provisions relating to applications for, and the making of, exclusion orders in each of these circumstances.

The most critical of these amendments arises from a recent Court of Appeal decision in the *Director of Public Prosecutions v. Phan Thi Le* [2007] VSCA 18. The effect of the majority's decision in that case is that, where a court is satisfied an exclusion order should be made, the court must exclude the whole of the property, rather than the applicant's interest in the property, from the restraining order or forfeiture (as the case requires). As was observed in the dissenting judgement in Phan Thi Le, '(t)he exclusion of the whole of the property

[9] See also the more detailed discussion of the right to property in section 2.1 above, which is also applicable here.

would undermine the policy goal of the act, which is intended to prevent people convicted of serious offences from profiting from the fruits of their crime'.

To avoid these consequences and ensure the regime remains an effective tool in the fight against organised crime, the bill amends the act to make clear that exclusion orders can only be made in relation to an applicant's interest in the property, rather than the entire property. The bill validates exclusion orders made prior to the Phan Thi Le decision, and the amendments also apply to applications that have been made but are yet to be determined. It is necessary to cover pending exclusion order applications to ensure that criminals cannot defeat the confiscation regime where another person with an interest in restrained property obtains an exclusion order. This is fair and appropriate, noting that the amendments merely confirm the law as it was understood and applied prior to the Phan Thi Le decision, and that applicants continue to have a right to seek to protect their property interests.

The bill also makes four further amendments to the exclusion order provisions.

First, it ensures that restraining orders for automatic or civil forfeiture (relating to serious drug trafficking or fraud offences) cannot be defeated by arguing that the property was not 'tainted' in relation to the specific offence with which the defendant has been charged or is reasonably suspected of having committed. In other words, the defendant will bear the onus of proving that the property itself was not used in or acquired directly or indirectly through illegal activity. This amendment will ensure that the policy objective of targeting the long-term accumulation of wealth through criminal enterprise underlying automatic and civil forfeiture for schedule 2 offences, such as serious drug trafficking or fraud offences, is not undermined.

Second, it clarifies the operation of the 'effective control' test in applications for exclusion of an interest in property from a restraining order or forfeiture by non-defendant applicants. The amendment will require the applicant to satisfy the court that the applicant's interest in the restrained or forfeited property was not subject to the effective control of the defendant at the time the defendant was charged or his or her property restrained, whichever occurred earlier. The same amendment is made in respect of restraining orders for civil forfeiture purposes or a civil forfeiture order, except that it applies to the person reasonably suspected of having committed a schedule 2 offence. This amendment is designed to address arguments that where, for example, a defendant is in custody, he or she no longer has effective control of the property.

Third, it makes clear that transfer of an interest in property for less than market value is not a sufficient basis on which to have a property interest excluded from restraint or forfeiture. This is consistent with the original policy intent indicated in the second-reading speech for the Confiscation Bill that 'The bill enables a court to restrain and confiscate tainted property that has been transferred for less than full value'. This amendment is designed to address arguments that transfer of a property interest by way of gift or out of natural love and affection constitutes sufficient consideration for the purpose of obtaining an exclusion order. It will also deny criminals the use of such less-than-market-value transfers to shield their criminally acquired assets from forfeiture.

Fourth, it ensures the appeal provisions in section 142 of the act cover all decisions concerning exclusion orders. This amendment will address the Court of Appeal's identification of some 'gaps' in s. 142 of the act in Phan Thi Le. Those 'gaps' meant the court was compelled to rely on its general appeal powers in civil matters under the County Court Act 1958 in order to determine that case. Similarly, unless the amendments to s. 142 are made, the Court of Appeal would have to rely on its general civil appeal powers under the Supreme Court Act 1986 if one of these 'gap' matters were appealed from that court.

In addition, the Court of Appeal in Phan Thi Le asked the Parliament to clarify its intent in providing that appeals under the act are to be conducted in the same manner as an appeal against sentence. The bill further amends s. 142 to clarify that the procedures applying to appeals against sentence are intended to apply to appeals under the act, rather than the principles laid down in *House v. The King* (1936) 55 CLR 499 on the appellate courts' approach to appeals against the exercise of discretion by trial judges.

The schedule to the bill makes a series of amendments to the act to assist in the interpretation and application of provisions concerning 'property', which is defined in s. 3 of the act to include 'any interest in any … real or personal property'.

Taken together, these amendments will assist in ensuring that Victoria's confiscation regime remains a potent and effective weapon in the fight against organised crime.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Wednesday, 22 August.

Sitting suspended 1.02 p.m. until 2.03 p.m.

Business interrupted pursuant to standing orders.

DISTINGUISHED VISITORS

The SPEAKER — Order! Before calling the Leader of the Opposition for questions, I welcome the delegation from New Zealand in the gallery today.

QUESTIONS WITHOUT NOTICE

Crime: assaults

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer to official — —

Honourable members interjecting.

The SPEAKER — Order! I warn government members that I will not have that level of interjection.

Mr BAILLIEU — My question is to the Premier. I refer to official Victoria Police statistics that show that assaults have increased by 45 per cent since 1999 — and even excluding the very serious crime of family violence they have risen by 33 per cent — and I ask: is it a fact that the risk of being assaulted in Victorian streets has increased under a Victorian Labor government?

Mr BRUMBY (Premier) — Since the Labor government has been in office in Victoria we have seen a reduction of 22 per cent in crime across this state and fewer Victorians — —

Honourable members interjecting.

The SPEAKER — Order!

Mr Wells interjected.

The SPEAKER — Order! The member for Scoresby knows better than to continue to interject. As I have warned the members of the government that I will not have that level of interjection, I warn the members of the opposition: I will not have that level of interjection.

Mr BRUMBY — As I said, since we have been in government crime has been reduced by 22 per cent. In relation to serious assaults, fewer Victorians are subject to serious assaults than people anywhere else in Australia. One of the reasons for this is that we have put significantly increased resources — —

Honourable members interjecting.

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

Mr BRUMBY — There are more than 1400 additional police around the state. Every region in the state of Victoria has more police today than it did seven and a half years ago. We have increased the police budget by 50 per cent, and we have given police the powers that they need to properly undertake their responsibilities.

There is always, though, more that we can do. We can always do better in the way we tackle crime in this state. There are issues, as we are aware, in the entertainment precincts of Melbourne in terms of increased violence and abuse of alcohol. We promised at the last election that we would introduce legislation to increase powers in relation to entertainment precincts. We will do that, and I will be introducing that legislation later this year. We have also doubled the penalties for people with knives. In addition we have given police something like 500 metal detectors so that they are able to detect whether knives are being carried.

All those things, plus the additional support we are providing through drug and alcohol programs, are making a difference in our state.

Mr Baillieu — On a point of order, Speaker, the Premier is clearly debating the question. When the Labor government came to office assaults in Victoria were under 20 000, now they are over 28 000 — and the Premier will not even acknowledge it.

Honourable members interjecting.

The SPEAKER — Order! The opportunity to take a point of order is not an opportunity to enter into debate. The Premier was debating the question, and I ask him to come back to the question.

Mr BRUMBY — As I said, we have a good record in this area. We have cut crime, we have increased police and we have indicated we will legislate to provide additional powers in relation to entertainment precincts. All those things combined will see less crime in the future, not more.

Honourable members interjecting.

The SPEAKER — Order! I have asked members not to interject at that level, and I ask them not to once again.

Commonwealth-state relations: funding

Mr HAERMEYER (Kororoit) — My question is to the Premier. I ask the Premier to outline to the house the benefits to the people of Victoria of a cooperative federal-state relationship.

Mr BRUMBY (Premier) — The Victorian government, and the former Premier and I as Premier, has always taken the view that the prime responsibility of the state is to work with whoever is in office nationally in the national interest, to do what is best for the people of Victoria and the people of Australia.

I think we showed our endeavours very successfully in that area with the development of the national reform initiative, which has become the national reform agenda. The national reform agenda, now agreed to by the commonwealth and the states, is about how we address the issues of the ageing of our population and the competitive threat that comes from China and India. Essentially it is about driving productivity improvements and about driving those improvements through investment in human capital, lifting skills and tackling in particular preventable diseases like diabetes. We have shown that we can work together. But I have to say we have been very disappointed in recent days with the policies — if you can call them that — of the federal government, which seem to be more about desperate vote buying than about sincere federal-state relations.

Mr K. Smith interjected.

Mr BRUMBY — The member for Bass — —

The SPEAKER — Order! The member for Bass has a clear choice today. He can stay in the chamber and listen to question time or he can leave. I have asked for the level of interjections to be much reduced, and I expect that behaviour from the member for Bass.

Mr BRUMBY — We are prepared to and do want to work with the commonwealth in relation to agreed good national policy objectives, but we will not be supporting this business where the federal government trawls through marginal seats looking for projects it can fund to buy votes. The *Australian Financial Review* of 6 August says this about cooperative federalism:

> The Howard government's vision of how the federalism mess can be fixed is no more coherent than a Paris Hilton monologue on Californian justice.

The reality is that the federal government should be taking responsibility for those things which are clearly its responsibility under the constitution. In this state — —

Honourable members interjecting.

Mr BRUMBY — In terms of the federal government responsibilities — —

Mr Dixon interjected.

The SPEAKER — Order! The member for Nepean! The same message that I gave to the member for Bass also applies to the member for Nepean.

Mr BRUMBY — Victoria would look forward, for example, to a fair deal and a better national framework in relation to the funding of disability services. We are providing more than a billion dollars each year in this area versus just $139 million from the commonwealth. We look forward to a better deal in terms of roads, where we receive just 16.5 per cent of national road funding despite the fact that we pay 24 per cent of fuel excise and represent 25 per cent of national gross domestic product.

In the health area, under the Australian health care agreement the commonwealth is meant to be funding 50 per cent of the cost of the hospital system. In Victoria the Howard government is funding just 41 per cent, and we are picking up 59 per cent. And of course in public housing we are funding $780 million above our requirements under the commonwealth-state housing agreement.

The Howard government can shop around Australia looking for issues, looking for projects and looking for pork-barrel opportunities, but what the people of Australia would say is: 'Focus on your fundamental responsibilities and do what is required in terms of proper discharge of those responsibilities to the states'.

We look forward, as I have said, to a better deal from the commonwealth in relation to roads. We look forward to a better deal from the commonwealth in relation to the funding of aged care, where we are being cheated of thousands of nursing home beds. We look forward to a better deal in terms of public housing. We look forward to a better deal in terms of disability services, and of course we look forward to a better deal in terms of GST funding, where it is still the case, under Mr Howard and Mr Costello's formula, that for every dollar Victorians pay in GST only 88 cents comes back to our state.

Water: food bowl modernisation project

Mr RYAN (Leader of The Nationals) — My question is directed to the Minister for Water. I refer to the first stage of the government's food bowl modernisation project, which is predicated on achieving

225 gigalitres of water savings, and I ask: given that Melbourne is getting the first 75 gigalitres, who gets the next 75 gigalitres? Is it the irrigators or the environment?

Honourable members interjecting.

The SPEAKER — Order! The Premier and the Leader of The Nationals! The dialogue across the table is not acceptable.

Mr HOLDING (Minister for Water) — I thank the Leader of The Nationals for his question, because it is an opportunity to remind the house again of the very significant investment that the state government is making, along with irrigators and, obviously, with water authorities in ensuring that we protect and preserve the water security of this state.

The food bowl modernisation project is, in simple terms, a once-in-a-century opportunity to invest in the water infrastructure of this state and particularly to invest in the water infrastructure of an absolutely critical region of this state and this nation. It is a region that is critically important from an export perspective. It is a region that is critically important in terms of the impact it has on our national economy and our state economy, and it is for that reason that the state government has committed to a plan that will, through stage 1, invest over $1 billion in providing and supporting water security for those irrigators.

It is an outstanding plan for irrigators in that region and for that region's future. It is an outstanding plan, because the state government will invest over $600 million in the first stage of that investment, which will provide an initial set of savings of 225 gigalitres. Local irrigators will be required, through the water authority, to make an investment of something like $100 million, so 10 per cent of the cost of stage 1 will be borne by local irrigators, and $300 million will be invested by Melbourne water authorities. Through that investment we will see, quite simply, the biggest single investment in water infrastructure in northern Victoria in the state's history.

We made it very clear that the 225 gigalitres will be shared one-third, one-third, one-third: one-third of the savings coming to Melbourne; one-third flowing to the environment; and one-third being used by irrigators. We made it very clear also that the process for resolving many of the issues around the allocation of that will be worked through. We will take advice from the steering committee. The steering committee, of course, meeting for the first time — —

Honourable members interjecting.

The SPEAKER — Order! Once again I ask members to cease that level of interjection. The Leader of The Nationals has asked this question, and I would expect that the members of The Nationals would be interested in hearing the answer. I ask the member for Keilor to be mindful of not displaying articles in the chamber.

Mr HOLDING — On Friday, when I have the opportunity to meet with the steering committee, I look forward to the opportunity to discuss these and many other issues relating to this significant investment in the water infrastructure of northern Victoria.

Murray–Darling Basin: federal plan

Ms THOMSON (Footscray) — My question is also to the Minister for Water. I ask the minister to update the house on Victoria's position on the federal government's proposed Murray–Darling Basin legislation.

Mr HOLDING (Minister for Water) — I thank the member for Footscray for her question. It is an opportunity to remind the house, as the Premier just has, that the Victorian government takes its commitment to cooperative federalism seriously.

It is in that spirit that earlier this year we made it very clear that we were willing to work with the commonwealth on the development of plans to provide the best possible management of the Murray–Darling Basin water issues, which affect obviously not only Victoria but New South Wales, Queensland, South Australia and the Australian Capital Territory as well. That is the spirit in which the Victorian government has engaged in these discussions. But we have made very clear from the start that there are certain things that we are not willing to cede to the commonwealth, there are certain powers that we are not willing to give away and there are certain rights that our irrigators and farmers have at the moment that we are not willing to let the commonwealth get its hands on. That has been very much the position the Victorian government has adopted from the start.

We were very pleased with the progress that we thought was being made. As recently as 9 July the then Premier and the then Minister for Water, Environment and Climate Change met with the commonwealth Minister for Environment and Water Resources to discuss, again, Victoria's sheet of terms and to work through to a mature and appropriate resolution of those issues. We were very pleased with the response we got from the federal water minister at the time, who felt that the terms the Victorian government put forward were

able to be supported. We were very surprised to see the legislation that was put forward by the commonwealth and released publicly, particularly to Victoria, yesterday.

Having had an opportunity to look through those 220 pages of legislation — and I want to make it clear that we have not got the intergovernmental agreement, which is the underpinning of that legislation — we can see that the Prime Minister has turned what was bad policy into even worse law. When we analyse that legislation what do we see? The first thing we see is the creation by the commonwealth of a massive bureaucracy. The commonwealth is proposing to add to the current arrangements a new Murray-Darling authority, which the commonwealth itself estimates will cost $585 million — that is, $585 million to have a governance set of arrangements which has a new Murray-Darling authority; the Murray-Darling Basin Commission; a ministerial council; a ministerial advisory committee; a community consultative council; and an officials committee. These are the bureaucratic arrangements that the commonwealth wants to put in place.

Add to that the $450 million the commonwealth wants to spend on new measurements, new research and a new understanding around some of these issues, and what do we have? We have over $1 billion that is going to be spent by the commonwealth and not 1 extra litre of water created. Not 1 litre of extra water, but over $1 billion in bureaucracy and new processes. At the same time the commonwealth is going to reach down into every farm and into every irrigator — reach down into them all — and provide for them a new set of draconian powers, powers such as new prosecution powers and new right-of-entry powers for commonwealth officials. In fact before any farmer in the region — —

Honourable members interjecting.

The SPEAKER — Order! I ask the minister to relate his answer to the effect of the legislation on Victorian government business, and I remind him that he has been speaking for 4 minutes. I invite him to continue with his answer.

Mr HOLDING — Thank you, Speaker. They will reach down to every farmer — —

Honourable members interjecting.

The SPEAKER — Order! Without the assistance of the opposition or government members or members of The Nationals!

Mr HOLDING — They are reaching down to every farm so that before any farmer in the region can make a decision to purchase water or to use water, they will first need to consult their lawyer. This is a situation that the Victorian government finds unacceptable.

At the same time there are the limits that exist in terms of water trading — at the moment limited to 4 per cent trading out of any region in any given year. With the new arrangements to be set by the federal minister, we do not know whether the current limits will be retained, whether they will be extended or whether in fact they will be abolished altogether. It is a bad deal for Victoria. It is a deal that Victorians will not sign up to. We will not have a situation in place where cashed-up water barons — either rice or cotton farmers — from New South Wales will be able to purchase high-security water from Victoria because of the abolition of these limits by the commonwealth government.

We have a strong policy in place. We will continue to support Victorian irrigators. We will continue to stand up for Victorian farmers, and we will continue to ensure that this process is driven by what is in the national interest and the Victorian interest, and not by what is in the electoral interests of the Howard government.

Honourable members interjecting.

The SPEAKER — Order! I ask for the cooperation of the members for Dandenong, Melton, Burwood and Footscray.

Crime: assaults

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer to the Premier's answer to my previous question, and to the contrary I refer to official Victorian police statistics that show that weapons offences have increased by 39 per cent and assaults with a weapon have increased by over 45 per cent since 1999, and I ask: is this why people no longer feel safe on the streets of Victoria?

Mr BRUMBY (Premier) — People are safer in Victoria than in any other state in Australia. They are safer because we have put 1400 additional police onto the streets; we promised a further 350 police at the last election. The facts speak for themselves. Crime in this state has been reduced by 22 per cent. The safest state in Australia is the state of Victoria. It is one of the reasons why Melbourne is the fastest growing capital city in Australia. We are adding 1000 people a week — more than Sydney and more than Brisbane — and

people come here because of our great economy, they come here because of our great lifestyle and they come here because it is a safe place to live.

Mr Baillieu — On a point of order, Speaker, once again the Premier is debating the question and seems to be in denial about the assault statistics.

The SPEAKER — Order! This is becoming a very tiresome afternoon. I ask for members' cooperation to allow me to hear the question, the answer and the point of order. I do not think I should have to ask every time there is another question. I do not find it particularly funny, and I particularly warn the member for Kilsyth and the member for Warrandyte.

Mr BRUMBY — I was asked a question about a safer Victoria, and that is exactly what we are delivering. As I said, crime is down 22 per cent, there are more than 1450 extra police, a police budget which is 50 per cent higher, record investment in police stations, more police powers, double penalties for knives and metal detectors for police. All of those things are designed to attack that problem. We have a good record, but there is always more to do. As I indicated in response to the — —

Mr McIntosh interjected.

The SPEAKER — Order! The member for Kew is warned, and I will not warn him again. Be warned! Although the member for Polwarth has said nothing in the last 10 seconds, he has also been interjecting ferociously and vigorously this afternoon, and I ask him to stop.

Mr BRUMBY — In addition to the overall reduction in crime in our state, the number of recorded knife attacks has reduced 30 per cent since 2001–02, from 1418 to 1089 in 2005–06.

As I have said there is more to do. We will be bringing forward legislation later this year, and that legislation will aim to put better practices and tighter controls in place around our entertainment precincts. What has been occurring there is not acceptable and, along with the other measures I have mentioned, the legislation will address those issues which are taking place.

Education: accessibility

Ms BARKER (Oakleigh) — My question is to the Minister for Education, and I congratulate the member for Melbourne on her appointment as the Minister for Education. I ask the minister to outline to the house how this government has ensured that every Victorian, regardless of suburb or region, has access to very high-quality education.

Ms PIKE (Minister for Education) — I thank the member for Oakleigh for her question. The Premier has said on a number of occasions now that education is this government's no. 1 priority. This is because the Premier knows, and in fact the whole government knows, that education is absolutely vital to an individual's development and of course vital to the growth and prosperity of our whole society. As a fellow former teacher, I share this genuine passion and commitment to developing in our young people a real desire for learning and a desire for learning that will continue throughout their whole lives.

A commitment to education, of course, goes beyond just having it as a good idea. You actually have to develop the policies and programs and you actually have to invest. Since 1999 the Labor government has invested an additional $7.3 billion in education and training. We have invested in teachers; we have invested in support for children and their families; we have invested in a commitment to educational excellence; and we have invested in better facilities so that learning can take place in those. Why is it so important that we continue to invest in our education system and particularly in our public education system? It is because our vision for education in Victoria is one in which all students, no matter where they live and no matter what challenges are facing them and their families, will have the best possible access to education services from birth to adulthood.

We know that, if children get the very best possible start, then they have the best chance of succeeding throughout their lives, and they also have the best capacity to contribute and build up society as a whole. It is not just about individual development, it is about how we make a stronger society and a stronger community. Our goal is excellence in all schools, whether they be in rural areas or in metropolitan areas or in areas of social or economic disadvantage.

We are well on our way. Victorian students are achieving excellent results. Our students consistently reach national benchmarks, or in fact better, in literacy and numeracy. Our completion rates have risen since 1999, with well over 86 per cent of young Victorians now completing year 12. We know this is very important in ensuring that young people have an opportunity to get into the workforce.

In spite of the fact that the commonwealth has been neglecting its responsibility in this area, and in spite of the fact that it has a scattergun and ill-conceived

approach to education policy, we have been repairing the damage of the past and making sure that Victoria is a great place for children to learn. The Brumby government will continue to build on this fantastic legacy, investing additional funds — $1.9 billion in extra funding — in education facilities, including investing in innovation through the ultranet and IT, in science wings and in extra facilities for innovation and excellence.

We are ready, willing and very eager to address the new challenges and opportunities that face us in education every day. Victorians can be confident that under a Brumby Labor government education will be and will remain our no. 1 priority. That is so important for the future of our children and for our own economic and social prosperity, and of course so that Victoria can continue to be a great place to live, work and raise a family.

Police Association: pre-election agreement

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to the secret pre-election deal with the police union, and I ask — —

Ms Marshall interjected.

The SPEAKER — Order! The member for Forest Hill is warned.

Mr Pandazopoulos interjected.

The SPEAKER — Order! The member for Dandenong is warned.

Mr K. Smith interjected.

The SPEAKER — Order! I point out to the member for Bass that I do not need his constant advice.

Mr BAILLIEU — Given the Premier's claim on the ABC's *Stateline* on Friday that there was 'nothing secret' about the deal and the Premier's promises yesterday on freedom of information, will he now release all documents associated with this deal, and in particular the correspondence from the police union that led to the deal?

Mr BRUMBY (Premier) — As I have made very clear recently, there was a letter which was sent to the Police Association. That letter has been made available publicly. The responsibility that we have as a government is to release correspondence which we have signed. We have released that correspondence. It is available to the opposition, and it is available publicly.

Mr Baillieu — On a point of order, Speaker, the Premier is debating, not answering, the question. He is ducking the fundamental question about releasing the documents.

The SPEAKER — Order! The Premier has concluded his answer.

Skills training: investment

Mr LIM (Clayton) — My question is to the Minister for Skills and Workforce Participation. Can the minister update the house on how the Victorian government's investment in skills is delivering results for Victorians?

Ms ALLAN (Minister for Skills and Workforce Participation) — I thank the member for Clayton for his question. This Labor government has been and will continue to be great for Victorians, great for the Victorian workforce and great for the Victorian economy. That is because, as we have just heard from the Minister for Education, we have always had, on this side of the house, education and training as our no. 1 priority. Under the Brumby government education will remain our no. 1 priority, with a very strong emphasis on skills and training.

It is very pleasing to see that Victoria already has a highly educated and highly skilled workforce with the best training system in Australia. It is not just me saying that we have the best training system in Australia. This view is backed up by the federal Liberal training minister, Andrew Robb, who has said that Victoria's TAFE system is the outstanding performer in Australia. These comments come as no surprise, given that the Labor government has made a massive investment in the skills and training sector.

If you have a look, you will find that since 1999 we have invested a massive additional $1.1 billion into skills and training in this state. This includes upgraded facilities at all of our TAFE campuses across the state, which represents an investment of over $359 million. We have more than doubled funding to the private training sector, and we are also looking to the future and to meeting the needs of industries in Victoria. We have established 21 new specialist centres across Victoria in critical areas such as new manufacturing, automotives and the dairy industry.

This investment is really seeing results in this state, and I am pleased to be able to update the house on some very impressive recent data that demonstrates this.

Since 1999 Victoria has completed more than 260 000 apprenticeships and traineeships, which pleasingly also is the most of any Australian state. The number of apprentices and trainees is continuing to grow strongly, particularly in the area of apprenticeships, where we have seen commencements increase just in the past year by almost 22 per cent.

You can see that this data confirms that Victoria continues to outperform other states in apprenticeship and traineeship programs. We have achieved these results; we have done our share here in Victoria. We have made our investment, and we have achieved this despite a significant drop in funding from the federal Liberal-National government. In fact the federal government's investment in this area has gone backwards, from 39 per cent in 1997 to 30 per cent in 2005.

When you consider that every man and their dog knows the importance of skills to a growing economy and knows the importance of skills to the future of our economy, we need to continue to put pressure on the federal Liberal government. We would really welcome those opposite joining us in these efforts and joining us in getting a better deal for Victoria, because we know this is what the Victorian economy needs. It is what the Victorian population needs so that we continue to build our skills base, continue to invest in our training system to secure Victoria's future economic prosperity and of course continue to make Victoria the best place to live, work, learn and raise a family.

Mr Haermeyer interjected.

The SPEAKER — Order! The member for Kororoit is trying my patience. I call the Leader of the Opposition.

Mr Eren — Quack, quack!

Questions interrupted.

SUSPENSION OF MEMBER

The SPEAKER — Order! Under standing orders I ask the member for Lara to remove himself from the chamber for 30 minutes.

Honourable member for Lara withdrew from chamber.

Questions resumed.

Police Association: pre-election agreement

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. Will the Premier confirm that he personally intervened in his previous role as Treasurer to stop the signing of an agreement that had been reached between the chief commissioner and the police union which would have delivered, amongst other things, a 4 per cent pay rise to all ranks, consistent with the government's commitments, rank elevations for technical officers, additional experience allowances, level 2A parity for senior constables and full vehicle access for superintendents?

Mr BRUMBY (Premier) — Our government is very proud of the efforts, the work and the dedication of our police force in this state. Our police officers, the members of the force, often put their personal safety and their lives at risk to protect the interests of all Victorians, and we have the greatest respect for them.

We also have a wages policy that we apply, and we apply that fairly and even handedly across the public sector. Our wages policy starts with the premise that we should guarantee real wages going forward, which is 2.5 per cent, the inflation rate. On top of that we allow a further 0.75 per cent as, essentially, an as-of-right entitlement, which gives us a base for wage movements of 3.25 per cent. Above that, whether it is police, whether it is teachers, whether it is nurses or whether it is public servants, we require that increases be productivity-cost offset. That is the government's wages policy. It is, by the way, the same wages policy that we applied in the last round of enterprise bargaining agreements (EBAs). At that time the inflation rate was a little lower — it was 2.25 per cent. Adding 0.75 per cent gave us 3 per cent. That is the policy we have consistently applied.

Whenever you are in an arrangement where you are conducting negotiations there are, of course, tensions from time to time between police command and between members of the police force and the police union. We are going through a negotiating phase at the moment.

Mr Baillieu — On a point of order, Speaker, it is now the Premier's habit to debate questions and not answer them. Did he or did he not intervene and undercut the Chief Commissioner of Police?

Mr Batchelor — On the point of order, Speaker, all the questions the Leader of the Opposition has asked today have been interrupted by a point of order when the speaker has been continuing to make a point. It is a consistent pattern on the part of the opposition to try to

disrupt question time, to prevent answers being given and to prevent information being furnished. It is a frivolous point of order, and I ask you to rule it out.

Dr Napthine — On the point of order, Speaker, I rise to support the point of order made by the Leader of the Opposition that the Premier was debating the issue. The Premier has developed very quickly a habit of debating the issue, rather than answering the question. The question was quite specific. It was about the intervention by the Premier — when he was Treasurer — into an agreement between the Chief Commissioner of Police and the Police Association. It required a simple yes or no answer, but the Premier has adopted a policy of simply debating around issues, rather than addressing the question.

I ask you to very firmly advise the Premier to answer questions. The Premier said himself that he wants to be more decisive and he wants the Parliament to operate more effectively. He can certainly start that process from the top by answering the questions that are put to him, rather than simply debating the issues in general.

The SPEAKER — Order! I do not uphold the point of order. The Premier was giving an answer relevant to the question around the police union's pay claim. I do, though, take on board the comments by the Leader of the House that every answer during this question time has been interrupted by a point of order and that the point of order has been used to enter into debate. I think I have fairly consistently ruled that way, if not on each occasion then on most occasions.

I am prepared to have a look at previous rulings that I have made today, but I am quite confident that I will find that I have actually asked people not to enter into the debate when they have taken a point of order. I do not uphold the point of order raised by the Leader of the Opposition, and I would like the Premier to have an opportunity to continue his answer.

Mr Baillieu — On a further point of order, Speaker, in regard to the question of the Premier debating answers to questions, I refer to the transcript of an interview the Premier did on Friday on the ABC program *Stateline*.

Honourable members interjecting.

The SPEAKER — Order! I will not have this level of interjection from government members. If the Speaker chooses to hear the Leader of the Opposition, that will be respected.

Mr Baillieu — I quote:

> … in question time, my intent will be to answer succinctly and concisely questions that are put to me as Premier and that's what I intend to do.

Hence, when the Premier debates and does not answer, I will raise that point of order.

Mr Batchelor — On the point of order, Speaker, this is a frivolous point of order made by the Leader of the Opposition. The Premier, on each and every occasion when he has been asked a question today, has sought to provide information. At the very point he has been doing that, the opposition clearly has a predetermined parliamentary tactic to interrupt the flow of answers from the Premier. It is attempting to continue that today, and I ask you to rule this further frivolous point of order out of order.

The SPEAKER — Order! There is no point of order.

Mr BRUMBY — We have certainly seen more points of order today from the Leader of the Opposition than the points he made at the state executive of the Liberal Party.

There is an EBA negotiation, which is continuing. There will be continuing negotiations between the police union and between police command. We will come to an agreement, but we are not there yet.

Public transport: funding

Mr LANGDON (Ivanhoe) — My question is to the Minister for Public Transport. I refer the minister to the government's commitment to public transport in Victoria, and I ask the minister to detail to the house recent initiatives to increase the capacity of our trains, trams and bus services.

Ms KOSKY (Minister for Public Transport) — I thank the member for Ivanhoe for his question and for his strong interest in public transport, which is shared by all members on this side of the house. We have made huge commitments in relation to public transport. The first commitment we made when we came to office was around regional fast rail. That has been an extraordinary success right across Victoria. It was a $750 million project, and every dollar was worth it. I can tell the house that regional Victoria certainly agrees with the commitment we made. We also put on board 400 extra V/Line services, and we reduced fares. As a result of that, we have seen a 30 per cent patronage increase over the last 12 months. It has been quite extraordinary.

Regional and rural Victorians are voting with their feet, and they are using the services. But we are now experiencing some overcrowding in relation to regional fast rail. As a result we are actually putting on extra carriages. We have 2 new two-car trains, which will be delivered later this year, and 14 intermediate carriages, which will come on board next year. This will help to address and respond to that 30 per cent patronage increase. I should say that that 30 per cent patronage increase in regional and rural rail services is the highest level of patronage in the last 50 years. It is quite extraordinary.

We have also been making major investments in the metropolitan train system. We have seen a 20 per cent patronage increase over the last two years. I have to say that that increase is very much welcomed by this side of the house, because on this side of the house we are committed to public transport. We have improved maintenance procedures. We have refurbished, or are in the process of refurbishing, six Hitachi trains so that we can, in the interim, respond to that increase in patronage. This will allow 39 new services to be brought into play in September with the new timetable, including 9 extra peak services. Of course we are extending the metropolitan train line electrification to Craigieburn. That is very important, and I know the local member is very keen on that project.

In addition to trains we have also put in additional tram services, so they are improving as well. Members opposite who are interested in public transport, as we are on this side of the house, would have realised that routes 86 and 96 have had significant extra services added since the end of July — just last month. Forty-three extra off-peak services will be provided, and the evening 15-minute services will be running for an extra hour on most nights. That is an extension of the services. Also extra Sunday services will be provided to St Kilda Beach. This is great news for Melbourne, and it is great news for our public transport system.

In addition to our expansion of the train and tram system, we are also seeing an extraordinary extension to our bus services. This is the biggest ever investment in Victoria's bus network, and it is being made by this government. We have provided an extra 6000 bus services over the past 18 months, as the Premier mentioned in the house yesterday. We have also improved 33 local bus services, with extended hours of operation. We will continue to work with local communities to find out what they want before we actually extend the services further. I have to say that it has been very much welcomed by the community.

We are putting in major investments as part of our $7.5 billion investment in public transport over the next 10 years. We are seeing an incredible response by the public to what we are doing. We certainly know as a government that, if you do not make the investment in the public transport system, then people do not get the opportunity to actually use public transport services.

We know that Victorians are voting with their feet. They are using public transport in increasing numbers. Certainly with the population increases we are having in Victoria, we are seeing an increase in the use of public transport. As a government we will not walk away from our commitment, as the opposition did in walking away from a commitment to public transport when it was in office. We will not be doing that. We know that there is more to be done in relation to public transport, but certainly the Brumby government is the government that will deliver on public transport.

SUMMARY OFFENCES AMENDMENT (UPSKIRTING) BILL

Second reading

Debate resumed from 21 June; motion of Mr HULLS (Attorney-General).

Mr CLARK (Box Hill) — If one ever wanted a demonstration of the emptiness of our new Premier's claim that his is going to be a more decisive government, one need only look at the lazy and sloppy way in which this issue and this legislation have been handled by his new deputy, the Attorney-General. The covert use of new technology to spy on people's private activities has been an issue that has been raised since 2002. There have been calls for legislation such as has now reached this Parliament as far back as 2003. Queensland legislated on this subject in December 2005. The Attorney-General set various time lines for this legislation which he has failed to meet. He has left out of this legislation a large part of the coverage that he said it would have. The bill fails to exempt innocent family activities, but on the other hand it fails to properly tackle real problems that exist with the covert spying on people in their private activities.

The Premier may claim that his will be a decisive government, but his deputy has demonstrated that he is anything but. Mañana is certainly good enough for the Attorney-General. This of course comes on top of the Attorney-General's delays, his laziness and his sloppiness in the handling of other aspects of his portfolio — the long delays in the promised redevelopment of courtrooms for the Supreme Court

and the bulging waiting lists of our courts because half our judges are tied up spending their time teaching the other half how to be judges because the Attorney-General has appointed people with no courtroom experience and has made no allowance for their steep learning curve. We also have increasing numbers of cases on appeal from the County Court due to basic errors of law from other inexperienced judges.

It has taken our Attorney-General since March last year to bring in an amendment to his own outworkers legislation to reinstate the minimum wages for clothing outworkers that he told us at the time was vital to stop them being exploited. We have had the Senate Elections Amendment Bill languishing on the notice paper for months at risk of not being dealt with if the Attorney-General does not get his act together before the federal election is called. Then, of course, yesterday the Attorney-General announced the appointment of new Supreme Court judges and confused the identity of one of his appointees with a federal member of Parliament. It is this laziness and sloppiness of the Attorney-General that provides the context in which the bill before the house needs to be assessed.

The bill tackles a serious problem and is legislation for which we have been calling for some time. It contains prohibitions on the use of a device to observe another person's genital or anal region where it would be reasonable for them to expect that that region could not be observed. That offence carries a penalty of up to three months in jail. It prohibits the visual capture of such regions where it would be reasonable for the person to expect that the region could not be visually captured. There is a two-year penalty for that. It prohibits a person who has visually captured such an image from distributing that image. It provides exceptions regarding the use of a device and the capture of an image where there is express or implied consent, where it is done via the internet or via a broadcasting or datacasting service or by a law enforcement officer reasonably in the course of their duty.

The bill also provides exceptions regarding the distribution of images where there is express or implied consent to the purpose of distribution or a similar purpose, if the subject is a person incapable of giving consent and a reasonable person would regard the distribution as acceptable or by a law enforcement officer reasonably in the course of their duty. The bill also confers the power to issue a search warrant in relation to an alleged visual capture or distribution offence.

The contents of the bill are straightforward, but the history of it, as I referred to earlier, deserves scrutiny. As I said, the use of various forms of new technology for the covert surveillance of people and the covert taking of images has been identified since as far back as 2002, and there has been a long series of calls and proposals for legislation around the nation. Our Attorney-General demonstrated yet again his gift — like the gift of many of his colleagues — for using calls for national or federal action as an excuse for his own inaction.

In a media release on 27 July last year the Attorney-General boasted:

> Victoria will lead a push to have national laws that crack down on the taking of unauthorised photos for sexual gratification or an indecent purpose.
>
> An example of such an offence is where someone takes a photograph up a woman's skirt without her knowledge, known as 'upskirting', or takes a photo down a woman's blouse without her knowledge, known as 'downblousing'.
>
> At this week's meeting of attorneys-general Mr Hulls will seek agreement from other attorneys-general to work towards national laws targeting upskirting and downblousing.

So our Attorney-General was out there in the media bragging that he was setting the pace in the call for legislation to deal with upskirting and downblousing. But it is interesting to see the news release issued by the Queensland Minister for Justice and Attorney-General the following day, Friday, 28 July 2006, in which she put an entirely different interpretation on what was happening at the Standing Committee of Attorneys-General meeting. She headlined her media release 'Australian states and territories to look at adopting Queensland secret filming laws'. It states:

> 'All Australian states and territories will look at adopting national uniform privacy laws based on secret filming and "upskirting" reforms passed late last year by Queensland', Attorney-General Linda Lavarch said today.

She went on to make the point that Queensland had legislated the previous December and outlined the provisions of that legislation, which cover exactly the same sorts of things as are tackled by this bill that has now finally reached this house for debate in August 2007. Rather than setting the pace on this, our Attorney-General was exposed from the start as tagging along belatedly behind Queensland and relying on a call for national uniformity to justify taking no action himself.

There were incidents over the past summer where people were arrested, charged, convicted and jailed for various secret filming and observation activities under existing law. The then Premier was under pressure to say what was going to be done. He was reported in the *Australian* as saying:

> I know that Attorney-General Rob Hulls will be bringing forward legislation, hopefully by April or May, to make sure that we have got specific and unique legislation dealing with that matter …

A media report of 24 January 2007 quoted the Attorney-General as saying that draft laws would be ready by April. Now this legislation is finally reaching the house, and it is manifest that the Attorney-General was unable to meet even his own very belated deadlines.

The other observation that needs to be made about the legislation that has finally reached the house is that a large part of what the Attorney-General promised would be covered has been omitted from the bill. That, of course, is the reference I quoted earlier to what the Attorney-General described as downblousing. The Attorney-General's reason for not including that measure in the legislation is that the report of officers prepared for the Standing Committee of Attorneys-General — as I understand what the opposition was told during the briefing that was provided to us by the department — cast doubt on the practicability of drafting the specifications of an offence to cover what the Attorney-General described as downblousing.

I make two observations on that. First of all one would have thought that it is perfectly possible to define such an offence based on the core principle of this legislation — that people should not be covertly spied upon through the use of a device or through the capture of images or have those images distributed where it is reasonable for them to expect that that observation of that particular part of their body would not occur. There seems to be no reason in logic why the activity described by the Attorney-General as downblousing could not have been covered based on that general definition. I would certainly welcome the document referred to, which was said to have been provided to the Standing Committee of Attorneys-General, being made public so that the arguments the Attorney-General is relying on can be more closely examined.

I make the further observation that this yet again demonstrates that our Attorney-General is prepared to go off with grand announcements without having done his homework and without having turned his mind to the issues, and he is then forced to retreat because for some reason he finds himself unable or unwilling to deliver on his grand promises. That is one of the serious shortcomings of the legislation before the house. It has a number of other serious shortcomings which relate to both what is caught by the legislation and what is not caught by the legislation. The structure of the exemptions provided in the legislation is very curious indeed. As I said at the outset, there are three broad offences that are defined by the legislation.

The first is prohibited observation; the second is the prohibited visual capture of images; and the third is the distribution of those images. There are some exemptions provided in the case of distribution that are not provided in the case of observation or capture. The one to which I particularly refer is the exemption to the distribution of an image which applies if the subject is a child or other person incapable of giving consent — namely, that the capturing was not made in contravention of proposed section 41B, and in the particular circumstances a reasonable person would regard the distribution of that image as acceptable. The bill gives as an example that the emailing by a person of a photograph of a naked newborn relative to a family member or friend may not be an offence against proposed section 41C because of paragraph (b), which is the exemption that I referred to in proposed section 41D(2) to be inserted into the act.

That exemption is of course perfectly reasonable as far as it goes. We certainly would not want the innocent distribution amongst family members of photos of newborn relatives being caught by this legislation. But the concern is that while this exemption is provided for distributing such an image, there is no corresponding exemption provided for the capturing of such an image. In other words if you take a photo of your newborn child or a young child not wearing clothes, then on the face of it you have breached proposed section 41B and have committed an offence under the legislation.

There may be an argument around that. It may be possible to say that, because of the way that offence is defined, that activity would not fall under it because it would not fall within the words of the section which provides:

> A person must not intentionally visually capture another person's genital or anal regions in circumstances in which it would be reasonable for that other person to expect that his or her genital or anal region could not be visually captured.

One could argue that in that circumstance it would be reasonable for a newborn baby to expect that his or her genital or anal region could be visually captured and therefore an offence is not committed. However, one gets into a very convoluted line of reasoning about what sort of reasonable person is to be assumed in that instance where the person being filmed is actually a young child. Does one talk about a reasonable young child, a reasonable newborn baby or a reasonable adult? It will be a delight for lawyers to argue over the interpretation of those questions, but ordinary citizens should not be subjected to this sort of complexity,

unnecessary risk and sloppiness in the drafting of this measure in their innocent activities in daily life.

I should say that the law institute has also raised concern about the inadvertent capture of various images that would technically qualify under the legislation, including the potential for photographs taken in various public places where an image that transgresses the bill is inadvertently captured. I should also say for the record that the institute is opposed to the creation of a new offence by this bill in total. That is not something with which the opposition agrees, but the institute's concerns about the drafting of the legislation need to be paid due respect.

Another deficiency in the bill is its failure to deal with a number of practices that are taking place which transgress what this legislation is supposed to be seeking to prevent and which are a cause of considerable concern. I would like to thank and acknowledge the Australian Family Association for drawing this issue to my attention. The issue is the use of peepholes in various public or semi-public locations in order to spy on people in private activities, and in particular to spy on them in toilets in public places, shopping centres and the like. This problem has been the subject of quite detailed media coverage, first of all in an article in the *Sunday Herald Sun* of 21 May 2006 and subsequently in a small passage in the *Herald Sun* of 1 July this year.

If we are serious about having specific legislation to prohibit covert spying on other people in circumstances where they are entitled to believe they would not be observed, we need to make sure this legislation covers the full range of this problem. It is clear that the legislation at least sets out or purports to cover the full range of the problem. It may be thought the term 'upskirting' that is used in the bill limits it to the observation of people simply in that context, but it is clear in the case that became public over the past summer that one of the offences that was committed by a person who was arrested, charged and subsequently sentenced to imprisonment, was spying on other people in the showers, as I recall, in a boarding house or hotel context. It is clear that the vice which this legislation sets out to tackle and which the Attorney-General and the Premier of the day were assuring us would be tackled includes this.

I refer in particular to a media report that referred to a Japanese student who took secret footage of women showering in a Melbourne backpackers hotel, as well as up the skirt of a woman at the Australian Open Tennis Championships, and who was jailed for at least two months. However, the bill does not adequately deal with this problem because of poor drafting. The problem with the drafting is that a person commits an offence for covert surveillance under this legislation only if that offence takes place with the aid of a device.

If one turns to the definition of 'device' in proposed section 40, one finds that it refers to a device of any kind, including a mirror, a tool when used to make an aperture and a ladder. It is clear that the drafters of the bill and the Attorney-General are trying to cover the situation where a tool is used to make an aperture. However, the problem is that the provision does not apply when someone makes use of an aperture, a hole or any other way of observing someone covertly that has come about through a breakage or other inadvertent cause or, even more seriously, where a hole in a wall is made by one person and is then used by another person to covertly spy on a third person in their private activities. This is a serious oversight by the Attorney-General in his preparation and presentation of this legislation.

If the Attorney-General is going to say to this house and to the public that he is going to tackle this serious problem, which is becoming more widespread and is causing justifiable offence, outrage and uneasiness to many citizens, then he needs to make sure that he does the job properly. Clearly, given this deficiency in the drafting of the legislation, he has not done the job properly. He is leaving a sizeable loophole in the law. The consequence of that is that our police force will be considerably impeded in trying to take action against people who have been using peepholes, spy-holes or other apertures in walls in public toilets to spy on other people. If the police are going to seek to prosecute under this legislation, they will have to prove that the person being prosecuted was the person who made the hole or created the aperture. That will be a very difficult thing for them to do. This causes the opposition considerable concern.

We would have thought that the Attorney-General would have made this legislation far more effective given the time he has taken to put it together. We are certainly going to support this legislation so far as it goes, because it is a step in the right direction. I would like to commend the work of my colleague the shadow Minister for Women's Affairs, Wendy Lovell, a member for Northern Victoria Region in another place. She has been diligent in drawing the need for this legislation to public attention, pointing out the delays that have occurred and exhorting the government to act.

We welcome the fact that this legislation has got to this house at last, even in the deficient form in which it has been presented. We call on the government to respond

to the concerns I have raised today and to act to improve this legislation to ensure the obnoxious behaviour involved is effectively tackled.

Mr RYAN (Leader of The Nationals) — The Nationals do not oppose this legislation, but we have a number of concerns in relation to its content. We strongly support the general tenor of what is intended by the government and, similarly, the general tenor of the legislation as it stands before the house. However, there are aspects of it that we believe need to be reconsidered, certainly following its passing here and prior to its being dealt with in the other place. There are opportunities to cure any deficiencies, and we would urge the government to take up those opportunities to make sure we get this right.

It must be said that the style of conduct which it is contemplated will be dealt with by this legislation is appalling. It is certainly conduct of the worst kind. The invasion of privacy contemplated by the type of activity being dealt with under this legislation is, I am certain, abhorred by all members of this place. To that end, as I said, we support the Attorney-General and the government in their endeavours to deal with it.

The title of the legislation, in as much as these things matter, seems to me to be most unfortunate. I appreciate that the expression 'upskirting' is used in a colloquial sense. However, I think it is a shame that we have this colloquialism being translated into the legislation before the chamber. It does not do the overall situation appropriate justice. The legislation could have been termed otherwise. It could have been termed the Summary Offences Amendment (Invasion of Privacy) Bill or the Offensive Conduct Bill or the Voyeuristic Conduct Bill.

A variety of alternatives were available to the government. I do not know by what means this term has made its way into the title of the bill, but I do think it unfortunate that it has. I say that without wanting to sound precious. It seems to me that while it is one thing to use colloquialisms for the purpose of general commentary in here and in conversations beyond the walls of Parliament, it is another thing altogether to give that sort of terminology the credibility which goes with its being part of the title of a bill. I suppose in the end the answer to that may well be that under the terms of the bill itself the legislation will be repealed in 12 months as it assumes its position within the principal act. That is presuming it passes both houses. In that sense the problem will be cured, but I will just say that I do not think it should have arisen in the first place.

The other preliminary comment I would like to make is that again we are seeing the agonised endeavours of the government to accommodate its charter of rights and responsibilities. We have the situation once more where the statement on the charter of human rights is longer than the second-reading speech. In this case the statement of compatibility is rising five pages, while the second-reading speech is four pages.

As forecast at the time of the debate on the Charter of Human Rights and Responsibilities Bill, I make the observation that the government has created a rod for its own back. It seems to spend more time trying to make sure its legislation exempts the laws of this state from any sort of influence or impediment arising from its own legislation — namely, the charter of human rights. We have these tortuous and convoluted explanations in the statement as to why the charter of rights should have applied in the first instance.

Mr Robinson interjected.

Mr RYAN — I hear the newly appointed Minister for Small Business and various other things interjecting out of his place.

Mr Robinson interjected.

Mr RYAN — What is it?

Mr Robinson interjected.

Mr RYAN — Consumer affairs. I beg the member's pardon. He may be right in observing from the front seats, albeit out of his place, that it was something to do with poor drafting by lawyers. I think that was the general tenor of it. Nevertheless, that does not change the fact that I do not think the charter of rights ought to be there. I said that at the time, and I say it again now.

As to the bill itself, the gross omission from it, having regard to another colloquialism, is downblousing. If you are going to have legislation of this nature which is intended to accommodate the surreptitious style of conduct we all abhor, then there should also be provisions to deal with this other abhorrent conduct known as downblousing. I would like to hear from the Attorney-General as to why this other element of the offence is not contained in this legislation. Surely it cannot be the result of an incapacity to formulate the words which would provide the necessary terms to accommodate the issue.

The principal intent of the legislation is to make it an offence to use an aid or a device such as drilling a hole in a wall to deliberately observe another person's intimate body parts in circumstances where it is

reasonable for the other person to expect such observation could not otherwise be undertaken. I pause to say that the definition of 'device' as contained within the bill also bears examination by the government, and I turn to the definition of 'device'.

I suppose the simple point is that the word 'and' is used to link the three elements recited there, whereas it would be better if the word 'or' were included in the definition. As you read the legislation literally, what it in effect says it is that a device which is offensive is a somewhat extraordinary structure, comprising a mirror, a tool when used to make an aperture and a ladder, whereas I am sure it ought to be any one or more of those. The government should look at that issue while the bill is between houses.

The bill then creates the offence of visually capturing, such as by photograph or film, another person's intimate body parts in circumstances where it is reasonable for the other person to expect such a visual image would not be made. Thirdly, it makes it an offence to distribute — for example, by sending, applying or transmitting — a visual image made of another's intimate body parts without their consent to any distribution.

There is another provision relating to the capacity to issue a search warrant in respect of an alleged visual capture or distribution offence. I might say on that point that it is unusual to see such a power in relation to what is a summary offence, but the explanatory memorandum to the legislation gives an outline as to why that is so. Given the fundamental significance of the forms of offence contemplated by the bill, the insertion of the provision for a search warrant is appropriate in all the prevailing circumstances.

As has already been observed by the member for Box Hill, there seems to be some confusion as to how this legislation made its way here. The Attorney-General has had plenty to say about it over the course of the past couple of years. We were given to understand that it was Victoria leading the way. In fact Queensland has already legislated in relation to these same matters. To the extent that we have deficiencies that appear in the legislation here, perhaps something is to be learnt from that which has been introduced in Queensland. Again I invite the government to make those comparisons and effect the appropriate repairs while the bill is between the two houses.

Various exemptions are applied to the different aspects of the legislation. The member for Box Hill has pointed out some of the inconsistencies. One particular issue is that if we are not careful we will achieve by this what might be termed very arbitrary interference in the way families function as a matter of practicality. On the face of it what this bill does is criminalise parents who are surreptitiously observing or photographing their children who are naked or have underwear on at the time. There are apparently on the face of it no defences available in the event of conduct in that context. In particular the power of consent referred to in parts of the legislation is not available in that instance because the consent must, of course, be of the person observed or photographed and that cannot happen with young children. There is a far-reaching consequence here — unintended, I am sure — that the government may well need to turn its attention to for the purposes of delivering upon its fundamental intent.

As I observed at the outset, aspects of this legislation require consideration while the bill is between the houses. Whilst The Nationals do not oppose the legislation as it comes before us, we do so on the basis that we share the government's fundamental intent of wanting to address the style of conduct which is dealt with by its terms. By the same token we are all, of course, in this place wanting to make certain that the legislation that actually passes through here is in an appropriate form, can be enforced and achieves the outcomes for which it is designed.

Mr ROBINSON (Minister for Gaming) — I am pleased to have the opportunity to contribute briefly to the debate on the Summary Offences Amendment (Upskirting) Bill. This is good legislation, and it is very welcome. It is legislation that aims to provide protection to women by a very timely and proportionate response to the unacceptable practice of upskirting. In his second-reading speech the Attorney-General referred to a spate of incidents. The common denominator, not surprisingly perhaps, is that these incidents all involve men who have resorted to this vile practice of using small or miniature cameras or remote devices to record images of female genitalia. It is a very disturbing and most unwelcome trend and one that requires a strong deterrent. The penalties provided by the bill are quite stiff, and they are welcome.

I do not understand what drives people to resort to this sort of practice. It disturbs me that it is a trend which we have seen emerging in recent months. I am not a psychologist and not someone trained in that field. I am sure that if I were I could delve into the reasoning and rationale of the disturbed mind that is behind this practice. I appreciate that developments in technology provide an easier means for people who wish to engage in this practice to do so, but I still do not understand what drives people to do it.

I have been pondering and, I suppose like a lot of other members, reflecting on this as I have noticed the reports of this practice in the papers in recent months. I have been pondering why it happens. It is not something that happened when I was younger. I had occasion to ponder this further some time back while I was at the gym. I am a member of the local Aqualink Nunawading, which is run by the council at the Nunawading pool, and I try to get along there and do my bit.

Mr Delahunty — How many days?

Mr ROBINSON — I try to do two, sometimes three — it depends on whether I get to walk the dog on other mornings. But it is a good practice and something I commend to all members. While I am on the treadmill at the gym I can utilise the entertainment facility. It is in the form of a little TV screen on the computer and is hooked up to a few channels.

Mr Delahunty — Sky Channel?

Mr ROBINSON — No Sky Channel. I may have to write to the mayor and suggest that that is a necessary future improvement at Aqualink Nunawading. You have the choice of commercial channels, a sports channel and the music channel. In between catching some sports highlights and perhaps the morning news, I like to occasionally look at the music channel. I think it goes by the name of the music video or MTV channel. I remind myself how out of touch I am with modern music trends. Between catching a glimpse of Icky Thump and Coldplay, one morning I came across a group called the Pussycat Dolls, which I understand is an American girl band that consists of six girls. This is allegedly a group of young women who sing, but anyone watching that video could be mistaken for thinking that far from it being about singers it is more like a travelling lingerie show. At one and the same time that is a bit of a throwaway line, but it does reflect a parallel trend in the music industry towards the way that women in particular are portrayed.

Mrs Fyffe — You don't have to watch it.

Mr ROBINSON — No, I don't have to watch, but many young people do watch it — that is the point — and it passes almost without commentary as an acceptable form of entertainment.

Whilst catching a glimpse of this particular musical performance video when I was on the treadmill I had cause to reflect upon this bill, which had been introduced or announced at the time. I understand this bill does not intend to intrude upon artistic freedom and artistic expression, and the Attorney-General talked about this in the second-reading speech. I have no doubt that the producers of that particular video clip involving the Pussycat Dolls would say that is exactly what they are engaged in, an expression of artistic freedom. With the greatest of respect to them, that explanation is simply crap. The truth is that the manner in which that group of girls is portrayed is nothing more than a deliberate and calculated effort to titillate an audience. That is what it is. You could not look at that video and come to any other conclusion.

I am not a wowser. I do not want people to think that I go around preaching that we should censor things we see on the telly every other moment.

An honourable member interjected.

Mr ROBINSON — And I am a punter, that is correct. It is not that the gyrations you see in that video clip are grossly offensive; I enjoy gyrations as much as anyone else. It is not that the exceptionally slim and attractive women are offensive; I enjoy watching slim and attractive women on the television. Seriously, it is the repeated visual references in a clip like that to intimate body parts that really set such videos apart. It characterises them as trash.

I am sure it helps people involved with that group to sell their CDs, and I am sure it helps generate associated activity, such as the search for the new Pussycat Doll, which is a high-rating show in the United States. I am sure the producers have grown rich on the proceeds of that activity. The question that needs to be asked of them is: at what cost? As I toiled away on the treadmill that morning, I wondered how many young men sit at home, at the gym or anywhere else watching Pussycat Dolls videos and stuff like that and actually start to believe that the visual recording of intimate body regions is in some way acceptable. I think that is the conclusion a young person would draw if they were watching that video or videos like it repeatedly. They would watch it and think that, because it is a music channel video, it must be acceptable.

We need to call a spade a spade here. Those sorts of videos are not artistic expression; they really are trash. They devalue women, they devalue music and they encourage the very behaviour that we are seeking to ban through this bill. I am sure this bill will enjoy unanimous support in this place. As I said, I am not a wowser, but there is a limit to the way in which women should be exploited, and it applies as much to people involved in the music industry as it applies to anyone else.

I will conclude by commending this legislation. However, I hope that one of the things it triggers is a rethink amongst people involved in the music industry as to the way in which they portray young women.

Mr HODGETT (Kilsyth) — I rise this afternoon to contribute to the debate on the Summary Offences Amendment (Upskirting) Bill 2007 and to speak in support of the bill. The deficiencies in the drafting of the legislation have been adequately covered by the member for Box Hill so I will not reiterate them now. Rather I will spend my time debating the merits of the bill.

As has been said, the purpose of the bill is to amend the Summary Offences Act 1966 so as to make it an offence in specified circumstances to observe or capture or distribute visual images of the genital or anal region of a person's body, and to confer the powers to issue a search warrant in respect of the offences. The amendments have arisen out of a series of incidents in Victoria in late 2006 and early 2007 where women were the unwitting subjects of photographs which had been taken up their skirts. In slang this behaviour, as it has been stated by members today, is called upskirting, and it is specifically prohibited by these amendments.

In summary, the bill makes it an offence to use an aid or device, such as a mirror or drilling a hole in a wall, to deliberately observe another person's genital or anal region — the intimate body parts — in circumstances where it is reasonable for the other person to expect such observation could not otherwise be undertaken. The bill makes it an offence to visually capture, such as by photographing or filming, another person's intimate body parts in circumstances where it is reasonable for the other person to expect such a visual image could not be made.

The bill makes it an offence to distribute — for example, by sending, supplying or transmitting — a visual image made of another person's intimate body parts without their consent to any distribution. The bill provides that where the subject of the visual image is incapable of giving consent or is a child, that visual image can be distributed only in circumstances in which a reasonable person would regard the distribution as acceptable. However, the bill does not purport to interfere with or replace current child pornography laws. Finally, the bill confers the power to issue a search warrant in respect of an alleged visual capture or distribution offence.

A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. As I have stated previously, Victoria in recent times has experienced a flurry of incidents where men have been caught secretly filming up the skirts of women on public transport and at public events, such as at the Australian tennis open earlier this year. The pervasiveness of this behaviour, and the increasingly sophisticated means of carrying out such activities, demands that new and specific offences be introduced to inhibit and stop it. The bill makes it clear that taking unauthorised photos of a person's intimate body parts will be prohibited. Such behaviour is unacceptable to the community and should not and will not be tolerated. Families are the fundamental group in society and are entitled to be protected by the state. Furthermore, every child has the right, without discrimination, to such protection as is in his or her best interests.

The bill creates specific offences that ban upskirting and associated behaviour. Some may argue that this behaviour is already prohibited under existing punishable offences such as indecent behaviour and stalking. However, the strength of this bill is that it constructs offences that directly target upskirting.

We must comprehend the need to keep pace with technological change. The very small size of some digital cameras, pocket cameras, video equipment and compact mobile phone cameras makes it easier than ever before to take photos or to make and transmit visual images without a person's knowledge. As the Attorney-General highlighted in his second-reading speech, technological advances have also facilitated the relatively easy transmission and distribution of visual images by mobile phones or over the internet — or in some cases without an actual recording being made, such as live streaming. With the introduction of this bill it will be an offence to take unauthorised photographs or to film a person's intimate body parts when they are in public, and it will be a separate offence to distribute such images.

Let us be clear that the bill is not about recording videos or taking photographs in public places, such as holiday snaps or videos of outings with family or friends. It is not about restricting videoing and photography; rather it is about protecting the rights of individuals to privacy and about protecting individual women and children when they are in the public arena. It is about prohibiting deliberate and covert behaviour that goes beyond ordinary public photography and videoing.

Again referring to the bill notes, the bill:

> … is designed to apply to circumstances where a reasonable person would expect a visual recording could not be made of their anal or genital region because that region is not visible to

> the naked eye and therefore could not be photographed as an ordinary part of public life.

It goes on to give a good example:

> For example, a woman standing on a tram wearing a skirt may be photographed without her knowledge. This would not be an offence per se. However, under this new section it would be an offence to take a photograph up the woman's skirt. This is because it is reasonable to expect that her genital or anal region could not ordinarily be visually captured as the region is covered by her skirt.

In conclusion, the bill restricts and prohibits the unwarranted and unauthorised recording of images of a person's intimate body parts. It clearly makes the practice known as upskirting illegal. It complements existing laws relating to stalking, indecent behaviour and child pornography. I commend the bill to the house.

Mr LUPTON (Prahran) — I am pleased to make a contribution in support of the Summary Offences Amendment (Upskirting) Bill and to commend the government for bringing this legislation forward. I note that the government has, through the Standing Committee of Attorneys-General, led a national push over a period of time to introduce specific laws to ban upskirting across the country. The Attorney-General should be commended for leading that public campaign and ensuring that the different jurisdictions across Australia have moved forward in this important way to protect women from these improper acts.

The bill deals with a phenomenon that has unfortunately become far more prevalent in recent times, where women have been the unwitting subjects of photographs and other filmed images that have been taken up their skirts. Of course this behaviour has become colloquially known as upskirting, and through the offences that are created by this bill the legislation will give practical effect to making that sort of practice illegal in Victoria. As we understand it, it is also being made illegal in other states of Australia, as I said, due to the very proper and vigorous support for these new laws that have been pushed forward on the agenda by the Attorney-General.

The bill amends the Summary Offences Act and creates three new offences which prohibit the unauthorised observation or visual capturing of another person's intimate body parts and the unauthorised distribution of intimate visual images. It is also important to note that the bill strikes the right balance between protecting the rights of individuals to privacy and also protecting social, artistic or journalistic freedom to take photos or other appropriate visual images in public places. It is important to make sure that we get the legislation right and protect the legitimate and appropriate ability of people, whether private citizens or journalists or others, to take ordinary and appropriate photos in public.

However, the importance of this bill is that it creates these specific new offences that have been made necessary because of advances in technology in recent times, particularly the ability for people to carry very small photographic devices and very small digital cameras — often even the cameras in mobile phones and so forth that we are aware of now. Because of the ability for people to carry concealed cameras and the like, these sorts of acts of upskirting have become possible in recent times, and of course the law needs to adapt and evolve to take account of those sorts of developments. We need to make sure that we update the criminal law so that it is appropriate to current circumstances.

The three new offences created by the bill effectively deal with the issues that have emerged in recent times. To deal with them specifically, in the first instance the bill makes it an offence to use an aid or a device such as a mirror or by drilling a hole in a wall to deliberately observe another person's intimate body parts — which are defined in the legislation to be the genital or anal region — in circumstances where it is reasonable for the other person to expect such observation could not otherwise be made. The first specific offence created by the bill is to deliberately observe another person's intimate body parts.

The second specific offence that the bill creates is that it makes it an offence to visually capture by using film or suchlike another person's intimate body parts in circumstances where it is reasonable for the other person to expect that such a visual image could not be made. Taking a photograph in those sorts of circumstances — either a film photograph or a digital photograph — and visually capturing an image in that way becomes an offence.

The third specific offence created is that it will be an offence to distribute — for example by sending, supplying or transmitting — a visual image made of another person's intimate body parts without their consent to any distribution. The offence of distribution of a visual image is designed to cover circumstances where a visual image is not captured on film or in a digital form but is merely transmitted or streamed over the internet. Distribution in that way needs to be covered, because that is one of the other technological methods that now exist for the transference and display of inappropriate visual images. Effectively, by covering the deliberate observation, visual capturing or distribution of inappropriate visual images, this legislation covers all the appropriate bases and ensures

that anybody engaged in this activity of upskirting will face an offence that they are capable of being convicted of if the evidence is there to substantiate their activities.

Another important ancillary aspect of the legislation is that sometimes there are circumstances where people are incapable of giving consent. The bill provides that where the subject of the visual image is incapable of giving consent or is a child, that visual image can only be distributed in circumstances in which a reasonable person would regard the distribution as acceptable. That is an important provision which is in keeping with the overall structure of this legislation, which is designed to make sure that inappropriate visual images cannot be obtained or distributed without the consent of the person who is the subject of those visual images. That is an important provision, and it is appropriate in this legislation.

The legislation also confers powers on police to obtain a search warrant in relation to the alleged visual capture or distribution offences, and that is appropriate in order for the legal authorities to have the ability to obtain evidence in relation to these matters. By creating specific and unique offences that take account of technological change and development we will ensure that in the future women in Victoria are protected from this type of inappropriate activity. It sends a strong message to the community that this sort of behaviour will not be tolerated in Victoria, and that is entirely appropriate. It ensures that we keep pace with modern technology, and the criminal law is something that needs to evolve and take account of these sorts of emerging issues.

The laws are also practical. They balance the competing interests of people's rights to privacy while protecting artistic and journalistic freedoms and the ability for ordinary members of the public to take photos in public places in appropriate circumstances and, of course, it is very important to protect the right of all of us to take photos in public in an appropriate way. We do not want to suggest in any way that there is any limitation on appropriate photographic activity, and that is important.

I commend the Attorney-General for his very important work in leading the national debate in order to get these laws implemented, not only in Victoria but through the Standing Committee of Attorneys-General, so that the women of Australia are protected from this inappropriate behaviour in all of the jurisdictions in this country, and I commend the bill to the house.

Mrs FYFFE (Evelyn) — I am pleased to rise to speak on the Summary Offences Amendment (Upskirting) Bill 2007. It seems that over the summer Melburnians woke up to the fact that we had a new phenomenon that few had heard of before — so-called upskirting. Within the space of a few weeks there were four cases of men allegedly taking photos up women's skirts both at the tennis and on public transport.

While the phenomenon was new to many, it has been of increasing concern to the police, but not just here in Australia. New Zealand has legislation that prohibits the taking of images of the intimate body parts of a person who has a reasonable expectation of privacy. Going back to 2000 the United States of America started to introduce legislation shortly after the introduction and proliferation of camera phones. While not having legislation that prohibits the taking of photos, Japan actually prohibits the distribution of such photographs, and Canada also has a law prohibiting the taking of photographs of private parts and the distribution of those photographs.

Because this is now such a worldwide issue, I feel that law-makers throughout Australia and around the world should be demanding that worldwide action be taken so that these devices, whether they be camera phones, video telephones or tiny, secret cameras, are all made to make an audible sound before they can be operated, whether it be making a video or taking a still photograph. In this day and age we have to change so many things, even our right to the expectation of privacy. Our innocence is being destroyed.

Quite a few years ago when young adolescent males would stand at the bottom of stairs hoping to catch a glimpse of a girl's or a teacher's legs as she climbed the stairs or would watch the girls on the swings, being voyeuristic they were treated as dirty little boys and told to go away. Many years ago we also had people who were called peeping Toms. They would individually look at women in various stages of undress or even as they performed everyday chores fully dressed. That caused tremendous distress to many women. It made them feel vulnerable, made them feel insecure and made them feel threatened. As a woman it is something I can personally empathise with. You feel that you are being exposed.

As I said, there were peeping Toms who looked at women when they were half dressed or just on their own in the house. But now we face men — and I say 'men', because there has not yet been any evidence that women have been guilty of upskirting — taking voyeuristic photographs of intimate body parts. They have also been known to put these photographs on pornographic sites on the internet. It is not an exaggeration to say that this can be likened to rape — not rape in the physical sense but a rape of your

personal privacy. Having your intimate body parts photographed without your consent and the photographs distributed without your knowledge is demeaning and sickening to every woman. To also have this happening to young girls — to children — makes every parent shudder. We all want to protect our children, and we all want to protect their innocence.

Going into toilets is so risky. If you ever go into a public toilet around Melbourne, Acting Speaker, I ask you to try to find one that does not have holes drilled in the walls where people can peep through. In actual fact you would not use an average public toilet. Everyone criticises McDonald's, KFC and Red Rooster for their fast food, but one thing they do provide is safe toilets, which many people such as me will use. The toilet block at Croydon railway station is appalling. There are holes in the walls — peepholes — and I would not advise anyone to use those toilets. Why do we tolerate it? This society tolerates the fact that toilet blocks are used for homosexual activity. We tolerate the fact that when we go into these toilets we will find holes drilled in the wall. Why do we put up with it?

I might be quite old fashioned, but I have to say that the people who are doing this upskirting, this degrading of women, should be put in the stocks. If we went back to the days when, if you were convicted, you were put in the stocks for a few hours, it would stop a lot of these practices. In fact there are probably a lot of people I would like to put in the stocks, Acting Speaker!

This issue has been of increasing concern to police. As I said, men looking up women's skirts is not a new phenomenon, but the advent of digital technology has made such conduct easier. It would have been very easy to identify what the young boys I mentioned before were trying to do when they were standing at the bottom of an escalator or flight of stairs giggling, and they could be told off and would go away. But with secret cameras in the toes of shoes and the little cameras in phones that people are unaware of, I am being serious when I say that law-makers of all persuasions in all states and all countries should be fighting so that every camera and every video camera, no matter what the size and no matter what it is secreted in, must make an audible noise before it is operated so that you are aware that someone is taking a photograph.

It has been said that some women might attract these photographs because of what they wear. That is a stupid defence. Everyone has the right to dress according to their wish, and just because a woman may be wearing a shorter skirt than the ones I tend to favour — that is not a protection against upskirting, it is a presentation thing — it does not give anyone the right to take a photograph of her body parts.

Downblousing is another issue. Breasts have held a fascination for mankind for hundreds of centuries. One is always conscious that if one wears a low-cut garment one is going to have people looking at the breasts. In fact some women who are well endowed have great problems with men very rarely making eye contact with them, but there is no excuse and no reason for anyone to take photographs of their bodies and post them on the internet or distribute them in any way. It is threatening to women; it makes them feel vulnerable; it makes them feel insecure; and it is demeaning.

I support this bill. There are faults which have been highlighted, and I will not reinforce those. It has taken a long time for the legislation to come into this house. It really must have hurt the Attorney-General, who is always wanting to be 'me first', because he was soundly beaten by Queensland, which brought it in last year. This bill prohibits the use of a device to observe another person's genitals — —

Ms Green — Where is your generosity of spirit?

Mrs FYFFE — The honourable member interjects about my generosity of spirit. This is a bill for which the shadow Minister for Women's Affairs in the upper house has been pushing for a long time. The requirement for legislation of this kind was mentioned when I was in Parliament previously, but it has taken this long to bring it in. If Queensland could do it, why could we not have done it? If we had done it last year before the tennis season, perhaps the police would have had more power and found it easier to prosecute more people than the four alleged offenders who have been reported in the press this summer. When it is about the protection of children and the protection of women, we should not dillydally. We should get down to it and take action. The legislation has its faults, but I will support it.

Ms OVERINGTON (Ballarat West) — I am very pleased to speak on the Summary Offences Amendment (Upskirting) Bill 2007. This bill makes it absolutely clear that upskirting behaviour is unacceptable and offensive and will be an offence under law. This bill also recognises the need to keep pace with technological change. With most mobile phones having a camera and a video, and given the tiny sizes of some digital cameras, this new technology has given new tools to the perverts who invade women's privacy. Not only do they invade women's privacy for their own use, but also some of these perverts actually distribute the images publicly.

I think we all remember the recent Australian tennis open, where a man was caught secretly photographing up women's skirts at the event and filming females showering at a backpackers hostel. These women had no idea that their privacy had been invaded until it was made public. How would they would feel about that? I know how I would feel about it. This behaviour is totally unacceptable. A woman's privacy must be protected, and perverts must be made accountable for their actions. I commend the bill to the house.

Mr KOTSIRAS (Bulleen) — It is with pleasure that I stand to briefly speak on the Summary Offences Amendment (Upskirting) Bill. From the outset I want to say that I support this legislation insofar as it tries to stop appalling behaviour that has no place in our society. As a father I would hate to ever see a photograph of any of my children on the internet. I support this legislation — it is a beginning — but I think more needs to be done.

This legislation is a result of a number of incidents that occurred last year. In January last year a student was sentenced to at least two months jail for filming under the stalls of a shower cubicle at a Melbourne backpackers hotel. He had also snapped an upskirt photo at the Australian Open Tennis Championships. The incident came to light again after someone else was caught filming up women's skirts on trams, using a camera concealed in his shoe. At that stage the public demanded that the government do something about it, and as a result of the public outcry we have this legislation before the house.

Law-makers and politicians must adjust to changing technology, and we must ensure that legislation is relevant and appropriate to those changes. The purpose of the bill is to make it an offence in certain circumstances to observe, capture or distribute visual images of the genital or anal region of a person's body.

The main purpose of the bill is to prohibit the use of a device to observe another person's genital region, prohibit the visual capture of such a region, prohibit the distribution of such images and confer powers to issue a search warrant. I am, however, concerned that the bill does not take into account downblousing, and this is a pity. I would have thought that if this government wanted to make a real difference and make an impact, it would take both of these into account and bring in legislation which makes both practices an offence. At the present only upskirting is an offence.

We should do what we can to try to stop both upskirting and downblousing. People who use small cameras, including mobile phone cameras, cameras in briefcases, cameras hidden in shopping bags or in shoes to take a video or a photograph should be stopped, because the next thing you find is that these images are on the internet for people to see. This causes much concern, especially for other family members, and it is something we should stop.

In the United States the National Centre for Victims of Crime had this to say:

> Unfortunately, with the advent of new technology and affordable, easy to obtain, and increasingly harder to detect video surveillance equipment, voyeurism has taken on a new character. These easily obtainable tools provide stalkers with new methods of terrorising their victims and observing their every move. Any person can visit their local electronic store or the internet and purchase this equipment at low cost. Since these cameras are … used to videotape, the victims of this surveillance may often be unaware that they are being watched. This practice brings new challenges to the idea of personal privacy and what it means to be safe from view.

The article continues:

> … it is clear that this technology is being used by stalkers. Investigators and practitioners must be on the cutting edge of this and other new technologies so we can best protect stalking victims. The public needs to be better educated about this behaviour so it can be detected and stopped.

The article goes on to say that it is a serious and dangerous offence that appears to be increasing. This phenomenon is increasing, and it is up to us as law-makers, politicians and governments to put appropriate legislation in place to ensure that this does not occur or at least to educate people so that they do not feel it is okay to participate in such actions.

I call on this government to revisit this legislation at some time and perhaps bring in an amendment to include downblousing. It is important, if we are serious about this issue, to send a clear message to the community that such behaviour is unacceptable. We will not tolerate such appalling behaviour, and we must do more to ensure it does not happen.

While I support this legislation, I believe that more needs to be done. It is up to us to have the courage and the will to ensure that the small minority that takes part in this type of behaviour does not interfere with the wellbeing of the majority. On that basis I support the legislation. I hope the government will in due time bring in amendments to ensure it covers both upskirting and downblousing.

Ms GREEN (Yan Yean) — It gives me great pleasure on one level to join the debate on the Summary Offences Amendment (Upskirting) Bill 2007. On another level, all of us in this place and most people in the community would wish that there was no

necessity for legislation such as this. Most right-thinking people would think that the sort of behaviour that is needed to be legislated against would not occur in our community.

The reason we have had to bring in this piece of legislation is that in Victoria and nationally there has been an unpleasant spate of incidents where offenders have been using new technology to take advantage of women in public places, such as on public transport and at the Australian Open Tennis Championships, in an extremely offensive manner. As a woman and as a parent I join with other members in expressing my disgust at this sort of behaviour. The issue has been considered at a national level by a working party established by the Standing Committee of Attorneys-General, and I am pleased to say that all jurisdictions agree that this type of behaviour should be prohibited, but there was no support for introducing a single national offence.

I am pleased to see that we are introducing this bill in Victoria. In summary the bill makes it an offence to use an aid or a device such as a mirror or a drilled hole in a wall to deliberately observe another person's intimate body parts in circumstances where it is reasonable for the other person to expect such observation could not otherwise be undertaken. It also makes it an offence to visually capture such a photograph or film another person's intimate body parts in circumstances where it is reasonable for the other person to expect such a visual image could not be made. It makes it an offence to distribute — for example, by sending, supplying or transmitting — a visual image made of another person's intimate body parts without their consent to any distribution.

The bill provides that, where the subject of the visual image is incapable of giving consent or is a child, that visual image can only be distributed in circumstances in which a reasonable person would regard the distribution as acceptable. However, the bill does not purport to interfere or replace current child pornography laws. It also confers powers to issue a search warrant in respect of an alleged visual capture or distribution offence. It is a bill, as others have said, that we have had to introduce in response to the availability of new technology and the small size of cameras and mobile phones. It is indeed regrettable.

I am always pleased to speak on yet another piece of progressive legislation introduced by this Labor government. I am pleased to be part of the team that shows its commitment to looking after women in the justice system. It is yet another legislative reform. I remind the house that previous reforms that have been introduced have been for victims of sexual assault. In this year's budget we announced $32.4 million to reform the justice system and provide additional services to support victims of sexual assault, including multidisciplinary sexual assault centres in Mildura and Frankston, and to provide victims with the assistance under the one roof of police, counsellors, forensic experts, victim advocates and interpreters. Also in the budget is $2.7 million to allow the Office of Public Prosecutions to create — —

The ACTING SPEAKER (Mr K. Smith) — Order! The member may wish to get back onto the bill, which is the upskirting bill, not a general bill with regard to justice.

Ms GREEN — I thank the Acting Speaker for his attention, but I think it is important to place the bill in the context that this government is extremely serious about looking after the needs of women in the justice system and children in the justice system.

The ACTING SPEAKER (Mr K. Smith) — Order! The member will return to the bill.

Ms GREEN — I have been visited in my electorate office by people who have been victims of sexual assault and unacceptable public behaviour. I have seen what can occur in that situation. I think it is important that we respond with legislation which expands the action that can be taken in situations such as this. In conclusion I am pleased to see that the other parties in this chamber are supporting the bill. I commend the bill to the house.

Mrs POWELL (Shepparton) — I am pleased to speak on the Summary Offences Amendment (Upskirting) Bill 2007. The Nationals will not be opposing this legislation. I am also pleased to be speaking on the bill as The Nationals spokesperson for women's affairs.

Can I firstly say that I join the Leader of The Nationals in his concern about the title of the bill. I think it is unfortunate to have 'upskirting' in the name of the bill, because I think it implies that this bill only deals with women, which is certainly not the case. I know the Leader of The Nationals made some comments about an appropriate name. My understanding of this legislation is that it is for intimate parts of men and women. The bill amends the Summary Offences Act 1966 and makes it an offence in certain circumstances to observe, capture or distribute visual images of the genital or anal region of a person's body. That is whether those intimate parts are bare or whether they are covered by underwear.

While we are not opposing the bill, there are a number of omissions in the bill that I would like the minister to clarify when he is summing up. One of those omissions, I believe, is making it an offence to observe, to capture and to distribute visual images of a woman's breasts. A number of members have spoken about that, and they are calling it 'downblousing'. I am not sure whether there was a definite reason for leaving that out as an intimate body part, but I believe to make it a better and a more substantial bill that should be looked at while the bill is between houses, and perhaps that part of the legislation should be clarified.

One of the other clarifications that I would like is in the definitions in clause 3, which refers to place. The definition of 'place' includes land, premises and a vehicle. I believe it should also include water and perhaps boats. Obviously when people are taking photos there could be people who are swimming in the water or it could be on a boat. I am not sure if there is a reason for that omission, and perhaps the minister would like to clarify that. If there is no reason, I would like to see that also included as a definition of place in the bill.

It is an offence to use an aid or a device. As other members have said, that could be a mirror or it could be drilling a hole in the wall to deliberately observe another person's body parts. This is in a situation where the person might reasonably not expect that they can be observed. There have been a number of examples over the last few years in the newspapers and on television where landlords have been charged with spying on female tenants. A number of members have discussed the issue of backpackers sharing toilet facilities and bathrooms where perhaps the manager of the backpackers facility has drilled a hole to observe females and males where they would reasonably expect that they would not be so observed.

The bill also makes it an offence to visually capture another person's intimate body parts where it is reasonable that the person would not expect such a visual image to be taken. This is about dealing with photographs or film. We have heard some discussion and read some reports in the paper about people taking photos of other people while they are at beaches, whether they are sunbaking, playing sport or just going about their business, and while they are at sporting venues, whether they are females wearing shorter skirts for basketball or netball, or males playing football and so forth. Mobile phones can also be used as cameras, which makes it much easier for somebody to take a photo discreetly without the other person knowing they have taken that photo. That really has to be stopped, because it causes a lot of humiliation.

The bill will make it an offence to distribute a visual image of another's intimate body parts without their consent to any distribution. Examples of that could be posting a visual image onto a website or putting it onto the internet. I wonder if members recall a report a while ago about images of a number of male students at a school being posted onto a gay website. A lot of parents were horrified to find their sons' images on a gay website. It took a while to have those images removed, but they certainly were removed.

Another example involves transmitting images by mobile phone or email to others. This is a concern as well. People with mobile phones can now transmit images to others, and we are seeing under-age students also transmitting images by mobile phone. There have been unfortunate incidences where footage has been taken of rapes or other sorts of abuse and sent to other students' mobile phones. I am not sure whether this legislation deals in particular with under-age people, but it certainly should deal with them. There should be some penalties for people who take inappropriate video footage of somebody, whether it is of an intimate body part or an act they are engaged in that is not appropriate. Whether it is done by deviates or perverts, whether adult or under age, that really needs to be looked at.

A magistrate can now issue a search warrant to allow for the seizure of items if the police suspect an offence has been committed. Currently the police do not have the right to apply for a search warrant in relation to most summary offences. The police officer applying for the warrant has to be at or above the rank of sergeant. We all have a right to privacy, and I hope this bill will be a deterrent to those people who take photos of other people when they believe they could not have their photos taken.

In his presentation the member for Mitcham said that the government also needs to look at the exploitation of women in advertisements, and he gave a particular example. One example I would like to put on the record involves the images of scantily and provocatively clad women in those call-me adds which are constantly on at a certain time of night and which I see from time to time. The women are shown in provocative poses, and as the member for Mitcham intimated, people watching that may believe these sorts of images are appropriate and are allowed in other situations. We need to tighten up some of those laws to make sure that women are not used in a disrespectful way. We need to ensure that women's and men's dignity and privacy are protected, and we need to give police the powers to penalise offenders.

Another member spoke about having daughters. I have two sons. As a parent you would like to think that there were some laws to protect your children from being put on a website. It is very difficult for images to be removed, particularly if nobody knows the person who owns the website. Laws such as this should be a strong deterrent and should say that it is not appropriate. The Parliament is now saying that these acts will be illegal, and I hope the bill is enacted quickly. I also hope the issues that I have raised are looked at while the bill is between the two houses. I think that the bill should include a reference to the downblousing issue and that its definition of 'place' should include water and wherever else images could be taken. I wish this bill a speedy passage.

Ms MUNT (Mordialloc) — I am very pleased to rise today to speak in support of the Summary Offences Amendment (Upskirting) Bill 2007, which is another piece of legislation the Brumby government has put in place to protect women and children. I have spoken on a range of these bills that include a range of different measures, and I am proud to be part of a government that is putting these protections in place.

The technical details of the bill are as follows. It makes it an offence to use an aid or device, such as a mirror or drilling a hole in a wall, to deliberately observe another person's intimate body parts in the genital or anal region in circumstances where it is reasonable for the other person to expect that such observation could not otherwise be made — which in practical terms probably refers to changing rooms and showers. I can recall that a range of offences have been committed in those circumstances. It also makes it an offence to visually capture, such as by photographing or filming, another person's intimate body parts in circumstances where it is reasonable for the other person to expect that such a visual image could not be made. As the member for Shepparton noted, given the range of different technology now available, it is becoming increasingly difficult to know when an image is being made and how it is being made. It can be captured surreptitiously.

The bill also makes it an offence to distribute — for example, by sending, supplying or transmitting — a visual image made of another person's intimate body parts without their consent to any distribution. Once again, given the advances in technology and the increasing use of the internet, including vehicles such as YouTube and MySpace, this is increasingly becoming a problem which needs to be regulated in any way it can be to protect people who are really innocent or unaware of such images being used.

The bill also provides that where the subject of a visual image is incapable of giving consent or is a child, that visual image can be distributed only in circumstances in which a reasonable person would regard the distribution as acceptable. However, the bill does not purport to interfere with or replace current child pornography laws. There is a note in the bill saying that the Crimes Act 1958 sets out the current child pornography laws. That is also a most important facet of this legislation. However, there are circumstances where the transmission of photo images of a child is reasonable. If you are the parent of a new baby and you have a photo of your baby splashing in the bath, then it is reasonable to expect that an image such as that could be transmitted — for example, given to relatives et cetera — where it does not — —

Dr Napthine — For their 21st.

Ms MUNT — Especially for their 21st birthday party, that is right. That could be transmitted where it does not contravene decency or the child pornography laws.

The bill also confers the power to issue a search warrant for our law enforcement agencies in respect of an alleged visual capture or distribution offence. Penalties have been put in place in the Summary Offences Amendment (Upskirting) Bill 2007 to deal with this.

For the observation of a genital or anal region — it is simply the observation of that region — perhaps with a mirror or other device, the penalty is three months imprisonment. For visually capturing the anal or genital region the bill says:

> A person must not intentionally visually capture another person's genital or anal region in circumstances in which it would be reasonable for that other person to expect that his or her genital or anal region could not be visually captured.

There is a penalty of up to two years imprisonment. For the distribution of an image of the genital or anal region once again the penalty is up to two years imprisonment.

As a woman myself and as the mother of girls, I think it is absolutely abhorrent that these offences are occurring. This bill is in response to a number of alleged offences that occurred earlier this year at the Australian Open Tennis Championships and on some trams in St Kilda Road where a range of devices were used to upskirt. If I recall correctly, a camera device was inserted in a pair of runners and the runner was used to look up an innocent victim's skirt. If that offence is proven, it deserves up to two years imprisonment. If you are the innocent victim whose image has been captured in this way and you are

unfortunate enough to have that image posted on the internet, you would believe that offence really is worth up to two years imprisonment as a penalty. It would be very humiliating and most distressing to yourself and your family.

I had occasion earlier today to discuss this piece of legislation with a Scotsman who wears a kilt, who said that on occasion he has had inappropriate comment or actions taken to see what is under his kilt. Most people would think that could have an element of fun or hilarity, but he viewed it quite differently and was offended by it. This legislation would cover that offence, which he believes is quite serious for him. He is an opera singer and he wears his kilt at his places of employment when he is singing, and he does not view it kindly at all if someone tries to look up his kilt.

It is a matter of a person's privacy. It is David's right of privacy, the opera singer, to wear his kilt without offensive acts being perpetrated on him. It is my right of privacy as a woman to not be photographed or videoed or displayed, and it is certainly the right of younger people to be able to travel on a tram or go to the tennis or the cricket or do whatever they want without these offences occurring. I support this legislation. I believe it is a good piece of protective legislation by the Brumby government, and I commend the bill to the house.

Mr TILLEY (Benambra) — I rise to make a contribution to the debate on the Summary Offences Amendment (Upskirting) Bill 2007. We have heard that this behaviour by individuals or groups of individuals has brought about this bill. The behaviour itself has probably been around for quite some time; however, it rose to prominence at the Australian Open Tennis Championships unfortunately giving this unacceptable behaviour at one of our great traditional Victorian summer events world media attention.

Previously offenders who have been caught committing these types of offences have been charged with stalking under the Crimes and Family Violence Act and offensive and indecent behaviour under the Summary Offences Act. This amendment, which includes definition provisions, will create a number of changes. It extends jurisdiction to public places and creates offences of visually observing, intentionally recording and distributing images. It provides search warrant powers and also provides legitimate exceptions and penalties. I will speak briefly about what it does not do and where it is deficient.

The bill recognises that we need to keep pace with technology, which continues to make our world a smaller place. We need to consider too the profiles of the types of perpetrators who commit these offences. This is a form of voyeurism. Traditionally we call them peeping Toms. They try to conduct observations of young women, girls and even children in their homes. Having been involved in law enforcement, I know that when you call to these types of offenders or deal with these types of perpetrators you find that their mindset is quite peculiar. You might catch a person unlawfully on premises, but simply calling out 'Stop. Police!' is not sufficient to stop them from committing these offences. In fact they commit further offences. Calling on the police car to run them over does not help either! I know on several occasions I had to run a bit harder and quicker to catch these predators.

It is interesting that this can be a stepping stone to other offences. When you get calls to attend incidents such as an unlawful person on premises or a peeping Tom or something similar, the best way to catch them is to have a profile and an idea of who is committing the offence. You go directly to their house and wait for them to turn up again. It is quite funny when you knock on the door on some occasions to wake them up out of a pretend sleep, and you find them in a full lather still breathing heavily and claiming they have been asleep. That is certainly one way of catching those types of offenders. That sort of behaviour leads to these sorts of offences.

The use of technology and being able to take digital stills, whether it be from a shoe or other device, with mobile phones that have cameras and such devices, and then spreading that information over the World Wide Web is of great concern. It is another stepping stone to committing further serious crimes, such as sexual offences like rape, indecent assault and those types of things. The profile of these people is that they need to be fed. They have a drive to be fed and to quench their thirst for whatever perverted desire they have. Hopefully this legislation will keep a tap on that and send a very clear message to them not to commit further offences.

Overall the amendments are better than the current offences — for example, stalking requires a course of conduct. It requires multiple events and the intention to create reasonable apprehension of fear. The offence of indecent behaviour is subject to a reasonable person test. How do we establish exactly what a reasonable person is? It is a subjective test. As summary offences these charges do not contain authority for the issue of a search warrant. If you did not seize the images, the cameras, the devices from the offender at the time of arrest, you would have no power to go searching for them. It is an asset to be able to catch these offenders

for the purpose of putting a stop to these types of offences.

Furthermore, stalking, offensive and indecent behaviour do not have any penalties which match distributing the image on to things such as the World Wide Web. It is an incredible tool people have these days. With the press of a button you can transmit an image out into the big world and who knows who captures these images or how they use them. It is good to be able to stop this.

This leads me to the deficiencies. Police have the ability to swear an affidavit to obtain a search warrant, but the profiles show these people will continue to feed their hunger and will continue to commit these types of crimes. These amendments do not provide for forfeiture orders for either the images or the devices used to capture these images. Looking in a practical sense at the enforcement of this legislation when it is enacted, when these offenders are put before a magistrate and convicted and found guilty, you cannot then make an application for forfeiture to stop future offences. As I have said, these people are hungry, perverted types of people. On some occasions it might be put down as a youthful experience, but there are some offenders who need to feed that hunger.

When you consider the types of equipment being used, such as digital cameras, videorecorders, universal serial bus devices and other such things, it is easy to see that taking these devices away from those offenders would certainly send a very clear message. Seizing the property used to obtain these images will hit the offenders hip pockets, because they will have had to obtain the equipment in the first place. One of the penalties for these offences is a period of incarceration. However, as this government is weak on crime and given the magistrates in this state, we will probably find that offenders will serve their sentences in the community and will not spend any time in our jails.

In considering this bill and its practical application, I would like to refer to the inaccurate figures. This state is cooking the books. We in fact have a rise in crime, but the government is giving Victorians a false sense of security. Hopefully these amendments will send a clear message to those people — and they are nothing short of sex offenders — that upon conviction they face a custodial sentence. I also emphasise to the government that it needs to consider amendments so that the legislation includes forfeiture powers to ensure there is no return of this property.

The other test is the argument by civil libertarians that these amendments should not restrict legitimate journalistic endeavours. As such, these amendments do have appropriate exceptions. Victoria has not been the leader on this legislation. We have seen that these types of offences have been addressed under the Criminal Code in Queensland. Quite some time ago this government had an opportunity to address this issue, but it has taken it until now to do so.

Mr LIM (Clayton) — This bill continues the outstanding work the Bracks and Brumby governments have been doing in the field of human rights and the rights of individuals to privacy. I think it says a lot about the concern and care of this government when it comes to these matters. The bill outlaws the filming or photographing of a person's intimate body parts. It does this by creating three new offences. These are the unauthorised observation of a person's intimate body parts; unauthorised visual capturing, including recording, of a person's intimate body parts; and unauthorised distribution of a visual image of a person's intimate body parts.

Several recent and sickening cases in Victoria, on public transport and particularly at the tennis, of offenders filming up the skirts of women demonstrate the need for this legislation. It is important that this government do this at this appropriate time. It has become more prevalent because of developments in digital technology, wireless devices and the growth of the internet. In a lot of ways this legislation is needed to keep up with the pace of change in this technology. These developments in the sophistication of digital technology allow perpetrators to get away almost in stealth when they commit their offence. A few years ago an offender was more likely to draw attention by using a traditional camera in full view — a camera with film — because its size and appearance would attract attention from people. Also, there were instances of persons being reported to the police by the film processors, especially in relation to the inappropriate photographing of children. We have heard a lot about this in the past.

The rapid growth of digital technology has changed all this. The Attorney-General in his second-reading speech spoke of the use of mobile phones to photograph victims without their knowledge or consent. He also mentioned the small size of cameras. This is indeed an issue. Spy cameras are now so small that they can be hidden in pens, buttonholes and shoes. The perpetrator does not even need to have the camera on their person. A miniature spy camera can be hidden and set to transmit video wirelessly to a receiver in another room or in another, distant location. The rapid growth of the internet has made it possible to distribute pictures and videos. Such images can be transmitted by email or uploaded to pornographic sites. They can also be shared

in internet chat rooms, especially by paedophiles, or published on video-sharing websites such as YouTube.

In his second-reading speech the Attorney-General also said that this bill strikes a balance and does not prohibit filming in public places in a broader sense. That, of course, provides for people who have a genuine interest in photography or in filming generally for family purposes or on social occasions. There are no infringements on civil liberties or the freedoms of the media in this bill. The filming of a person's intimate body parts is a crude, disgusting, perverted, deliberate and calculated act, which, as I have pointed out, has become easier to perpetrate because of the developments we have seen in technology. There is no individual right to perform this act. There is no public or media interest in publishing such images.

Rather, there is an individual right to privacy. As a government we have clearly enunciated such a right through a raft of legislation such as the Charter of Human Rights and Responsibilities Act, the Information Privacy Act and the Health Records Act. This is sensible, timely, practical and necessary legislation. It protects the dignity and privacy of individuals, particularly women and in certain circumstances children. I am pleased to support the bill.

Ms ASHER (Brighton) — I wish to make a few brief comments in support of the Summary Offences Amendment (Upskirting) Bill 2007. As previous speakers on this side of the house have indicated, the Liberal Party supports this particular piece of legislation. I want to mention the work done by Wendy Lovell, our shadow Minister for Women's Affairs, who over the course of some time has been quite vigorous in calling for legislation of this particular type. I commend her for her work in this area.

The bill appears to have come to this place as a consequence of a number of high-profile cases. The Australian Open Tennis Championships incidents have been mentioned by other speakers and there was also an alleged workplace incident that I think was a contributor to the circumstances driving this particular piece of legislative change. In the main this has arisen because of technological change. In our lives there are, of course, many good elements as a consequence of technological change. But there is a significant downside, in my opinion, as a result of the internet, phone cameras, digital cameras and so on, and that is that there are grave implications for privacy right across the system.

This bill attempts to address some of the extreme privacy considerations generated by new technology. We are faced with the ease of transmission of data of the like we have never seen before. With digital cameras, and phone cameras in particular, a lot of people are in possession of the technology needed to take a photo in circumstances where even 10 years ago they would not have had a camera with them. So times have changed rapidly, and we need to adjust accordingly. The government's response has been to create new offences in this bill. Again, other speakers have referred to them.

If this legislation is passed, it will be an offence to photograph or film a person's intimate body parts, an offence to use a device to observe a person's intimate body parts — such as when a hole has been drilled in a wall of a change room — when it is reasonable for that person to assume privacy and an offence to distribute certain images. I note that the government has made a number of exceptions to this. The government has adopted the procedure that it has used from time to time of giving an example in a bill to explain the legislative provisions. As someone who is not a lawyer, I think this is not a bad way to handle the drafting of legislation, but I am sure my friends in the law may have different views. The bill canvasses the example of a model who gave consent for the distribution of something for commercial purposes as a legitimate exception to the regime put forward in the bill.

I find myself in the unusual situation of having to say that the expressions 'upskirting' and 'downblousing' were not part of my lexicon a year or so ago. Initially I had to have this new terminology explained to me. I guess again therein lies my point about technology and changing times and that we are now addressing a new offence. While supporting the bill, I want to raise a couple of issues. The first is that the Attorney-General has been late in putting forward this bill. I note that on 27 July 2006 the Attorney-General issued a media release in which he claimed in the heading 'Push for national laws on upskirting and downblousing'. It raises the question of why, if it was such an issue in July 2006, it has taken so long for this piece of legislation to come before the house. Either it is a serious crime or it is not. Again in the general tenor in which this government handles policy, the attorney has been tardy.

The second observation is that in that press release of 27 July 2006 the Attorney-General led us to believe that he was leading a crusade to seek from other attorneys-general — it is not the way it is spelt in the press release, which is incorrect — support for both upskirting and downblousing, which, for those people who may be reading *Hansard* in 20 years time, is taking a photo down a woman's blouse without her knowledge. I notice that the Attorney-General has

delivered in only the former, upskirting, area and has not delivered in the downblousing area, which presumably means that he was not able to convince other attorneys-general to proceed along that line. It might indicate to the Attorney-General, now that he has become a statesman as Deputy Premier, that he might want to moderate some of his press releases before claiming success in an area that he has not yet embarked upon.

The third observation I make is one that the shadow Attorney-General addressed in his speech as well. In the Attorney-General's second-reading speech there is a reference to the word 'may':

> Although this behaviour may already be prohibited by existing offences, such as indecent behaviour and stalking, this bill creates offences directly targeting such behaviour.

The Law Institute of Victoria has provided to the Liberal Party the information that it believes that these offences are already covered. I take the government's position that this bill is specific because we need to keep pace with technology. It is a position which has been advocated very strongly by the shadow Minister for Women's Affairs as well. I find it interesting that, if you extrapolate from that, the law institute believes, quite frankly, that this is a bit of spin from the Attorney-General. It has expressed a view that I think has to be taken into consideration — that is, that the more specific legislation gets, the more likely it is to be overtaken by the effluxion of time and by new technology and new events.

I make that as just a general observation. It is not my party's view. My party's view, which I strongly support, is that this legislation is probably needed, given the changing times. With those few words, I am quite happy to support to this legislation.

Mr SCOTT (Preston) — I too rise to support this legislation. I have noted that in the debate so far some fairly strong feelings have been expressed about what is regarded as disgraceful behaviour by some members of the community. I think that in her contribution the member for Evelyn was suggesting a return to the stocks as a form of corporal punishment. While I regard the behaviour of people who engage in upskirting and similar activities as completely disgusting and reprehensible, I am not sure that using the stocks is the answer that we should seek as a society.

Traditionally in the Tory Party in the United Kingdom I understand they used to refer to supporters of Margaret Thatcher as the Birch 'em and Hang 'em group. I would hope that in this Parliament we would not return to corporal and capital punishment.

Honourable members interjecting.

Mr SCOTT — I understand, Speaker, through you, that members are suggesting hanging, drawing and quartering them as a means of punishment. I would hope that the sort of punishment that parliaments once meted out through such things as bills of attainder for traitors would not make a return to the statute book.

The bill creates three new offences to deal with this disgusting and reprehensible behaviour, one being the unauthorised observation of a person's intimate body parts; another being the unauthorised visual capturing, including recording, of a person's intimate body parts; and a third being the unauthorised distribution of a visual image of a person's intimate body parts. I hope all members of this Parliament regard this piece of legislation as something to be supported and as a logical response to advances in technology and changes in our society.

I would like to make a more general comment that has also been raised by other members in this house about the sexualisation of our society and the boundaries which have disappeared. My own view, and I am not a prude at all, is that sexuality is an important part of human life and that people should enjoy a happy and healthy sexual life. But there is a very important principle that should underline how a society deals with sexuality, and that is consent. Every human being has the right to be assured that matters affecting their sex life, their sexuality in general and their intimate body parts are subject to their own consent. This is an important principle which guides this bill, and it is an important principle that as a Parliament we should all support.

It is not prudish in any way to regard consent as being at the heart of a mature and rational way of dealing with sexuality issues, because a return to puritan values would not be a realistic or desirable path for our society to head down. However, the deviant behaviour involved in taking photographs up women's skirts or similar behaviour in no way relates to a normal expression of sexuality. It is something much more reprehensible and something that does not belong in a civilised society. I would hope that all members would share my sentiments.

I would also like to say what I think the bill does not outlaw, and it is something that a member of my staff participated in. I am sure he is not too pleased that I am mentioning it now, so I will not name names. People may remember that in 2001 an American artist, Spencer Tunick, came to Melbourne and took a mass nude photograph of an artistic nature. Anyone who has

viewed the work would see that it is not really sexual in nature. I regard artistic expression and the use of the nude in art as very different in nature from the sort of titillation and mindless voyeurism that is involved in the behaviour of people who would offend against this legislation.

I am glad that the notion of consent underlies this bill and that that sort of artistic expression and use of the nude, which, as anyone who knows anything about western art understands, goes back many hundreds of years, will not in any way be affected by this bill. As long as the key principle of consent lies at the heart of what we are doing — and as long as that consent does not attempt to include children, who I believe do not have the ability to give consent in these circumstances — I think that as a Parliament we are on safe ground.

Like other members of this house I too regard the rise of technology as an important issue with which we have to deal. As someone who is one of the younger members of this house — I am not the youngest — I am well aware of the changes that even people younger than me have undergone in the way they communicate with each other. The rise of sites like YouTube, but more importantly sites like MySpace and Facebook, have changed the very way that people communicate.

The use of mobile phones not just to take photos but to distribute photos means that, through bluetooth and other forms of text and multimedia messaging, photos can be distributed by mobile phone in a very rapid and viral way. It has been found that the sort of images we are talking about can spread beyond the immediate social group of those who took the photo to a broader audience without the knowledge or consent of the person who has been photographed.

This raises fundamental issues for us as a society as to how we deal with the spread of technology that is at one level a desirable democratisation of communications. People can easily communicate with almost any person on the planet via mobile phones for there are literally billions of mobile phones, and it is possible for most people to send a text message or a multimedia message to people around the globe at a very low cost — and that again raises significant issues about how society should regulate that behaviour.

The bill provides a useful start down a path that parliaments will deal with for some time to come. The bill does not represent the end but the beginning of a process of dealing with the changes of technology which at one level annihilate space in time, meaning that any person is able to communicate and send images, text and videos to other people around the world at little or no cost, which I would regard at many levels as a wonderful liberation of human communication, but unfortunately there are still deviants at the edges of our society whose behaviour should be regulated by the state. I believe this bill does that.

Other members have touched upon the examples of upskirting at places like the tennis and of other behaviour in change rooms. While in a way this is a continuation of a previous behaviour, I again believe that the changes in technology, the ease of communication and the surreptitious nature of much of that technology require the government to take action. I note with some pleasure that although there were a few comments made by opposition members about what they perceived are inadequacies of the bill, which I would not necessarily accept, there is general support for the bill and it is a positive that all members I would hope in this house regard upskirting and other behaviour as completely abhorrent.

In terms of arguments against the bill that I understand could possibly be mounted, there is a sort of civil libertarian argument about limiting behaviour. I do not think that applies at all in this case, because people's rights to have privacy is an important fundamental human right which this bill protects. I would hope that even the most dyed-in-the-wool civil libertarian would realise that the right to invade another person's privacy and to impinge on their most fundamental core values as a human being is not something to be protected but instead should be limited by state action.

As I said, I am not a prude. I am someone who believes that what people do in the privacy of their own home should be limited only in very specific circumstances. But this is not that sort of issue. This is about protecting people's rights and protecting people's rights to live in a way that they wish to live and not have that infringed and not be humiliated by what are disgusting deviants who would take pleasure in the humiliation of others and whose behaviour is not part of normal and acceptable expression of freedoms in our society but is instead often a desire to humiliate and degrade others.

I commend the bill to the house, and it seems that all members will support it. I would urge members in the upper house to also support the bill, which I hope will provide an important new regulatory framework to minimise a disgusting behaviour that we all find abhorrent.

I too had not heard of upskirting or downblousing until recently. I would hope that one aspect of this bill's

success would be that such terms disappear. That might be optimistic, but I believe that these terms do not add to the Parliament in themselves because we are debating behaviour which we would all hope would not take place. I would hope that one aspect of the bill is that we do not, in years to come, discuss either upskirting or other similar terms. I commend the bill to the house.

Mr BURGESS (Hastings) — I rise to speak in support of the Summary Offences Amendment (Upskirting) Bill 2007. Listening to the other speakers on this topic it is worthwhile identifying a few things before I go to the bill. One is that while there has been unanimous support for the bill — certainly the mischief that it is trying to address — it is worthwhile focusing on the fact that there are certain anomalies within the bill, there are deficiencies within the bill, and we can speak in a non-political way and speak to the government based on the fact that all members of Parliament want this issue addressed properly.

It is worth reflecting on probably one of the most important responsibilities we take on when we are elected to this Parliament — that is, that we make decisions on behalf of the community about what sort of solutions need to be put in place to address particular ills. One would hope that those solutions — those policies or legislation — would be based on discernible and coherent policy platforms that have been properly communicated to the electorate.

One would also hope that those decisions are based on the best available evidence. There are always competing views within the house, within the Parliament and within the community about specific ills within the community, whether they are ills, what degree of ills they are and what sort of solutions need to be applied to address them. It is important and certainly incumbent upon us to decide, firstly, what that solution is, whether it needs legislation, and when the legislation is put in place to decide whether it is the appropriate legislation and whether it addresses the ills effectively. Those things need to be contemplated when we are drafting and debating bills to make sure that we are acting with the best solution in mind.

I turn to the bill. Clause 1 will make it an offence in certain circumstances to observe, or capture or distribute visual images of the genital or anal region of a person's body. The amendments have arisen out of a series of incidents in Victoria in late 2006 and early 2007 where women were the unwitting subjects of photographs taken up their skirts.

At clause 3, new section 40 provides new definitions of terms used in the bill, including 'device', 'distribute', 'genital or anal region' and 'visually capture'. The definition of 'device' includes a device of any kind capable of being used to facilitate the observation of another person's anal or genital region, but does not include spectacles or contact lenses. The definition of 'distribute' includes publishing, sending or transmitting to another person or making available for access by another person.

The definition of 'genital or anal region' means a person's genital or anal region, whether bare or covered by underwear. The definition of 'visually capture' includes capturing moving or still images by a camera or other similar means in such a way that a recording is or is capable of being made of those images. The definition also covers technological developments such as the use of a camera or other means to broadcast live images to the internet although an actual recording is not made.

New section 41 provides that an offence against the new division may be committed even if the subject of the observation or visual capturing is in a public place. Existing offences which stipulate the circumstances in which it is illegal to use an optical device, or publish or communicate records produced by them under the Surveillance Devices Act, do not apply to activities carried on outside a building. Very importantly, new section 41A makes it an offence to utilise a device, as defined in new section 40, to deliberately observe another person's genital or anal region in circumstances in which a reasonable person would expect that that region could not be observed. So clearly where a person is aware of what is going on, or if a person had been aware, they would know that this could possibly happen.

The legislation before us recognises community concern about the recent spate of incidents that I have already referred to. Those incidents involve filming up the skirts of women on public transport and at public events. It also recognises the technological advances that have contributed to such behaviour. Privacy is a fundamental and very important human right and one that demands and deserves great protection.

Harking back to what I said earlier about what is incumbent on members of the house when considering these things, particularly in the case of an emotive situation such as the one before us, these sorts of offences put enormous pressure on governments to legislate. This is particularly when governments must remain resolute; when we must make sure that we are really addressing the issues. As I have already said, the

legislation must be effective, desirable and really necessary.

The creation of new offences is a strategy that is always fraught with danger. This bill creates new offences in an unfortunate circumstance where existing legislation at least partly addresses those offences. It is arguable that the creation of the particular offence of upskirting is unnecessary because the behaviour is already targeted in some ways by laws relating to offensive behaviour, unlawfully using an optical surveillance device, the electronic distribution of offensive material, and where the behaviour constitutes a course of conduct — that is, stalking. These things are already prohibited.

What is more, that behaviour is punishable under other legislation. Significantly, existing legislation carries either the same or greater penalties. Notably, the existing provisions focus on the offensiveness of the behaviour rather than on a mechanical definition which could catch innocent or acceptable behaviour.

Other speakers have addressed those particular shortcomings in the bill so I will not take the house's time with that. Suffice to say that this is an area of uncertainty, and again the criticisms of the inadequacies and looseness of the bill are warranted. After all, the police have been able to prosecute the people who perpetrated the offences we are trying to address at the moment.

However, when all things are taken into consideration these amendments reflect the public's view that upskirting is offensive behaviour which is unacceptable to the community. It really is an overwhelming invasion of the privacy of people. Certainly there would appear to be no doubt that an extra message needs to be sent that this community does not accept that sort of behaviour. The bill reflects the views of magistrates and law professionals who have stated that these crimes are increasingly worrying and demoralising to the victims. Taken from that perspective this is a very worthwhile piece of legislation.

In closing I refer back to the comments I made earlier that even when there is something as emotive as this before us, it is still incumbent on us as members of this house to be very discerning about what legislation we allow to pass, and whether that legislation is going to bring about the solution the community wants and needs.

Mr PERERA (Cranbourne) — I am pleased to join the members on both sides of the house to support the Summary Offences Amendment (Upskirting) Bill 2007. This bill is another step towards protecting the basic rights of Victorians, especially those of women. When our sisters, wives, daughters and, in the future, granddaughters and great-granddaughters, take part in public activities or use public facilities, they should be able to do so without having their privacy invaded by somebody taking inappropriate pictures up their skirts. It is our role as legislators today to provide that protection. I congratulate all the members of this house for supporting this bill.

Upskirt images of Melbourne girls have been posted on the internet by an international network of perverts. Last year so-called members of the Werribee gang created their own video showing them urinating directly on a girl and throwing a cup of urine on her. It also included footage of a sexual act. The video has been distributed at a cost of $5. Some segments of the DVD were posted on the YouTube website more than three months prior to the sale of the video. This year in New South Wales five boys were accused of gang-raping a 17-year-old girl and distributing a mobile phone video of the attack among their schoolfriends.

As previous speakers have mentioned, a tennis fan who claimed to have been distracted by beautiful women at this year's Australian Open Tennis Championships was jailed for filming up female patrons' skirts. Takuya Muto, a 34-year-old Japanese student, photographed up a woman's skirt, later returning to his backpacker hostel and filming four or five women as they showered in an adjoining unisex cubicle. This conduct, which invades the privacy of people, has become more common during recent times. In my view it has gone too far. It is another example of the advancement of technology having detrimental effects when it falls into the wrong hands. Some upskirters have used cameras mounted in the toes of their shoes to covertly snap shots.

Recording images of another person's body parts and the unauthorised distribution of intimate visual images are atrocious and should not be tolerated. Taking a photograph up a woman's skirt without her knowledge will become a specific offence under this amendment, as will the distribution of lewd images via email, SMS or any other form of distribution. The Brumby government is committed to reforming the law and the criminal justice system to better protect women. These measures will make it absolutely clear that upskirting behaviour is unacceptable and is against the law.

The bill creates three new offences prohibiting the unauthorised observation, visual capturing — including recording — of another person's body parts and unauthorised distribution of intimate visual images. However, these laws are a practical balance between

the competing interests of protecting a person's right to privacy and protecting artistic and journalistic freedom as well as retaining the ability to take photos in public places.

In all the Victorian cases the intimate body parts in question have been limited to images of the anal or genital region and have not included the breast. Widening the definition to cover women's chests would unreasonably limit media photographs of women at public events, which may incidentally capture part of a woman's breast or bra. Photographing people in public places without their knowledge is currently not an offence. This bill does not criminalise such conduct other than in relation to the genital or anal area. A photo of a woman with her bra exposed would not be a breach of the act if it had not been done covertly and if her privacy were not invaded.

The new offences in the bill will criminalise intentional covert observation requiring the assistance of some aid or tool. This could be using a mirror to look into a neighbouring toilet or shower cubicle or using a ladder to look through a window into a public change room.

In the Werribee case and the New South Wales gang-rape case the unauthorised distribution of intimate visual images played a key role. The perpetrators do not know that they are sick, that they are perverts. They tried to tell others that they were on an heroic mission and that the way to achieve that was through distribution of that unsavoury material. The bill is designed to prohibit the initial distribution of the image to prevent it being made public in the first place. It operates in a wider public context where distributions of, for example, intimate visual images of another consenting adult are not prohibited per se. The bill does not interfere with such activity between consenting adults. However, it recognises that distinct harm can result from publication of a private image, if there is no consent to do so.

The maker of an image is the person in the best position to obtain consent not only to the image being made but to the image being distributed as well. The bill also prohibits the maker of an image from authorising or requesting another person to distribute the image on their behalf, if there is no consent to do so. It does not, however, criminalise recipients of distributed intimate images.

The bill also provides police with search-warrant powers appropriate to the level and type of offence to ensure that they can effectively gather the necessary evidence. The new offences are designed to complement existing pornography, classification and stalking offences which may apply in related situations. It is another example of the Brumby government's drive to modernise our legal system and comes on top of a suite of laws and initiatives introduced to better protect women. This legislation is among the best legislation for the protection of women in Victoria. I commend the bill to the house.

Mr NORTHE (Morwell) — It gives me great pleasure to comment on the Summary Offences Amendment (Upskirting) Bill 2007. As mentioned by the Leader of The Nationals and the member for Shepparton, The Nationals do not oppose the bill, and I will only make some brief comments on it, because I think what needed to be said has already been said by other members.

The purpose of the bill in the first instance obviously is to make it an offence to use an aid or device, such as a mirror or by drilling a hole in a wall, to deliberately observe another person's genital or anal region — 'intimate body parts', so it is termed — in circumstances where it is reasonable for the other person to suspect such observation could not otherwise be undertaken. As mentioned by previous speakers, we essentially are faced here with a new crime to some degree, and this has certainly been advanced by new technologies that are available today. Unfortunately a minority of people in the community — who I guess could be deemed voyeurs or some other apt name — have seen these technologies as a way to fulfil their unacceptable desires. We have heard that mirrors, mobile phones, cameras and other devices have been utilised by perpetrators of these low acts. In particular these offences seem to be undertaken, or occur, in densely populated areas, such as on public transport or in shopping centres, obviously in an attempt to disguise the perpetrators' intentions.

The bill also makes it an offence to distribute, for example by sending, supplying or transmitting a visual image of another person's intimate body parts without their consent. I guess we should not downplay the importance of this point. Once again, given current day technologies, we have seen many examples of inappropriate and unauthorised material transferred without the consent of the person offended against. Not only have these images been distributed without consent, they have often been viewed unwittingly by family, friends and minors, and that causes untold angst and embarrassment to one and all who are affected by this.

Mention has also been made of community standards. This bill will go some small way towards upholding the standards that many in the community feel have been

slipping over time. Whilst this bill refers to it being an offence against a 'person', I gather the intent is predominantly to protect females in the community — unless we have a lot of Scotsmen wearing kilts who may be offended against. Obviously those potentially affected could be our mums, our sisters, wives, girlfriends or daughters, and certainly we do not want to see any crimes perpetrated against those we love. Females are certainly the ones most at risk. I think as a consequence of that, we as legislators should be doing all that we can to protect them from predators such as these.

You would obviously hope that a bill such as this would act as a strong deterrent, given the penalties relating to these particular offences, and hopefully that will be the case. Another point about the bill is that some believe that maybe it does not go far enough. The bill deals with specific and intimate body parts, but I am sure that some in the community would feel that any unauthorised images or taking of pictures of a person is unwarranted and unnecessary.

With any new piece of legislation, particularly one which deals with amendments such as these, it would be naive to think there were no further implications for other authorities. By that I mean that there could be increased pressure on the police force and courts in dealing with these crimes. I think we really need to be conscious of the fact that whilst we have this new legislation, it is important that the government understand that there could be increased pressures on those other authorities and act accordingly, making sure they have the resources available to be able to deal with these types of offences. In summary, I commend the bill to the house. The Nationals do not oppose it.

Ms GRALEY (Narre Warren South) — I am pleased this evening to be able to speak on the Summary Offences Amendment (Upskirting) Bill 2007. It is another demonstration of the Brumby government's commitment to reforming the law and the criminal justice system to better protect women and the privacy of all individuals.

It is rather sad that we find ourselves in the chamber in 2007 still having to legislate to protect the privacy and rights of women. Despite the efforts of the government in trying to provide new laws and new resources to protect women — and the government has a strong record in that area — we do need this new legislation. As many other speakers have suggested, it reflects some of what we would consider to be the declining standards we see operating in our community today. I am constantly affronted personally, not only as a woman but as the mother of daughters, a representative of many women in the community and having a history of working with women in all areas, to see the constant putting down of women, and indeed men, in many advertisements on television.

I refer to a particular advertisement for alcohol where men are standing in a queue being mesmerised by the female bartender and seemingly cannot take their eyes off her sufficiently to order a drink of the preferred style. I refer also to an ad where men and women are at a cricket match or a football match — something that I like to go to — and there are signs being sent across referring to the lusciousness of the female sitting next to them. Unfortunately in 2007 that sort of perpetuation of the defaming of females — and men — is contributing to the sorts of behaviour we are trying to deal with in this so-called upskirting bill.

I read about upskirting in an article in the *Age* of 25 January that described the situation at the Australian Open Tennis Championships this year. The article says:

> He positioned the camera under the woman's skirt and took a photograph between her legs, obtaining a picture of her genital area.
>
> When he returned later to his room … took the video camera and filmed between four and five women as they showered in an adjoining unisex cubicle.

That was a revolting description of some quite deviant behaviour. You pick up the paper and read about some quite abhorrent things that are happening in society, but it really is very disgusting to read that somebody has actually filmed female genitalia without the permission of the woman who was trying to have, I suspect, a nice day at the tennis.

I also refer to an article in the *Herald Sun* of 27 May this year which describes the extent to which some of the people who are partaking in this quite perverse behaviour will go to in order to gain pictures of female genitalia. The article says:

> Some upskirters have used cameras mounted on the toes of their shoes to covertly snap shots.

I have to say that when I think about somebody deliberately sitting in their home and mounting cameras on the toes of their shoes I am, frankly, lost for words in trying to describe how I feel. I find it quite abhorrent to think that they go out in public places and walk around trying to take pictures of the daughters or female friends I hold dear. I am very pleased that the government has taken the opportunity to bring such a bill into the house, not only to protect women, as we have all said, but also. I suspect, men, certainly those in same-sex relationships. The member for Mordialloc referred

to — and she may have mentioned it in a fun sort of way — the Scotsman who plays the bagpipes in the city of Casey citizenship ceremonies. He might be pleased that we are going to protect his privacy as well, because the kilt is sometimes a cause of great discussion and derision.

I must say I am very proud to be part of a government that has worked very hard to protect women in the justice system. Having said earlier that I have worked with many women in the community, I would just like to highlight a number of the government's initiatives, especially in my own electorate where there is a problem with family violence — just as, I suspect, there is in many other members' electorates. Just as we are giving judges new powers in these circumstances, I am very happy that the government has taken the opportunity to give police new holding powers to protect victims of family violence, especially the powers that authorise them to detain a person suspected of family violence for up to 10 hours, allowing family members, who are usually women with children, to remain at home rather than being forced to flee. I suspect many members of Parliament have had women in their offices looking for places to flee to. It is not easy to find accommodation for them. The fact that the police will now have these powers will be an enormous relief to and support for women and children in those very grave circumstances.

It is also very pleasing to see the operation of the specialist family violence service near my electorate. I know many women who have unfortunately had to attend specialist family violence services. The services are working very successfully and are part of the government's record of trying to protect women, especially against sexual assault and family violence.

I am very pleased that under this legislation judges will have new powers. They will have sufficient punishments available to them to not only punish people but also deter people from making enormous efforts to exploit women and participate in behaviour which the whole of society finds perverted and abhorrent. However, since I have been in the Parliament — and judges and judicial appointments have been mentioned — I have been very concerned on a number of occasions to have heard derisory comments coming from members on the other side of the Parliament about the quality of the appointments the Attorney-General has made.

I would like to put on the record my praise for the Attorney-General, who has been a reforming attorney-general not only in terms of the general law but also in the way he has gone about putting in place supporting measures that have provided greater protection and extra privacy and have made life a lot easier for women. His appointments to the courts, especially in increasing the number of women on the bench, ought to be wholeheartedly supported. I suggest that those women judges should throw the book at those men — it is often men, but maybe there are some of the other sex who take part in this sort of behaviour — who are committing these crimes.

As I said, I am wholly supportive of the bill. I have been very pleased to see that most members of Parliament have spoken overwhelmingly in support of the bill, not only because of the merits of the bill itself but also because of the consequences in terms of the punishment of offenders. I would like to take this opportunity to congratulate the Attorney-General on another piece of reforming legislation. Unfortunately we need this legislation, and I commend it to the house.

Mr WAKELING (Ferntree Gully) — It gives me pleasure to rise to contribute to the debate on the Summary Offences Amendment (Upskirting) Bill 2007. As has been mentioned by members before me, the main purpose of this bill is to make it an offence in specified circumstances to observe, capture or distribute visual images of the genital or anal region of a person's body.

The bill aims to do a number of things, which include prohibiting the use of a device to observe another person's genital or anal region in circumstances where it is reasonable for them to expect that such a region could not be observed. It prohibits the visual capture of such a region in circumstances where it is reasonable for a person to expect that his or her region could not be visually captured. It prohibits a person who has visually captured an image of such a region to distribute that image.

It provides exceptions with regard to the use of the device in capturing an image where there is express or implied consent; where it is done via accessing the internet or a broadcasting or datacasting service; or where it is by a law enforcement officer acting reasonably in the course of their duty. The bill also provides exceptions in regard to the distribution of images where express or implied consent to the purpose of distribution or a similar purpose is subject to a person being incapable of giving consent and a reasonable person would regard the distribution as acceptable.

As has been mentioned by a number of speakers, this piece of legislation has been brought about by recent activities of a number of individuals throughout

Victoria who have engaged in antisocial behaviour which has involved the capturing of visual images of individuals, particularly women, without their consent.

I would firstly like to congratulate Wendy Lovell, a member for the Northern Victoria Region in the other place, on her efforts in raising this issue and making sure that it was put on the political agenda. It is pleasing to see that the government has picked up on her demands and her calls and has enacted legislation.

As has been mentioned, we will be supporting the legislation. There are, however, deficiencies within the legislation that I think are important to put on the record to identify how the government could have gone about this in a much better way. The first thing, which has been mentioned by the member for Brighton, is that the Attorney-General — the new, happy Attorney-General as opposed to the angry Attorney-General that we had last week — issued a press release dated 27 July 2006, which is over 12 months ago, in which he was calling for a push for national laws on upskirting and downblousing. If this issue was such an important matter, if the government had been on the ball and actually ensuring that legislation came before the house in a timely manner, we would not be dealing with this bill 12 months down the track.

The other important point in regard to this press release is that the minister made a point of explaining that through his efforts he would be ensuring that legislation would be enacted to deal with not only the issue of upskirting but, as has been mentioned by others, downblousing, which is the taking of a photo down a woman's blouse without her knowledge or consent. As we know, that provision is not in the legislation. At the legislative briefing I attended I asked the question of the departmental staff. To their credit, they provided explanations as to the difficulties associated with legislating on that issue, but one can only question why the minister would actually go on the record and publicly state that he was going to push for such a provision if his own department believed that it was not possible.

Another issue that needs to be brought to the house's attention, as was mentioned by the member for Box Hill, is the minister's own second-reading speech, in which he said:

> The bill creates specific and unique offences that ban upskirting and related behaviour. Although this behaviour may already be prohibited by existing offences, such as indecent behaviour and stalking, this bill creates offences directly targeting such behaviour.

One has to ask whether this legislation is necessary. The Liberal Party, and I as the member for Ferntree Gully, will be supporting the bill, but the question obviously has to be asked whether this offence is already covered by existing legislation. The minister has already alluded to that in his second-reading speech. I understand the Law Institute of Victoria has also raised concerns about that provision. Another important issue that needs to be dealt with concerns the on-forwarding of illegal material. Proposed section 41C of the Summary Offences Act says:

> A person who visually captures or has visually captured an image of another person's genital or anal region … must not intentionally distribute that image.

Therefore a person who visually captures an image and then on-forwards it can potentially face two years imprisonment. However, not covered by this legislation is the circumstance when an image is forwarded to a separate individual who is not party to the illegal action and that individual on-forwards the image; that person is not affected in any way by the provisions of this bill. We certainly raised this issue at the bill briefing, and it was clear that the government had no intention of seeking to cover such circumstances through this bill. Obviously women would be greatly concerned if they knew that a secondary person who received their image from the perpetrator and on-forwarded that material was not captured by the provisions of this legislation.

There is also concern about proposed section 41B of the Summary Offences Act. It reads:

> A person must not intentionally visually capture another person's genital or anal region in circumstances in which it would be reasonable for that other person to expect that his or her genital or anal region could not be visually captured.

This proposed section obviously deals with taking images of children. Whilst we understand the provision on which the minister has couched this legislation, it is unclear, will therefore be open to much scrutiny in the court system and will be a minefield for the legal fraternity. We think it would have been much better for the government to have properly worded this provision to clarify and overcome these issues, because what is reasonable for one person may be deemed unreasonable for another.

Whilst it may be deemed reasonable for one person to take a photograph of their child, others may believe it may be inappropriate because of the age of a particular child. These issues need to be clarified. We believe the government has dropped the ball on this issue. The government could have dealt with it better, considering the fact that the minister raised it 12 months ago. He has had 12 months to deal with this aspect of the

legislation. Proposed section 40 of the Summary Offences Act says in part:

> device means device of any kind capable of being used to observe a person's genital or anal region including —
>
> (a) a mirror; and
>
> (b) a tool when used to make an aperture; and
>
> (c) a ladder …

As the member for Box Hill has indicated, individuals may well view someone through a peephole, for example, but that situation, to our understanding, will not be covered by the provisions of this legislation.

Whilst we understand and support the tenet of the bill, we believe there are still areas of deficiency. We hoped the government could have fixed those problems. Nevertheless we will be supporting this legislation; I am happy to support the bill because it is legislation that this community has called for and it is legislation that the Liberal Party has called for. However, there are still areas of concern where this legislation may need to come back to this house for future improvement.

Ms DUNCAN (Macedon) — I am pleased to support the Summary Offences Amendment (Upskirting) Bill 2007. It is interesting to follow the member for Ferntree Gully. After listening to his contribution, I have to say that I am not quite sure why he is supporting this bill because everything he seemed to say suggested that the bill will not to do the job appropriately. I am a bit confused about why he supports a bill that he seems to think is unnecessary.

The member for Ferntree Gully also mentioned the definition of 'reasonable' and that what might be deemed reasonable by one person may be deemed unreasonable by another. The term 'reasonable' is used in lots of legislation, and it is why we have courts that then determine what is reasonable and what is not. It is not uncommon for the question 'What would a reasonable person make of such action?' to be asked. That is obviously for the courts to determine in their role.

The intention of this bill is to make it very clear that the inadvertent, surreptitious filming of the private parts, if you like, of a person in public is now considered a crime. As was pointed out by the member for Ferntree Gully and other members, other pieces of legislation — on stalking and using an electronic device without consent — already exist in various parts of our criminal code. However, what makes this different and what is specifically addressed in this bill is looking up the skirts of and surreptitiously filming women in particular. Its intention is to send a strong message that this sort of behaviour will not be tolerated, and its purpose is to better protect women and make women feel comfortable in public.

In recent times we were all shocked to read of the occasions when this has occurred, which are extraordinary. There were reports of people doing this at the tennis and at some other events and on public transport. A few minutes ago I was looking at an article which reported that a man had been caught on a train and that when the police apprehended his phone they found he had dozens and dozens of images of people. It is not always possible to identify who the victims are in these circumstances; but clearly an offence had been committed because it was clear from the images that the people had been filmed without their consent.

It is extraordinary to think that 10 years ago we would never have imagined that we would need to have offences like this in our statutes. I mean, 'upskirting' — who had even heard of the term even a few years ago? Certainly I had not. But I suppose this sort of behaviour has been with us for many years. I remember that as a schoolgirl there was the old joke about not wearing patent leather shoes because your knickers, as we used to say in those days, might be reflected on your shoes, or about boys who might wear patent leather shoes — —

Ms Thomson interjected.

Ms DUNCAN — I did go to a Catholic school, and we were told that that could occur. It is not unusual and it is not new that men look up women's skirts. But what has changed is their ability to do so with improved technology — cameras that are getting smaller and smaller and mobile phones which now have cameras in them. There are now much greater opportunities for people to do this sort of thing if they are so minded. More than that, it is now possible for people to have a direct stream onto the internet. While someone is being filmed the image does not even need to be recorded; it can be streamed straight onto the internet.

While some woman is sitting on a train, watching the tennis or going to a football match, across the way someone can be filming her while she is completely unaware. That is the point of this bill — that such filming is without consent. Millions of people could be watching as those images are streamed onto the internet. It is also about what the new technology allows people to do, so that the offence becomes not just an offence where the woman feels that her privacy has been invaded by an individual who may have been sitting opposite her, but also where she may then see

her image, or have it reported to her that the image is being streamed across the world.

It makes the offence and the invasion of a woman's privacy that much more offensive and the crime that much more grave. The bill creates that offence, but at the same time it balances the competing interests of a person's right to privacy and the filming of public events. Most of the filming of football matches and the people watching them is done without the consent of individuals, but this is not about that sort of general filming of the public — for example, general views of people walking down the street or sitting at the football. This activity is much more insidious, and the bill specifies the sort of behaviour that is being made an offence.

We have seen similar pieces of legislation around the country — for example, in New South Wales. An article which appeared in the *Age* of Friday, 18 March 2005, states:

> In NSW, anyone found to have taken a photo or filmed someone without consent in a state of undress or engaged in a private act such as bathing or having sex faces two years jail.
>
> NSW has also banned camera phones from courtrooms for fear that jurors' and children's identities may be compromised or even posted on the internet.

There are several million mobile phones with cameras on them in Australia. At various public places we have all seen organisations trying to deal with this. We know, for example, that many gyms and swimming pools ban camera phones, as do some companies. I guess this is again indicative not necessarily of the changes in human behaviour but of the changes in technology that allow this sort of human behaviour to take on dimensions that we would never have dreamt of even a few years ago.

In South Korea problems with peeping Toms were so widespread — they were taking photos of women's skirts and other things — that camera manufacturers were forced to sell cameras that give off a loud beep when they are being used so that people have some opportunity to be aware of what is going on. What is interesting about a lot of the people who have been caught doing these things is that it is often other members of the public who have observed their activities. I think we saw that at the tennis and on another occasion when a gentlemen on a train had his photo taken while doing this. While this technology has its down side, which this bill seeks to address, it also has its advantages in allowing people to capture that sort of action, which will, no doubt, assist in prosecutions.

This bill is designed to address those behaviours. It complements other pieces of legislation, and it strengthens legislation that has been introduced by this government to protect women or to enhance the protection given to them. We should all feel comfortable when we are out in public. People need to be aware of inappropriate behaviour. This sends a very clear message to the public and to our courts that this sort of behaviour will not be tolerated. The bill gives police search warrant powers appropriate for the level and type of offence being proscribed to ensure that they can effectively gather the necessary evidence to successfully prosecute this sort of behaviour. I commend the bill to the house.

Mr MORRIS (Mornington) — It is a pleasure to make what I think will be a relatively brief contribution to the debate on the Summary Offences Amendment (Upskirting) Bill 2007. As the explanatory memorandum tells us, the intention of the bill is to amend the Summary Offences Act to make it an offence in certain circumstances to observe, capture of distribute visual images of the genital or anal region, and to confer the power to issue a search warrant in respect of the offences.

It is interesting to read the explanatory memorandum on clause 1. It states, in part:

> The amendments have arisen out of a series of incidents in Victoria in late 2006 and early 2007 …

As the house has heard during the debate today, some 13 months ago the Attorney-General issued a press release about this issue, and as we just heard from the member for Macedon, incidents occurred in New South Wales as far back as 2005. It has taken perhaps longer than is desirable to get this legislation before the Parliament.

The member for Box Hill said the opposition will be supporting the bill. I certainly see no reason to deviate from that support; I will certainly be supporting the bill as well. I want to just briefly comment on a point the member for Macedon made during her contribution to the debate. This legislation is certainly not perfect. As a member said earlier today, we can always do better. There is no doubt in this case that the legislation could have been better, but this bill is what is here; it is what we have got, and it is what we have to work with.

The bill seeks to insert a new division 4A in part 1 of the principal act. It provides a number of definitions. It creates the offences of 'observation', 'visual capture' and 'distribution'. It identifies the very necessary exceptions to these offences, and it deals with the search and seizure provisions. I think I neglected to

mention the very first one in terms of the location being immaterial.

It is a great shame in my opinion that this legislation is necessary at all, but it has become very necessary; I guess it is a reflection of the 21st century and the era we live in. There is no doubt that society has a different view of the world to even 20 years ago, let alone 50 or 100 years ago. There are changed moral and technological environments. The ability to capture images on ever smaller devices has grown exponentially even over the last four or five years. With the rise of the internet and the World Wide Web the opportunities for distribution of this material as well as legitimate material have increased enormously.

There are obviously a number of issues about this bill, as I said. They have been extensively canvassed, as have the matters I just referred to. Quite frankly, I am pretty relaxed about the offences of 'observation' and 'visual capture', the exceptions, the search and seizure provisions and largely with the definitions. The only comment I really want to make is in the context of the offence of 'distribution'. If we look at proposed section 41C, under the heading 'Distribution of image of genital or anal region' it says:

> A person who visually captures or has visually captured an image of another person's genital or anal region (whether or not in contravention of section 41B) must not intentionally distribute that image.

If we go to clause 3, we see that the definition of 'distribute' includes:

> (a) publish, exhibit, communicate, send, supply or transmit to any other person, whether to a particular person or not; and
>
> (b) make available for access by any other person, whether by a particular person or not;

That is as it should be. The concern I have — I know there was some discussion about it during the briefing that was made available on this bill — relates to what can only be described as secondary distribution. That is, if this material actually makes its way to the internet, it does not appear to be an offence once the material has found its way onto the net for it to be then further distributed to a site that is frequented by many people.

I understand there is obviously an array of issues with that, but it seems to me that, while what is here is good, the omission of this secondary distribution aspect, although not gutting the bill, very much limits its effectiveness. The information we have may not be complete. There may be a view that the secondary distribution can be caught up within this legislation, and I would be very pleased to hear that from the Attorney-General if it is the case. If it is not the case, then I would hope that while this legislation goes through that issue may be addressed, because I think we are perhaps 70 per cent of the way there, but we need to go that further step as well. As I say, that is really the only concern I have with this bill.

In closing I make the observation that while it appears to me, as a non-legal practitioner, to be a reasonably tightly drafted bill, clearly when we are dealing with technology of this nature it is a moving target. I hope that should the legislation quickly become redundant or less effective because of advances of technology, the government will quickly move to stop any further holes that might occur. We all know, just in our daily lives, the speed at which technology is moving. We also know that the bad guys are as on top of technology as anyone else. They are able to utilise it to their advantage and to the disadvantage of society. With those few words, I commend the bill to the house.

Mr SEITZ (Keilor) — I rise to support the Summary Offences Amendment (Upskirting) Bill 2007. I wholeheartedly support this bill. It is a very small bill, a very narrow bill, but it is an important bill in clarifying the situation firstly for the police and secondly for the Magistrates Court, so that we do not have clever-talking lawyers getting their guilty clients off or having them found innocent of these offences. This legislation makes the offences specific.

I make an observation about the use of new words like 'upskirting' by our wordsmiths. It is similar to the use of the term 'ethnic cleansing'. These new words are not actually expressive of the horrible cases we see taking place, and upskirting is exactly in that category. These are mentally sick people who have a problem that should be treated. These people should be given assistance. It says something about our society when we use such polite words to describe such things. To me polite words do not have a place in describing actions like that, because you should call a spade a spade. Ethnic cleansing means genocide, and here upskirting means invading women's or men's privacy. It is basically the criminal act of unlawful hooligans and mentally ill people who stoop to acts like that. That is my concern with the bill.

I support the bill and I particularly commend the government for doing so much for the protection of women, but we really need education in our community to bring back some moral values into society, regardless of technology. Technology was around before. Mirrors have been around forever and a day, and could have been used and are now being used. Drilling a hole

through a wall and being a peeping Tom has been around for a long time.

We are not talking about new technologies. We need to talk this up in society and in the community. Whether it is in the schools — secondary schools in particular — or elsewhere, such behaviour is not the action of a normal person and should not be encouraged. The offenders should not be made heroes or be allowed to brag about it. Firstly, they should be experiencing the full wrath of the law; and secondly, society should shun people like that. They should be exposed and outed.

People should not have to walk in fear, watching where they are and which sporting venue they go to — and they should not have to worry when they are travelling to work and from work, and everything else associated with that. They should not have to have in the back of their mind that it could happen to them, that they could be stalked and somebody could be taking photographs of their private parts without approval. That is the abhorrent part to me. As I said, the word 'upskirting' does not describe the horrific offence that takes place and the shock and trauma people experience.

Once an image is captured, even if the police catch the people and confiscate the images, you do not know where they have been passed to. With lightning speed a mobile phone can be used to spread images on the internet. It is then too late even if the computer or the images are found after the police search somebody's house and find the images in their possession or on their computer. The person offended against will always live with the horrible thought in the back of their mind that they have been the victim of such an activity. They become victims of crime, which is of great concern.

Having said that, the Labor government has done a lot to protect women. Labor has introduced legislation and amended laws to protect women in particular. It has allocated $6 million to create multidisciplinary sexual assault centres in Mildura and Frankston to provide victims with police assistance, counselling, forensic experts, victims advocates and interpreters, all under the one roof. The Brumby government is committed to these activities, as Labor in general has been since coming to power. However, the word does not seem to have gone out far enough. We have allocated $2.7 million to allow the Office of Public Prosecutions to create a dedicated team comprising a senior Crown prosecutor and an extra four solicitors specialising in sexual offences to prosecute sex offences.

Even with all that, and the list of the initiatives taken by the Brumby and Bracks governments goes on, we still need this legislation. I commend the Brumby government and the Attorney-General for continuing with this legislation because it is specific, in that it deals with the offences of the unauthorised observation of a person's intimate body parts, the unauthorised visual capturing, including recording, of a person's intimate body parts, and the unauthorised distribution of a visual image of a person's intimate body parts.

The changes in this legislation are quite clear and quite specific. I listened to the previous speaker, and I agree that as community reactions change we have to come back here and amend legislation. However, I think this bill will encourage not only the person whom this vile act has been perpetrated on but also other people who observe it to come forward as witnesses, to pay attention to it and to stop people from doing it if they suspect somebody is taking photos without the other's consent. This new legislation will encourage people to come forward.

It will also encourage the police to act more positively in dealing with these offences. They know if they go to the Magistrates Court with the specifics, they will succeed in gaining a conviction. In many cases, especially when it comes to domestic violence and associated issues, the police say they did this and they did that, but the offender gets off at the Magistrates Court, which disheartens the police. I understand the police wholeheartedly support and welcome this legislation — and that is another important part.

We need to give them that moral support and encouragement so they are more vigilant and active in that area. We need to encourage the police to pursue matters when they are reported to them, whether by phone or by somebody who thinks they saw somebody doing something wrong coming into the station. It is important that the police follow through at that point. All those things are important. If the police leave it for two weeks because they do not have time or because a number of officers are on holidays or annual leave or whatever, in the end the person making a complaint gives up.

It is important that we encourage people to take action on the sort of criminal activity that this bill addresses and that we stamp it out completely. We need to re-educate our whole society. It is not just people who are caught taking illicit photographs of other people's private body parts who need to be educated. There should be an ongoing education process so that everybody understands that in a civilised society such as ours that sort of behaviour is not acceptable. We need to get the message out that, even if people can get on the internet and see that that sort of thing is going on in other countries, it is not acceptable in Australia and

here in Victoria in particular. That is a very important part of the message we are sending with the small piece of legislation that we will pass today.

The bill will come into force as soon as it gets the royal assent, and that is important. I hope that as soon it passes this house and the upper house it will be sent to the Governor in Council for royal assent, and I hope the minister will have the bill proclaimed very quickly. That will enable the police to act on it. Police command will have to consider various regulations et cetera and work out how the police will handle things. It is important to move speedily with this legislation. The issue came to our attention last year. The media ran a campaign and individuals complained.

The Labor government and the Attorney-General are to be commended for their fast action in bringing this bill before the house so we can deal with the matter. We should also be dealing with some of the new types of offences which will come about given the various games that are available for use on Xbox these days and even some of the video clips that are shown. Those things need to be discouraged before they get started.

Mrs SHARDEY (Caulfield) — I rise to speak on the Summary Offences Amendment (Upskirting) Bill 2007. I would certainly like to join all other members in this house in offering my support for the legislation. First of all I would like to congratulate the many male colleagues who have spoken on this legislation. I think it sets a fine example, and we are rather proud of the fact that some of our male colleagues have been happy to speak on what is an important bill.

An article on the issues says:

> It is Saturday afternoon, and you are shopping at the local mall with your teenage daughter. Riding up the escalator, you notice a flash of light and a shady character lurking behind her. A closer look reveals that the man is holding a small, barely noticeable camera in his hand. Suddenly it hits you: he is snapping shots underneath your daughter's skirt!
>
> As disturbing as this scenario is, a new breed of 'upskirt' voyeurs are taking advantage of easily concealed, micro-camera technology to secretly film unsuspecting victims in compromising positions. Some of these unsavoury opportunists then publish the images on websites featuring upskirt, downblouse and other candid shots of women in public places.

This article on the subject goes on to say:

> Over the past decade, legislators have responded to voyeuristic tactics by enacting laws prohibiting surreptitious photography in places where individuals would reasonably expect privacy. But most statutes focus on privacy expectations in private places, and failed to foresee considerable privacy invasions in public spaces through the development of new technology.

The bill before the house today — as well as the bill that I understand has been passed in Queensland — seeks to address this issue and to make sure that we bring balance to the whole issue by ensuring that women and others are protected whether they are in a private or public place. I think this is very important.

I had a look around to see what exists in some other parts of the world. As has been noted, Queensland has already passed this legislation. In Japan, as of 2002, upskirt photography has not been against the law but someone distributing it publicly may break the law. However, camera phones sold in Japan make an audible noise when taking a picture. I understand that that feature was added with clandestine upskirt photos in mind, so that a woman would be more likely to notice if someone was taking a picture of her without her consent. In New Zealand it is illegal to take voyeuristic photos of intimate body parts in any setting in which a person has a reasonable expectation of privacy. A vast array of legislation has been passed across local, state and federal areas in the United States of America. Most of that occurred at about the time that there was a widespread proliferation of camera phones.

In painting the picture, first I would like to congratulate my colleague Wendy Lovell, a member for Northern Victoria Region in the other place and the shadow Minister for Women's Affairs, on raising this as a very important issue. She has sought to bring a lot of public focus on this issue so that action would be taken to provide a deterrent. While some have said that the Attorney-General has taken up that argument a little belatedly, he has taken it up and this legislation is before the house and has the support of all members.

I suppose the fact that we are having to pass legislation of this kind is an indictment of our society. It is probably somewhat sad that we have to introduce legislation against this kind of behaviour, which any of us would regard as totally unacceptable. Certainly any of us would be very upset if anyone we knew indulged in this kind of behaviour. A further focus was brought on this issue when it was found, last year at the Australian Open Tennis Championships, that people were taking photos up the skirts of women. That made it even more important for legislation to be brought forward.

I recall many years ago — some members were probably not born when this happened, but others will also recall — when a certain model came to Australia to attend the Melbourne Cup carnival and wore the shortest of skirts, certainly very much above her knees.

Ms Beattie — Jean Shrimpton!

Mrs SHARDEY — Yes, exactly. In those days we did not think of anything like this, of course. We certainly did not suspect that people would take advantage of women wearing skirts that were shorter than normal, shorts or whatever clothing, and that they would be exposed to this kind of thing. In a sense we need to bring balance to this argument and this legislation appears to do that. Later I will raise a few issues which indicate that we may have to look at the legislation again.

Firstly, the bill makes it an offence to use an aid or device, such as a mirror or a tool to drill a hole in a wall, to deliberately observe another person's genital or anal region — that is, intimate body parts — in circumstances where it is reasonable for the other person to expect such observation could not otherwise be undertaken. We are talking about observation of a person's genital parts. The penalty for this offence is three months in prison. I note that the reasonable expectation test is an objective test of what a reasonable person in the position of the person being observed would have expected.

Secondly, the bill makes it an offence to visually capture on film another person's intimate body parts in circumstances where it is reasonable for that other person to expect a visual image could not be made. The penalty there is two years. Thirdly, the bill makes it an offence to distribute — for example, by sending, supplying or transmitting — a visual image made of another person's intimate body parts without their consent to any distribution.

There are a number of exemptions in this legislation. This bill provides that where the subject of the visual image is incapable of giving consent or is a child, that visual image can only be distributed in circumstances in which a reasonable person would regard the distribution as acceptable. It brings that balance so that parents taking photographs of their children in family situations, as certainly I did with my own children, would not find themselves contravening the law.

One issue I would like to raise, which I think is important, is the concern raised by the Law Institute of Victoria. It has made a couple of very important points which may mean that we have to come back to have a look at this legislation. In its letter it says that it would:

> … consider that the attempt to precisely define the offending behaviour which the bill seeks to prohibit will have the unintended effect of capturing a greater amount of conduct than is envisaged.
>
> …
>
> The current wording of the offences could result in charges against a person who incidentally captures or distributes an image of another person's genital or anal region.

That is of concern: we are talking about accidental capture. The second issue raised was:

> … that the creation of specific 'upskirting offences' is unnecessary because the type of behaviour targeted is already prohibited by existing laws … we submit that laws relating to offensive behaviour, unlawfully using an optical surveillance device, electronic distribution of offensive material … sufficiently prohibit and punish the type of behaviour envisaged in the bill … these existing provisions carry the same … penalties as proposed in the bill … the existing provisions rightly focus on the offensiveness of behaviour, rather than a mechanical definition that could include many types of acceptable or innocent behaviours.

The law institute has raised some concerns which may mean that we have to come back to this.

Another concern that has been raised is the fact that this bill does not look at the issue of downblousing, but there again I think there might be a difficulty with some definitions. With those few words, I offer my support for this bill and wish it a speedy passage.

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

Ms RICHARDSON (Northcote) — I am pleased to rise in support of the Summary Offences Amendment (Upskirting) Bill. This bill is an important part of Labor's commitment to women's justice in this state. We reformed the justice system in the 2006–07 budget to provide additional services for victims of sexual assault and introduced measures to tackle family violence, and I would like to take this opportunity to identify some of these important measures.

Some $2.7 million has been allocated to allow the Office of Public Prosecutions to create a dedicated team comprising a senior Crown prosecutor and an extra four solicitors specialising in sexual offences to prosecute sex offences. An additional $4.6 million has been allocated to establish a specialist sexual assault list in the Magistrates and County courts, and $3.8 million has been allocated to boost counselling for victims of sexual assault. In total, $34.2 million has been allocated in the 2006–07 budget to reforms of this nature.

In a bid to tackle family violence Labor has provided a $35.1 million package, as well as giving the police, the courts and family violence groups the opportunity to work with government to draft laws giving the police the power to issue interim on-the-spot safety notices to protect victims of family violence after hours. We have also given police new holding powers to protect victims of family violence. In total, this package sends a very

strong message to the community that violence against women will not be tolerated, and in fact it supports our ongoing commitment to improving safety in the state. There has been a 22 per cent decrease in crime in the state since 1999, and obviously these measures go a fair way to improving on that percentage.

The bill before the house arises following a spate of inappropriate and offensive incidents that took place in public. In particular this bill makes it unlawful to secretly film women in public against their wishes. I assume that this will also apply to men in kilts. Speaking as the daughter of a Scot, they will be very pleased to hear that it will no longer be an option for people to take advantage of that version of dress. Such behaviour will be clearly prohibited, and offences will arise if people take this course of action.

Given the range of ways people may be filmed with improved technologies that have come over time, the bill will help us regulate the use of these devices in the community. Not only will it be an offence to take images of a person's intimate body parts, it will also be an offence to distribute such material. In this day and age we all know how easy it is for all sorts of materials to be uploaded on to the internet and for those images to be flashed around the world, so that is an important measure that has been introduced as part of the bill. There is widespread support for the measures the bill introduces.

The bill also makes it an offence to drill a hole, for example, with the purpose of deliberately observing a person to seek to take some sort of photographic images of intimate body parts. It also provides the power to issue a search warrant in circumstances where the authorities believe there has been some inappropriate behaviour of this nature.

In summary the bill is an important part of Labor's commitment to ensuring that women and men are treated with respect and can have a sense of security when they wander out into the public. In my office I have had various incidents relayed to me by constituents, particularly from parents of young girls travelling on public transport and the like. The sort of activities that we are told about as MPs involve bullying of people, including of children, and obviously the bill will go a long way towards ensuring that those kinds of activities are dealt with. It sends a strong message to the community at large that those sorts of behaviours will not be tolerated now or into the future. It is an important bill, and I take this opportunity to commend it to the house.

Mr THOMPSON (Sandringham) — The Liberal Party supports the Summary Offences Amendment (Upskirting) Bill 2007. In its consultations it noted that the Law Institute of Victoria raised a number of concerns in relation to the bill suggesting it is overly prescriptive and too broad in application to behaviours already prohibited. Nevertheless the Liberal Party adopts a position of support for the measures being taken.

The safety and welfare of people are very important matters, and the development of cyberspace places a different focus on the use of technology. The power of cyberspace and the ability almost instantaneously to transmit images around the world are factors that will lead to legislatures worldwide dealing with new issues that perhaps were not contemplated in days gone by.

Some time back I had occasion to raise in this house an issue in connection with sexual assault. I raised the issue in Parliament by way of questions on notice concerning sexual assaults on children in the cities of Bayside, Kingston and Port Phillip.

The questions posed were: how many children under the age of 10 had been sexually assaulted by strangers in public places in each of those local government areas in the last five years and in the last 12 months; and how many cases of children under the age of 10 being assaulted by strangers in public places in each of these local government areas had been solved where the crime was committed in the last five years and the last 12 months? Some other questions asked about the monitoring of offenders and, importantly, the current level of risk to families of repeat incidents. These questions arose out of representations from a constituent, Mr Clarke Martin, who was concerned about an incident that took place in a public park where a young child was assaulted by a person about whom numbers of people had raised some serious concerns.

I regret to note that the minister's answer, which was prepared for him, did not respond to the questions raised regarding the specific local government areas of Port Phillip, Kingston and Glen Eira. I lament that fact, because civic-minded people were concerned about the risk of further events taking place. The response was less than adequate, less than open and less than accountable. I refer specifically to the minister's response to my question on notice 108, which pertained to sexual assault. I reiterate that the reply was inadequate and that it fell short of the mark that might be expected of an appropriate answer.

I will cover a couple of other matters in my contribution to the debate. The bill grants powers to Victoria Police,

which does a magnificent job in upholding the law and protecting the community across the state. In my own electorate I have some outstanding police who have served the state with great distinction. A couple of Cheltenham policemen — senior sergeants Hegedus and Ryan — recently retired. Another policeman who recently retired had served in the area of traffic accident investigation as a crash investigator — initially in what was called the accident appreciation squad — for a period of 32 years, with a police career of some 41 years.

Honourable members interjecting.

Mr THOMPSON — The duties this policeman had undertaken are not a case for levity in the chamber. As a crash investigator he performed a very necessary range of duties on behalf of the community. He had occasion to scrape body parts off roads. He had, and I quote from the *Age*:

> … identified crash victims from piles of metal that had been cars, and delivered the news to too many families that their loved ones had been added to the state's road toll.

The ACTING SPEAKER (Ms Green) — Order! I remind the member for Sandringham to return to the bill.

Mr THOMPSON — Members of Victoria Police have had to undertake a wide range of tasks. The bill before the house gives power to police to deal with situations where people have behaved in an appalling manner and to prosecute those people. I welcome those changes on behalf of the opposition, but we regret the delay in introducing the law and note the concerns of bodies such as the Law Institute of Victoria.

Ms THOMSON (Footscray) — I too rise in support of the Summary Offences Amendment (Upskirting) Bill 2007. I do so acknowledging that the Bracks government was, and the Brumby government is, committed to making the lives of individuals better and to respecting the lives of individuals. This adds to a number of pieces of legislation that we have brought into the house that show respect for individuals, their privacy and their ability to lead their lives with some surety that the law is there to protect them.

This legislation is not specifically about women, although it will mostly affect them. It comes on the back of a number of pieces of legislation that have been brought to this chamber that are about supporting women, recognising the role they play in our society and our economy and recognising the fact that they are equals in our society and have a right to take on roles as they see fit and perform those roles without intimidation or favour.

The bill comes to the house through the Attorney-General, who has put this issue on the national agenda. He has not only done this; he is also responsible for increasing the number of women who serve in the judiciary and for ensuring that there is a college for the judiciary so that the judgements made by judges as they hear cases reflect community concerns about and community understandings of legal cases. In fact the Attorney-General has shown an incredible commitment to making a real difference to the lives of women here in Victoria and making this a great place for women to be comfortable and confident that they can conduct their lives knowing that the law is there to protect them.

This upskirting legislation is a sign of things which have probably always been around but which have now taken on a new measure of concern because of technology. There are going to be more and more ways in which technology can invade our lives and take over. We have to be conscious that while technology is a wonderful mechanism for shrinking the world and giving us access to the globe in ways that we could never have thought about a decade ago, we also need to have the protections in place to ensure that the world does not get access to those things which should always remain private. This legislation is about securing the privacy of — mainly, but not exclusively — women, as we have heard from those from a Scottish background. Protecting that privacy is crucially important.

This is about ensuring all the time that our legislation is up to date, that it reflects what is going on in the world and that we are responsive to it. No-one wants to feel that they cannot go to something like the Australian Open Tennis Championships and relax and enjoy it without the thought that someone will have taken an image and tomorrow will put it on stream so that around the world people get to see what was under their skirt. That is not what we want to see happening, and there should be adequate penalties in place to ensure that people are discouraged from that kind of activity.

Members in this house have talked about the act and its components. There are penalties in place: there are penalties of three months imprisonment for those who use equipment or devices, be it mirrors or holes in walls, to observe people's private parts; there are penalties of two years imprisonment for those who actually take images; and there are penalties of two years for those who distribute those images.

It is important that we tell people that it is unacceptable to do this. We might have seen it in movies where it is done in jest, but it can be, and often is, intimidatory. It should not be happening, and we need to send a signal to everyone that this is unacceptable behaviour and we will not tolerate it. It is vitally important that we ensure that this legislation sends that message. It is terrific that this legislation is being supported across the chamber. It is pleasing to know that in other jurisdictions across the country legislation has been or will be moved that actually supports this kind of legislation. Then, across Australia, women in particular, but men and children as well, can feel more comfortable knowing that the law is protecting them.

This also builds on other legislation we have introduced in this house concerning sexual assault. The sexual assault package and the family violence packages that we have put together demonstrate this government's commitment to ensuring families, particularly women, are kept safe; but most importantly we are sending the signal to the community that people need to respect others. We are entitled to live in an environment where women are respected for who they are, what they do and what they contribute; that they are no less a person for being a woman; that a child is no less a person for being a child; that both have rights and entitlements; that men have rights and entitlements; but that everyone is obliged to respect one another. It might be within the home in relation to action that we take against family violence that is not just about paying out against the man who might perpetrate it but about encouraging the man to undergo clinical and counselling assistance to stop that behaviour.

One of the most progressive moves from a government would be to say, 'Let's deal with treating the problem and not just deal with the crime'. That shows the kind of government we are dealing with now. It is about dealing with the very issue. It is about making a difference to people's lives, and I am proud to be part of a government that wants to leave the kind of mark on the Victorian community that says, 'We are about changing people's lives, making a real difference and leaving a real legacy'.

There have been numerous pieces of legislation over the last seven and a half years that have demonstrated this government's commitment to making the quality of our lives in Victoria much better and, more importantly, to showing due respect to every citizen who lives within Victoria. This piece of legislation might not be a major piece of legislation — there are not 240 pages of a bill to go through, and there are not a lot of complex legal elements to it — but it is a balanced piece of legislation that deals with the press and the media being able to take images while, on the other hand, ensuring that we are protecting the privacy of those whose lives need to be protected.

It is with great pleasure that I stand before the house and support this piece of legislation. It is part of a comprehensive suite of legislative measures and programs that this government has put in place to ensure that we respect one another. No matter what the technology may be in the future and no matter what we may have to face as a result of changing circumstances in society, this government is prepared to ensure that the legislative program is there to protect each and every Victorian.

Mr DELAHUNTY (Lowan) — I rise on behalf of the Lowan electorate to speak on the Summary Offences Amendment (Upskirting) Bill 2007, which is an important piece legislation commonly known as the upskirting bill. The Leader of The Nationals has outlined our concerns about the bill. The Nationals support the bill, but I want to speak on behalf of the community of the Lowan electorate.

As the member for Footscray said, this not only deals with women but also deals with men. It is unfortunate that we live in a society where we have to bring forward this type of legislation to protect those who are unfortunate enough to be involved in such a situation. The purpose of this bill is to make it an offence in certain circumstances to observe, capture or distribute visual images of the genital or anal region of a person's body and, secondly, to confer powers for the issuing of search warrants.

The Nationals consulted very widely in relation to this. We spoke to the Law Institute of Victoria and the Victoria Bar Council. Also I notified, as I normally do, the people of the electorate of Lowan about this legislation and other pieces of legislation coming before the house. This bill amends the Summary Offences Act. The Nationals have also moved in the upper house a private member's bill to amend the Summary Offences Act in relation to body piercing, and I trust that this Parliament will also support that amendment, because it is important that we deal with that issue as we are dealing with this.

This bill makes it an offence to use an aid or a device, such as a mirror or drilling a hole into a wall, to deliberately observe another person's intimate body parts in circumstances where it is reasonable for that person to expect that such observation could not otherwise be undertaken. It is also interesting to note that it is not only the naked parts of the body; but even if the body is covered by underwear, it is still an

offence to take photos and observe these types of things. Therefore, it is important that we support this type of legislation. But as I said, it is an unfortunate set of circumstances when we have to bring legislation before this house to protect those vulnerable people.

This bill also makes it an offence to visually capture, such as to photograph or film, another person's intimate body parts in circumstances where it would be reasonable for that person to expect such a visual image could not be made. I will be interested to hear the minister's summing up. We know that transmitting such images out of the country through emails and the like would be an offence, but it would be interesting to know if it would be an offence to receive emails coming from another country, whether that be New Zealand or anywhere else. How would we deal with that type of offence? People would be impacted by that type of thing happening. If those types of images are coming into Australia, how do we deal with that, particularly here in Victoria?

The bill will also make it an offence to distribute — for example, by sending, supplying or transmitting — a visual image of another person's intimate body parts. That again highlights the concern I have about dealing with overseas people. As members know, we can today email things around the world in a couple of seconds; therefore pictures of intimate body parts and such things could be transmitted without people knowing about it. The bill will also confer the power to issue a search warrant in respect of an alleged visual capture or distribution offence.

As I said earlier in my presentation, most people I have heard speak tonight have spoken about the bill in relation to women. As we know, it also relates to men and, in my understanding, to children. Unfortunately we have paedophiles in this community, and we need to protect the children and to try to handle the problems that paedophiles create. I would be interested to know how that could happen. If a child's genital parts are photographed or distributed, is it up to the child to act on that? No doubt it would be up to the parent or the guardian to make a complaint so that the matter could be pushed into the courts.

This is an unacceptable practice, and all the people I have heard speak about it recognise that. I am also pleased to hear that other states are bringing in legislation similar to what we are dealing with here. Again we are showing that Victoria can lead the way in lots of things, so it is good to see that we are supporting this.

Clause 3 talks about the definition of a 'device', which includes any kind of device capable of being used to facilitate the observation of a person's anal or genital region but does not include spectacles or contact lenses. Clause 3 also covers the definition of 'distribute' in detail. It also gives a definition of 'genital or anal region' which, as I said earlier, incorporates a person's genital or anal region whether bare or covered by underwear. So this is a very extensive bit of legislation, and I think it covers the issue well enough to protect people.

Like the Leader of The Nationals, I agree with the position The Nationals took on Monday night on this matter — that we would not oppose this type of legislation because it will protect men, women and children who are unfortunately caught up in this type of issue with these types of people. As I said, it is unfortunate that we have to bring this type of legislation before the Parliament, but again we are here to protect people in the right way, and this legislation will do that.

Mrs MADDIGAN (Essendon) — It is a pleasure to follow the member for Lowan on the Summary Offences Amendment (Upskirting) Bill. As the member for Lowan discussed, perhaps in more detail than was really necessary, the bill will create three new offences: the unauthorised observation of a person's intimate body parts; the unauthorised visual capturing, including recording, of a person's intimate body parts; and the unauthorised distribution of the visual image of a person's intimate body parts.

I am not quite sure whether we should be amazed at the imagination of people in respect of their using new technology or absolutely appalled about the behaviour that some people apparently think is appropriate. I have listened to quite a bit of the debate during the evening, and I did notice that a number of members also mentioned downblousing as part of their contribution and wanted to know why that was not included in this bill. There is actually quite a good reason for that, and I know it was discussed by the department in formulating this bill. Downblousing is very difficult to quantify and quite a different activity to upskirting, if I may put it like that. Obviously a person taking photographs up someone's skirt is really quite different from someone taking photos of women who may be dressed in various ways in various places.

I think part of the problem of trying to quantify downblousing is that, with fashions as they are, a great deal of the upper part of a woman's anatomy can be displayed quite openly. In fact a woman in that case could perhaps be seeking to have her photograph taken in certain circumstances, and trying to draw a line

between someone seeking publicity or wishing to have their photograph taken and someone not wishing to have their photograph taken is a very difficult legal line to draw. I understand that other jurisdictions that have legislation relating to upskirting have had a similar problem, so there is in fact very little legislation that relates to downblousing.

It is unfortunate that we have to bring in legislation like this, but it obviously is needed. Some men have raised the point about whether it relates to men as well as women. Of course it does, but the only complaints that we are aware of, the only ones that have been identified in the media, relate to women. It is quite extraordinary that you cannot stand on a tram on your way home from work without someone abusing you in the way that people who might be charged with upskirting do. It is a serious infringement of people's privacy and a quite alarming situation, particularly when you think of young people catching public transport and people appearing in public places. While in some ways this seems quite strange legislation, and I understand that civil libertarians may see it as rather unfortunate legislation, I think those cases show that it is necessary, that there is a problem in the community and that people are feeling violated by the behaviour of others.

I was quite appalled yesterday when I looked up the term 'upskirting' to see how many photographs are advertised on the Net. I am not quite sure what action governments may wish to take about that in the future. I did not bother to open any of the pages, but there were certainly pages and pages of photographs and other documents relating to upskirting. I think probably for many of us in this chamber, as other members have said earlier, our knowledge of upskirting is greater now than it was six months ago. Certainly the prevalence of such photographs on the internet, together with a whole lot of other inappropriate photography on the Net, is a considerable concern and one that we might have to consider again in the future.

In the meantime, however, this bill is a good first step. The penalties are very severe, and hopefully that will have an effect in ensuring that people understand that such behaviour is not appropriate in our community.

Ms BEATTIE (Yuroke) — In a perfect world we would not have to have this legislation. However, the world is not perfect, so this legislation has come into the house, and I am pleased to say it is broadly supported by all parties in the house and even by the Independent member. It would seem that the offence of upskirting is not a new offence but is indeed an old offence. For many years we have had peeping Toms and perverts who have also looked at women's bodies, but this adds the new dimension of photographing them. I suppose the new technologies of the world in which we live now mean that almost instantly a photograph is taken it can be streamed all around the world in an unauthorised fashion.

Technology moves faster than legislation. Recently my husband had to replace his mobile phone. I will say that he has not kept up with the latest technology, but he found it impossible to buy a phone without a camera. So whether people want a camera or not, they are almost forced to buy a phone with a camera. As we now understand, from researching this legislation, there are people who use mobile telephones for nefarious purposes. It came to light at the Australian Open this year when there were people going around using the cameras on their phones to take photographs. I would have thought people who were so inclined could find alternatives to this foolish and illegal behaviour, and yet that was not so.

The bill really proposes three new offences. They are the unauthorised observation of a person's intimate body parts; the unauthorised visual capturing, including the recording, of a person's intimate body parts; and the unauthorised distribution of a visual image of a person's intimate body parts. The bill is good. As I say, it has been introduced as a result of those offences at the Australian Open. There were a couple of offences immediately after which seemed to indicate that this type of behaviour was spreading and becoming somewhat fashionable. We have certainly seen not only perverted behaviour but also very violent behaviour now being filmed on cameras and posted on various websites like YouTube.

However, it is not fun and it is not just a lark on the spur of the moment at the tennis. It can be extremely distressing for any person, regardless of their sex, to have their body parts photographed when they have not given authorisation to it. There were agencies consulted, including the Victoria Police, the Office of Public Prosecutions and, of course, the privacy commissioner, in the preparation of the bill.

The bill has been considered at a national level. A working party was established by the Standing Committee of Attorneys-General. All the jurisdictions agreed that this type of behaviour should be prohibited, but there was no support for a single national offence — which would have been my preferred model. Each jurisdiction considered that its current laws are adequate, and they have indicated that they propose to implement appropriate laws. In closing I am pleased to note that this is a great first step, and I hope this really stops this kind of perverted behaviour.

Mr CARLI (Brunswick) — About three years ago my local swimming pool banned mobile phones from the change rooms because of the ubiquitous cameras that are on everyone's phones. Basically it did so to protect people's privacy. What we are starting to see with the number of cameras, the amount of video equipment and other equipment incorporating cameras, the size of a lot of this equipment and the way it easily connects to the internet — and once you have an image on the internet it can be reproduced and made available to millions of people — is that there is a need to protect people's privacy.

This bill, which is particularly aimed at the issue of upskirting, is part of a strategy to increase the protection of people's civil rights and civil liberties, and in particular that of privacy. Recently in Japan manufacturers of mobile phones with cameras have incorporated a sound when a photo is taken to address this problem of people taking photos of others in inappropriate situations. At the very least if there is a sound you are aware that a photo is being taken. This legislation is in response to the need to protect privacy, which is a very basic civil liberty.

While the bill does engage other rights, it does primarily balance those rights. It is a very good balance that gives primacy to the issue of protecting people's rights. We also had the very public incident at the Australian Open Tennis Championships earlier this year where someone took a video upskirting the private, intimate parts of women and made the images available on the internet. Once they are on the internet, the images are available to everyone and can be distributed widely.

A number of speakers today said 'What about the issue of secondary distribution? It is an offence to distribute, send, supply or transmit images. What about somebody who takes those images and transmits them?', but you cannot control the internet. Once an image is on the internet, it cannot be controlled; it is available, so it is really important that the offence is seen to be occurring at the point of making the visual image and distributing it by sending, supplying or transmitting a visual image of an intimate body part of a person without their consent. Once it is on the internet, once it has been streamed or is available as a joint photographic experts group file or in another form, it is unstoppable, and there is no way you can then control its movement.

The bill makes it an offence to use an aid or device, and that includes a mirror or drilling a hole in a wall, to deliberately observe another person's genital or anal region — that is, the intimate body parts. It protects against this happening in a situation in which a reasonable person does not expect to be observed. Essentially it protects people's privacy at moments where they would not expect to be observed. That is a very important distinction.

There was an example recently where Segolene Royal, who was the Socialist candidate in the French election, had her image captured while she was wearing a bikini on a beach; she attempted to sue the newspaper. This offence does not apply to a person who is on the beach in a bikini because they could expect to be photographed, particularly if they are relatively famous. However, it does apply to the changing room. It applies to a situation where a camera is positioned on a person's shoe so that they can upskirt and take an image of a woman's intimate body parts. That is one of the techniques that is used.

It is also important that this legislation protects the visual image of a child. Again, it uses a reasonable test so that a visual image of a naked child with exposed intimate body parts cannot be distributed in circumstances where a reasonable person would regard that distribution as unacceptable. A person can distribute a picture of their child naked on a sheepskin rug to their family. A reasonable person would accept that that is not an infringement of the child's privacy. It is very important to note that we are dealing here with situations that a reasonable person would not regard as acceptable. It is a very important test, it is a legal test, and it is a test that can be decided in court.

This is important legislation, which, as I said, really applies to new circumstances and new technologies, particularly the explosion of communication technology. The member for Essendon has already noted that if you go onto the internet and type the word 'upskirting' into Google you will find any number of images available. As I said earlier, you cannot stop the multiplication or distribution of those images, other than by restricting a person from filming and transmitting them — and that is the point at which we can act.

That is the point that this amendment to the Summary Offences Act deals with. It is the only part that is reasonable. We can deal with the nature of modern communication technology, but we cannot intervene and protect people's privacy at all stages on the internet. We have to act where it is appropriate, and this bill does that very effectively. It sets very strong restrictions on the observation and video capturing of a person and the broadcasting or datacasting of that image. That is the point where it can be effective, and that is what the bill does.

This is a bill, which, as I said, protects the privacy of individuals in reasonable circumstances. It is a balanced piece of legislation. It is a piece of legislation which engages a number of civil rights in a very useful way and is a reasonable and proportionate balance of people's rights. I support the bill very much.

Mr HULLS (Attorney-General) — I thank all members who contributed to this debate. I am very pleased that this bill has received the support of those opposite. The bill makes it absolutely clear that not only is upskirting behaviour unacceptable but indeed it is against the law. This government is certainly committed to modernising the criminal law, and this piece of legislation is certainly a very good example of that.

I will be pleased to try and address some of the issues that have been raised, in particular by those opposite, during the debate. One of the issues that was raised was the issue of downblousing. I would like to point out to the house that the laws in other Australian jurisdictions dealing specifically with upskirting do not include provisions in relation to downblousing, and that includes the Queensland offences that have been widely mentioned in this debate. Views expressed by the Standing Committee of Attorneys-General officers who were considering this issue from a national perspective were united in the view that downblousing should not be included in this legislation. I might add that gaining a national perspective on law reform by raising important issues like this at SCAG is invaluable. There are many debates that take place at SCAG about national law reform.

In Victoria we strive to harmonise laws across the country where possible and where appropriate, and I make no apologies for that. The view of the SCAG officers — and I agree — was that the inclusion of downblousing would risk unreasonably limiting ordinary behaviour, such as media photographs at public events. I think we would all agree that laws do need to be practical and carefully drafted to ensure that there are no unintended consequences. I want to make it clear that there are already a number of offences which cover both upskirting and downblousing-type behaviour. They include offences already successfully used in prosecutions, such as stalking, using an optical device without consent and indecent behaviour.

Some concerns have been raised about an exception contained in the legislation in relation to the distribution offence, which is not included in the observation and visual-capturing offence. The exception is contained in new section 41D(2)(b)(iii), which provides that the distribution offence does not apply to the distribution of an image if in the particular circumstances a reasonable person would regard the distribution of the image as acceptable. The example in the legislation is that emailing an image of a naked newborn relative to a family member or friend may not be an offence. The observation and visual capturing offences do not require this exception, because the elements of the offences themselves ensure that they do not apply to the reasonable observation or visual capturing of persons, including a family photograph.

There are different elements in the three offences, and I suggest the opposition carefully looks at the offences in the legislation. Observation and visual capturing may occur in public without consent where it is reasonable in the circumstances. This is made clear in new sections 41A and 41B. However, the distribution of an image may not occur unless consent is obtained. This consent, as the shadow Attorney-General ought to know, may be implied or express. Accordingly, in contrast to the other two offence provisions, reasonableness is not an element of the distribution offence. The exception then recognises that a person may not be able, for example, to obtain the consent of a child to distribute a photo, and therefore provides an exception where a reasonable person would regard the distribution of the photo as acceptable.

Concerns were also raised that those who unintentionally engage in upskirting behaviour — for example, in taking photos of a busy street — may be committing an offence. The bill and explanatory memorandum, however, make it clear that these offences only apply to intentional behaviour rather than accidental or incidental behaviour.

The shadow Attorney-General also raised the issue of peepholes. I would refer him to new section 41A of the legislation, which says:

> A person must not, with the aid of a device, intentionally observe another person's genital or anal region in circumstances in which it would be reasonable for that other person to expect that his or her genital or anal region could not be observed.

The bill would cover the use of a drill, for instance, to make a peephole to observe a person in a shower. This bill is intended to specifically deal with upskirting behaviour involving the use of aids and technology. Looking through a peephole is already covered by existing offences such as indecent behaviour.

I would like to address one final point in relation to the issue of peepholes which was raised by the shadow Attorney-General. There are laws in relation to aiding and abetting an offence, which would be relevant to the

situation described, where one person creates a peephole for the purpose of a second person using it.

The other issue that was raised that I will just touch on briefly was secondary distribution. Any attempt to legislate with respect to the distribution by a person who receives an image which they have not taken, risks encroaching on the national classification scheme, which is a cooperative arrangement between the states, territories and the commonwealth. The scheme covers the media, arts or entertainment industries where intimate images can be legally redistributed countless times. I might add that it would be virtually impossible to accurately track secondary distribution and attribute criminal culpability to it.

I just want to conclude on one of the matters that was touched on by the shadow Attorney-General in quite an extraordinary way, I would have to say. I will be very mellow in my comments.

Mr Mulder — You can't keep this up!

Mr HULLS — Give me another week! The issue was in relation to judicial appointments. The shadow Attorney-General raised an interesting issue in relation to appointments that were announced yesterday. He raised the issue of me as Attorney-General confusing a Supreme Court appointment with a federal member of Parliament.

Mr Clark interjected.

Mr HULLS — He has just interjected and said I cannot get the names right between John Forrest, the federal MP, and Jack Forrest, the judge. The fact is, tragically, the shadow Attorney-General has not done his homework. The name of the judge who was appointed is actually John Herbert Lytton Forrest — and he is commonly known as Jack. Can I say he will be a great Supreme Court judge.

If you read *Hansard* you will find that at the time when I was in the shadow Attorney-General's position, many appointments were made by the then Attorney-General, Jan Wade. I made a point of not criticising judicial appointments, because the fact is that processes are followed. I expect that Jan Wade at that time took the view that she was appointing the best and the brightest. I go through a very extensive process that involves consultation with the heads of each jurisdiction.

For the shadow Attorney-General to criticise judicial appointments without having the guts to name the people who he deems to be inappropriate actually calls into question the entire judiciary in this state. This government and I are proud that some 50 per cent — —

Mr O'Brien interjected.

The ACTING SPEAKER (Ms Green) — Order! The member for Malvern is interjecting out of his place and he knows better.

Mr HULLS — Some 50 per cent of the appointments that this government has made to the County Court and Magistrates Courts have been women. Why? It is because we want to appoint the best and brightest. We kid ourselves if we think that the best and brightest are white Anglo-Saxon males from private schools — of which I am one!

Mr Baillieu interjected.

The ACTING SPEAKER (Ms Green) — Order! The Leader of the Opposition is interjecting out of his place and he should know better.

Mr HULLS — We will continue to appoint the best and brightest. I have to say that I find it an absolute disgrace that the shadow Attorney-General uses this place to criticise the judiciary. He can point the finger all he likes, but the fact is that he is criticising the entire judiciary in this state. I will continue to consult widely.

I know that the member for Kew has expressed an interest in going to the bench; I will consult very widely about his capabilities and abilities in relation to that matter. Some people say he would be an excellent County Court judge; others say he would be an excellent magistrate; and others say he would not be a bad tipstaff. We will continue to consult very widely in relation to judicial appointments.

Mr Mulder interjected.

Mr HULLS — No, not yet. In conclusion, this is a very important piece of legislation. I gladly support it, but I will continue to defend the independence of the judiciary in this place.

Mr Ryan — As will we all.

Mr HULLS — I am very pleased to hear the Leader of The Nationals say that. But when the shadow Attorney-General comes in here and — —

An honourable member — Casts aspersions.

Mr HULLS — When he casts aspersions in relation to the entire judiciary, I believe it is incumbent upon me to come into this chamber and defend what I believe is a fantastic judiciary in this state. It is certainly the best in the nation. I think the shadow Attorney-General ought to take the opportunity to apologise for his

remarks. Having said that, I wish this bill a speedy passage.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

STANDING ORDERS COMMITTEES

Joint meeting

The SPEAKER — Order! I have received the following message from the Legislative Council:

> The Legislative Council requests that the Legislative Assembly agree to a joint meeting of the standing orders committees to report on an agreed set of words to be contained in communications between the houses.

Mr BATCHELOR (Minister for Community Development) — In giving consideration to this message from the Legislative Council, I move:

> That the Legislative Assembly notes the message from the Legislative Council and requests the Speaker to seek a joint meeting of the standing orders committees to discuss the language of messages between the two houses.

In moving this motion I think it is a very appropriate response to a suitably phrased resolution coming from the Legislative Council. In essence, we are acknowledging and noting its resolution and asking for and seeking an action — that is, asking you, Speaker, to seek a joint meeting of those standing orders committees to discuss the issues that are at the forefront of consideration by the Legislative Council.

In doing that it must be remembered that it is the prerogative of each chamber as to how it deals with its standing orders and its customs and practices. That is why we have two different sets of standing orders to control and administer the operations of each separate house. But we have had a simple and straightforward request from the Legislative Council, and I think it is appropriate that we respond in the fashion that I have set out in the motion. I would be seeking support, both in spirit and in contributions, here tonight.

Mr O'BRIEN (Malvern) — The genesis of this matter is that an entirely proper request came from the Legislative Council to the Legislative Assembly seeking the leave of the Assembly — it was not a demand; it was seeking the leave of the Assembly — to allow ministers and a former minister of this government to appear before the upper house inquiry into gaming licences.

This inquiry had very important matters to investigate, and it continues to have very important matters to investigate, for which the attendance of ministers of this Labor government is necessary. The former Premier may well find himself turning up there now that he is no longer the member for Williamstown, and we look forward to what contribution he might be able to make to get to the bottom of some of these dealings.

But there are other ministers who have questions to answer. The then Treasurer, the now Premier, has a number of questions to answer about his conduct in relation to these gaming licences. Both the former Minister for Gaming and his predecessor are also people who have a lot of knowledge about this process to date, which has been comprehensively bungled and needs to be investigated, and is properly being investigated by the Legislative Council. This is a government which trumpeted the democratic reforms to the Legislative Council.

The SPEAKER — Order! The motion before the house is quite narrow — that is, it is on the message from the Legislative Council requesting the Speaker to seek a joint meeting of the standing orders committee. While I will allow some background and some latitude, there is a limit to how wide this debate can be.

Mr O'BRIEN — Thank you, Speaker. I appreciate that. This background that I am providing places into context the request which has come from the Legislative Council to this chamber, which has been the thing which has led to this request coming through. This is a government which trumpeted the democratic reforms to the Legislative Council, but as soon as the Legislative Council sets up an inquiry that it does not like with terms of reference that it does not like and places a request to get evidence from ministers of this government, that it does not like — what happens?

Did the Attorney-General on behalf of the government move a response which was temperate and reasoned and which actually dealt with the substance of the request? Of course not! This Attorney-General, now the Deputy Premier — the man who tells us that he is soft and cuddly — came up with a response to this polite request from the Legislative Council which turned into an intemperate, rude and hectoring reply that did him, this government and this chamber no credit whatsoever. From time to time there will be disputes between the houses — that is part and parcel of the nature of politics

in this state — but for democracy to work there must be some basic level of respect between the houses.

Mr Hodgett interjected.

The SPEAKER — Order! I ask the member for Kilsyth to stop interjecting in that manner!

Mr O'BRIEN — For democracy to work there must be some basic level of respect between the houses, and each house must accept the other as being democratically elected. Turning a response to an entirely legitimate request from the upper house into an intemperate, rude and hectoring reply, as this Attorney-General did, and denying the legitimacy of a perfectly proper request from the Legislative Council asking ministers of this government at the time to appear before a duly constituted inquiry, is the problem which has led to this request coming through. If we actually look at the text of the message — inspired by this Attorney-General — that this house sent back to the Legislative Council, we see that it says:

> That this house refuses to consent to the … request for ministers and a member to appear before the Legislative Council Select Committee on Gaming Licensing …

So far, so good! The Attorney-General should have just stopped right there, but he could not help himself. He had to go on. Inspired by the Attorney-General, the house adopted the motion. The motion moved in the other house said that the Council regarded the language of this Assembly as 'intemperate' and:

> … contrary to the long-established principles of the Westminster system of responsible government …

Mr Hulls interjected.

The SPEAKER — Order!

Mr O'BRIEN — I would not generally accept an interjection from the Attorney-General, but he shows once again he is — —

The SPEAKER — Order! The member knows that interjections are disorderly and that responding to interjections is equally disorderly.

Honourable members interjecting.

Mr O'BRIEN — The nature of the request from the Legislative Council was entirely proper at the time it was made. The motion moved by the Attorney-General was supported only by Labor members of this house. The opposition certainly did not support his response, and The Nationals and the Independent member of the Assembly did not support the response. This was a government response, designed to try and protect government ministers who have got a lot to hide. The first day of hearing of this inquiry demonstrated just how much the government has to hide.

Mr Hulls — On a point of order, Speaker, this is a very narrow motion that is being debated. For the member to be now going into evidence that may or may not have been given before an upper house inquiry and casting aspersions on the evidence that has been given before that inquiry is way outside the terms of this motion. I ask you to bring him back to the very narrow terms of the motion.

Mr McIntosh — On the point of order, Speaker, I have been listening to the member for Malvern's contribution almost entirely in silence, but the most important thing is that the member for Malvern is entitled to put this motion in context. It is a motion of the house. There is some half an hour allocated to the lead speaker for the opposition, and he is entitled to put this motion in context. That is what he is doing, and indeed everything he is doing is certainly within the order of this house.

The SPEAKER — Order! As I stated earlier to the member for Malvern, this is a fairly narrow debate. I will allow some latitude for background and context, but I am inclined to agree with the Deputy Premier that to go into evidence given before the inquiry is a little wide of the mark.

Mr O'BRIEN — The nature of the actual language that was used by the Attorney-General in replying to the entirely proper request of the Legislative Council is this:

> … the Legislative Assembly has refused to consent to the request for ministers and a member to appear before the Legislative Council Select Committee on Gaming Licensing and notes that the request represents interference in the operation of the Legislative Assembly and its members and undermines the traditional Westminster principles that underpin our parliamentary democracy.

Mr Andrews — On a point of order, Speaker, I simply seek your guidance. It is my understanding that we had a debate in relation to the principal request made by the Legislative Council. The house determined — it was the will of the house — that a message be sent back. We are now having a debate about whether we have a meeting of the committees on standing orders for both houses. To simply repeat the subject matter of the original debate, which went for hours, is surely not in order in light of the narrow focus of this debate, and I would ask you to draw the member back to the subject of this debate — whether a message ought to be agreed to and whether a meeting of the

standing orders committees of both chambers ought to be held.

Mr O'BRIEN — On the point of order, Speaker, if anything is relevant to this debate, surely it is the language in the message that this Assembly sent to the Legislative Council which has presaged this exact reply. There can be nothing which is more relevant, with respect.

The SPEAKER — Order! The motion before the house is:

> That the Legislative Assembly notes the message from the Legislative Council and requests the Speaker to seek a joint meeting of the standing orders committees to discuss the language of messages between the two houses.

An honourable member interjected.

The SPEAKER — Order! Yes, I have read the motion, and I am glad we all agree with the motion! I have already ruled that I will allow some latitude with what can be discussed by the member for Malvern. I do not uphold the point of order from the Minister for Health, but I advise the member for Malvern that this is a narrow debate and I will only allow a certain degree of latitude.

Mr Burgess — Why are they so scared?

The SPEAKER — Order! I do not need the assistance of the member for Hastings.

Mr O'BRIEN — Members opposite seem to be particularly sensitive about reading out the very language which they utilised in their motion to send back to the Legislative Council. As I was saying, if the message simply noted that the Assembly did not agree to the request, that would be one thing, and it would not be something which would be subject to any sort of reaction from the other place. But to go on and say that 'this request represents interference in the operation of the Legislative Assembly and its members and that it undermines the traditional Westminster principles that underpin our parliamentary democracy' is just absurd. What about the principle of the executive being accountable to the Parliament?

The SPEAKER — Order! This is where we stray into being fairly wide of the mark.

Mr O'BRIEN — The message sent from this house to the other place refers to undermining traditional Westminster principles that underpin our parliamentary democracy. That is the sort of thing which is a relevant consideration — —

The SPEAKER — Order! We are now debating whether we should have a joint meeting of the standing orders committees to discuss the language of messages between the houses.

Mr O'BRIEN — Thank you, Speaker. On that point, what I am saying is that we should have a meeting to discuss it because the language which is being used by this chamber and by this government is intemperate, is not proper, is disrespectful of the democracy that led to the election of the upper house and is disrespectful of an entirely proper request to grant leave that ministers of this house appear before the upper house inquiry.

What I say on this particular motion is that we will support it, but the reason why this motion needs to be brought before the house is that we have a government which does not respect the other place, does not respect parliamentary democracy and does not respect accountability.

Mr RYAN (Leader of The Nationals) — The motion before the house is a very important one as it goes to some of the fundamental aspects of why we are here as members, both in this chamber and in the other place. In support of the motion, I would have thought that a joint meeting of the standing orders committees of the two houses would be something not to be missed.

Mr Andrews — We ought to sell tickets to that.

Mr RYAN — That would be something, as the minister says, to which we could well sell tickets because that would be a riveting experience, I am sure, for all present. I am most anxious that those who have to go to it should go; I will be busy that day, whenever it happens.

An honourable member interjected.

Mr RYAN — The member has to go. The motion speaks to the language of messages, and that is why the actual language of the message becomes important.

There are three elements that I think are objectionable in the language of the message which was sent across to the other house. The first is that the request from the Council represented interference. That is patently objectionable, because the Council is perfectly entitled to make a request — as it did. That is entirely in keeping with the democratic principles that bring us all here. Far be it from us that we should ever be in a position where such principles are emasculated by the government of the day, be it this government or otherwise. That is the first element that is reflected in this message.

The second element is the reference to the operation of the Legislative Assembly and its members. Again, that is clearly an aspersion cast, because the members of the Assembly had a debate that day — it was a very active debate on the part of all the participants — and in the end a determination was made by the government, in effect on the numbers, resulting in a situation which was against the interests of democracy, many would say. But by the same token, the language of the message is also very important.

The third thing is this priceless reference to undermining traditional Westminster principles. That is language of the message in circumstances where we are elected members of a Parliament which is part of the Westminster system, which has enjoyed literally hundreds of years of operation, yet all of a sudden we conveyed a message which asserts that what had been undertaken was somehow against the basic principles of the Westminster system. That was patently objectionable.

The position was that we were almost faced with the inevitability of a ping pong game, with messages coming back and forth between the two houses interminably. This has arisen because the very worst of this government's nightmares happened when it lost control of the upper house at the last election. 'Be careful what you wish for' is the real message out of this motion which talks about messages.

What is causing the grief here is that a government that thought it could never get done, got done in the upper house on the numbers. Now, at 5 minutes to midnight, to avoid the horrible embarrassment of all of this, we have a proposition advanced which The Nationals are prepared to support because forever we are the benchmark of common sense in this and the other place. We believe this at least offers a mechanism to bring about a solution to this issue. We believe there is at least the opportunity to bring this otherwise protracted process to a conclusion, and to do so in a way which does justice to all concerned. So it is that we have determined we will support the motion before the house.

Mr ANDREWS (Minister for Health) — Because this is a minor matter, can I say very briefly that the Legislative Council sent a request to this chamber. This chamber had a long and fulsome debate, a spirited debate indeed, about whether the request for a number of members, including me, to attend should be agreed to — that is, whether we should be given leave to attend the Select Committee on Gaming Licensing, otherwise known as a rank political witch-hunt. After a fulsome debate — —

Mr O'Brien — On a point of order, Speaker, given the minister's concern about this debate straying into matters of evidence or other matters relating to the content of this particular inquiry, surely the minister should be brought back to the question before the house.

The SPEAKER — Order! I will afford the minister the same latitude that I have afforded other members. The minister to continue, acknowledging that this is a narrow debate and I have allowed some latitude to other speakers.

Mr ANDREWS — Thank you, Speaker, I appreciate your guidance. As I was saying, the Legislative Council requested the presence of certain members. The Legislative Assembly had a fulsome, spirited debate and it was the will of this house that leave not be given to those members as named in the original request to appear before the witch-hunt or select committee, whatever we want to call it.

The Legislative Council has taken grave offence at the will of this house, as expressed in a message sent to it following a fulsome debate in this place. In light of the grave offence they have taken at the language used in that message, we are debating whether we ought to have a joint meeting of the Standing Orders Committee of the Legislative Council and the Standing Orders Committee of the Legislative Assembly. Notwithstanding the fact that it may not be the most riveting hour or two spent in the course of parliamentary business, what is wrong with simply agreeing to that? That is the motion put before this place tonight by the Leader of the House. It is a perfectly legitimate thing to do. Let us get on and have that meeting.

Mr O'Brien interjected.

Mr ANDREWS — In the interests of causing himself no further embarrassment, the member for Malvern ought to be quiet. You have not had a good night — —

Honourable members interjecting.

The SPEAKER — Order! I will not have that behaviour across the table. I warn both the Minister for Health and the member for Malvern that I will not tolerate that behaviour. I ask for some quieter interjections from the members for Kilsyth, Ferntree Gully and Warrandyte. I remind the member for Ferntree Gully that he is out of his place.

Mr ANDREWS — I will simply conclude by saying that this is a sensible motion. Let us get the two

standing orders committees — one from the Council and one from the Assembly — together. They can have a long and fulsome discussion about the language that ought and perhaps ought not be used in messages. It is with great pleasure that I support the sensible motion moved by the Leader of the House.

Mr INGRAM (Gippsland East) — Like other members I stand to support the motion before the house. It is interesting to note the level of spirit that we have in some of these debates on fairly narrow questions. I think it is important that we get right the language of messages between the houses, and the motion before the house is to send this matter to a joint sitting of the standing orders committees. I think that is the best way of dealing with it, and then we can get on with the business of this place.

Mr STENSHOLT (Burwood) — I just want to briefly underline the very sensible motion that the Leader of the House has put forward. This is very much common sense and very temperate. It is in response to a request for the meeting of the joint standing orders committees to discuss the language of messages between houses. As we have heard from some other speakers — not all the speakers of course, and in fact we heard — —

Honourable members interjecting.

The SPEAKER — Order! The member for Kew should show more respect to a fellow member of the house who has been given the call.

Mr STENSHOLT — Thank you, Speaker. Not all the speakers were the same. The approach of the member for Malvern was, to use his words, quite intemperate, rude and hectoring. Of course he comprehensively bungled his attempt to deal with this motion — I am actually using his words.

This is a very sensible motion coming before the house, one which represents very much an adult approach to this issue. I look forward to a very sensible meeting. I will not be there, and neither will the Leader of The Nationals, but I am sure the committees will be able to come up with a sensible proposal for language for messages between the houses.

Mr BATCHELOR (Minister for Community Development) — In summing up the debate here Speaker, so that we can move on to the Parliamentary Salaries and Superannuation Amendment Bill — —

Honourable members interjecting.

Mr BATCHELOR — Unless I misheard those who made a contribution to this debate, the motion that I have moved tonight is going to receive the support of the government, The Nationals, the Liberal Party and our Independent member. So we are in unanimous agreement that this is a good motion that ought to be passed. I thank the members of this chamber for that support. It is simply a procedural motion that agrees to the nature of the request from the Legislative Council and puts in place a process. But as I said in my introductory remarks, it is the entitlement of each house to determine the way it conducts is own business, and it does that through the standing orders which are in place, and the sessional orders that may or may not be in place, to support it.

Speaker, we are entitled to conduct our own business here, and it is appropriate, if we have a view, that we are able to express that. If that is not the view of the other chamber, I am happy to organise via this motion an opportunity for the two standing orders committees to meet and discuss matters, but it is in the context of the independence of each chamber. I commend the motion to the house.

Motion agreed to.

PARLIAMENTARY SALARIES AND SUPERANNUATION AMENDMENT BILL

Second reading

Debate resumed from 19 July; motion of Mr BRACKS (then Premier).

Mr WELLS (Scoresby) — I rise to join the debate on the Parliamentary Salaries and Superannuation Amendment Bill 2007. The purpose of this bill is to ensure that, effective as of 1 July, members of Parliament receive a pay increase of 3.25 per cent. This latest amendment will provide MPs with a pay increase in line with the government's public sector wage policy. It is always difficult to understand where the government is coming from on pay increases across the public sector. Sometimes the increase is 3.25 per cent and at other times the government builds in a productivity factor, so we are not sure what the pay policy actually is.

From the outset I indicate that the Liberal Party will be supporting this piece of legislation. We recognise that the amendment provides for an increase in MPs pay in line with community expectations. MPs pay is adjudicated by an independent arbitrator, the commonwealth Remuneration Tribunal, which fixes the

pay and conditions of federal MPs. The Victorian system is tagged onto that and has a mechanism which I will speak to in a moment.

As members of Parliament we are trusted to bring into this place laws which are fair. In dealing with our own conditions and pay we have to be seen not to breach that trust. It is, of course, difficult to argue against that. The amendment will mean that the legislated gap between the base salary of a member of the federal Parliament and a member of this Parliament will change from the existing $1442 to $5733. This will be the second time that that gap has been amended from the long-held historical gap, which was $500. The first amendment, which created the gap of $1442, was made in August 2004, effective from 1 July 2004. At that time the rise in salaries of Victorian MPs was restricted to 3 per cent. The Premier stated that the amended gap was in accordance with community expectations and the government's wage policy and was necessary to maintain a viable economic future for the whole Victorian community.

It is interesting to compare the pay of MPs in Victoria with that of those in other states. The commonwealth parliamentary library website has a very interesting comparison. As of 1 July 2007, after the adjustment following the amendment made by this bill, Victorian MPs will receive a base salary lower than that of MPs in Queensland, New South Wales, South Australia and the Northern Territory. Victorian MPs will receive 4.4 per cent less than Queensland MPs, who are the highest paid of any state MPs, and 4.1 per cent less than New South Wales MPs. Western Australian MPs will receive 2.4 per cent less than the new Victorian pay rates, while Tasmanians MPs will receive 16.5 per cent less than Victorian MPs.

I guess the significance of this adjustment to the wages and conditions of MPs comes back to the arrangements that the government entered into with the Police Association Victoria. It is interesting to see how that unfolded during the election campaign and since then. There was an understanding in the community that the police union was going to achieve a 4 per cent pay increase. Of course we heard the Premier saying on the radio just recently that the government will not be increasing the pay offer to the police union and that the offer will remain at 3.25 per cent. However, we will see what happens when it comes to productivity savings and offsets; that is something we will be very keen to watch. We understand that the government, with its wage policy of a 3.25 per cent increase, is very keen that that be maintained so that there is not a wage rise outbreak across the public sector.

The Liberal Party is also hopeful that the government might maintain fiscal responsibility in some other areas. We have had financial restraints blow out in a number of areas — for example, the government's $4.2 billion blow-outs in project costs, including more than $800 million on the fast rail project, and a massive projected increase in public sector debt to $15.3 billion. As I said at the outset, the Liberal Party is supportive of this bill, but it hopes the government does maintain fiscal responsibility in many more areas and not just in the area covered by this particular bill.

Mr RYAN (Leader of The Nationals) — It is my pleasure to join the debate on the Parliamentary Salaries and Superannuation Amendment Bill. It is ironic that this was the final piece of legislation moved in this place by the former Premier shortly before he walked out the door and left the rest of us to it. Nevertheless here we are debating it.

The Nationals do not oppose the legislation. I put that position on the basis that, in a sense, while the government is attempting to be responsive to community expectations, there are layers within the approach it is taking that do deserve some commentary. Of course the all-prevailing thought which is driving the government in this area is, in essence, its negotiations with the union movement with regard to what might be the increases in salary structures in Victoria. So it is that we have this benchmark of a 3.25 per cent increase that has been set out.

The government is trying to marry up the position in relation to the salaries of members of Parliament so that it can talk to its friends or colleagues, as you like, in the union movement in a manner which will not cause any division. Of course if it were different, and the increase were accepted independently of parliamentarians in the manner which has been recommended, the Victorian government would find itself being beaten with a very big stick, because the union movement, to which it has considerable allegiance, would be making the obvious point that what is good for the goose should be good for the gander. This is a political move on behalf of the government to accommodate what it would otherwise see as a grave concern if it were to do otherwise.

The other issue that I think is pertinent to mention in this debate is that in many senses the whole argument from the perspective of those who are members of Parliament is completely unwinnable. As I have said on radio and as I have said in public forums, I could offer to pay to the Treasury the amount of money — whatever it is — that I receive for doing the job that I do, and people would still ring up on talkback radio and say that I should pay more. That is just the nature of

things. You cannot conceivably ever have a system which satisfies the concerns that people in the community have about this issue. It is just insoluble in a populist sense, if you like.

It is a pity in a sense that the legislation is here, because the system that we have does in fact completely remove the capacity of parliamentarians to directly influence the outcome which is reflected in the recommendations that are made. True it is that parliamentarians, like anybody else, can make a submission to the tribunal which ultimately makes its recommendations, but in the final analysis the system as we have it does in fact deliver what people crave — that is, a means whereby parliamentarians are removed from influencing the notion in the first instance of the amount of salary which they should receive.

Nevertheless, and despite the independence of that process, we have this legislation before the house, which is in effect not overturning but certainly diluting the recommendations that have been made and have otherwise been accepted in full from the perspective of the federal government in an election year. That process, having been removed from the direct influence of the Parliament, is therefore accepted. It would have been interesting to see what the government of Victoria would have done if the recommendation of the relevant committee had been to have an increase of 2 per cent. Would we have had the Victorian Labor government moving a bill here in the house to the effect that we do not accept the recommendations of that committee and that the salary should be increased by another 1.25 per cent to bring it up to the same 3.25 per cent? I suspect the answer to that rhetorical question is no.

For all of that, members of The Nationals are very sanguine about this. We accept that certainly from our point of view anybody coming to this place to do what we do is doing it for a variety of reasons other than the remuneration it attracts. Accordingly we do not oppose the legislation.

Mr DONNELLAN (Narre Warren North) — It is an honour to speak on the Parliamentary Salaries and Superannuation Amendment Bill 2007. The purpose of the bill sends a good signal to the community and our public servants and shows them that, if we are asking them to accept 3.25 per cent, then we are prepared to do likewise. We are public servants in just the same way as the public servants we employ in Treasury and the like. This is based on a very reasonable assessment of the Reserve Bank of Australia that inflation will be about 2.5 per cent, and then we allow about a 0.75 per cent for service delivery improvements. At the end of the day we are saying that, if we want others to accept that, it is only appropriate that we do likewise. I understand the bill will be backdated to 1 July 2007.

The difference between our federal and state salaries will now approximate to about $5733. It is important that we continue to show restraint in these times, that we do not put any pressure on inflation, that we do not have wages bursting out and that we show a strong signal. The March 2007 quarter of public sector wages growth in Victoria is about 0.4 per cent, which is a very reasonable growth. For the year to March 2007, with some productivity improvements, it approximates to about 3.9 per cent. We are keeping it within the guidelines, and this continues to send the appropriate message to our public servants. This is sustainable, fair and affordable, and I hope it will be generally accepted in the public service as well. I commend the bill to the house.

Mr CLARK (Box Hill) — It is always invidious for anybody to be involved in making a decision about their own remuneration, and it is a problem that has vexed the Parliament for many years, going back to the time when the first debates took place about whether or not members of Parliament should be remunerated at all. At that time even that was a contentious question.

As I understand it, the thrust of the debates was that members of Parliament should have some remuneration to broaden the capacity of people from all walks of life to take on the role of a member of Parliament rather than practical eligibility being confined to those who had independent means and were able, therefore, to attend the Parliament without remuneration. At that time the proposal to provide for remuneration of members of Parliament was seen as pro-democratic and pro the broadening of representation. Nonetheless, in many respects members of Parliament are in a similar situation to board directors and others on executive bodies of entities involved in setting their own remuneration. In each of those contexts moves have evolved over time to put in place other mechanisms so that that conflict of interest is avoided.

The mechanism that has been in place in Victoria for some time, based on what has taken place at the commonwealth level, is for Victoria to parallel the decisions made by the commonwealth Remuneration Tribunal. That is fine as far as it goes, but the recommendation of that tribunal is now in conflict with the policy objectives that the government has adopted regarding public sector wages. The government has therefore understandably taken the view that it would be inconsistent with its public sector wages policy for this particular recommendation of the commonwealth tribunal to be implemented.

We have a clash of principle: on the one hand there should be an independent tribunal so that members of Parliament are not in the invidious position of determining their own remuneration, but on the other hand the government has the understandable desire to ensure consistency with its own wages policy. The opposition has decided to support this legislation because it would place the government in a very difficult situation were it not to do so. However, it needs to be recognised that although what is being adopted is the way forward, it is not an entirely satisfactory outcome, because it is contrary to the desirability of having some independent and external determination of remuneration and to the principle that members of Parliament should not take part in determining their own remuneration. Nonetheless, as I said, the reasons are on this occasion understandable, and that is why the opposition is supporting the bill.

Mr STENSHOLT (Burwood) — I rise to speak on the Parliamentary Salaries and Superannuation Amendment Bill. It has been a very subdued debate, but I am sure it is very dear to the heart of all members, even if the Leader of The Nationals is fairly sanguine about it.

Mr Robinson interjected.

Mr STENSHOLT — Yes, we will support this. The Minister for Gaming can relax. The member for Scoresby has said he is supporting it as well. I am happy to join with him, the member for Box Hill, the Leader of The Nationals and the member for Narre Warren North in supporting the bill. As has already been said, the purpose of the bill is to increase the base salary payable to members of the Parliament of Victoria by 3.25 per cent. It comes into effect on 1 July 2007.

There is a bit of trick to this. I am sure you, Acting Speaker, have had a look at the bill and have noticed that clause 4 is a reserve clause. This is because the federal Parliament can disallow this increase. I note that one party is a little bit on the outer, and it is probably aligned with the Liberal Party — that is, the Greens. The federal Greens leader, Bob Brown, is attempting to knock this pay increase off. He is the only one, so it is unlikely to be disallowed, but we have to make sure we can deal with that eventuality.

In order to give effect to the 3.25 per cent increase we have to change the difference between the base salary of federal members of Parliament and Victorian members of Parliament. As the member for Box Hill so rightly pointed out, Victorian parliamentary salaries are set by reference to federal parliamentary salaries, which are set by the federal Remuneration Tribunal. If you look at the tribunal's website, which I have, you will see that there have been a number of determinations recently. For example, determination no. 19 of 2005 set the current salary, which, of course, is minus $1442. It made a determination in May, which was no. 4 of 2007, that increased the base pay by 2.5 per cent, and very generously it followed it up with a determination on 20 June to increase it further by 4.2 per cent. This would round up the federal salary to $127 060.

In this regard, and as I have already mentioned, it is possible for this to be disallowed by the federal Parliament. You will be pleased to know, Acting Speaker, that in regard to the first increase of 2.5 per cent, the last day for disallowance by the House of Representatives has already passed; it was 21 June. However, it has not been passed by the Senate where the last date for the disallowance of the 2.5 per cent increase is 10 September. In respect of the 4.2 per cent increase which was tabled in the House of Representatives on 21 June, the last day for disallowance is 20 September. It has not been considered either by the Senate or by the House of Representatives because it was tabled in the Senate on the same day, but Senator Bob Brown notified a motion in the Senate to disapprove the 2.5 per cent on 21 June.

Clause 4 refers to a situation where the increase happens to be rejected by the federal Parliament, which would mean that there would be no salary increase. In that event clause 4 will reverse the proposed change to the definition of 'basic salary' in section 3 of the Parliamentary Salaries and Superannuation Act. Otherwise we would actually lose salary, because the basic salary for members of Parliament here would be $5733 less than the salary for a backbencher in the House of Representatives and in the Senate. I would not necessarily want to see us go backwards. That is why we have a fail-safe clause so that if the increase is rejected by the House of Representatives and/or the Senate, then this clause would be proclaimed and dealt with by the Governor in Council to make sure we go back to the current basic salary, which is less $1412.

We have made sure that we will not lose out if the increase is rejected by the House of Representatives and/or the Senate. My understanding is that this is unlikely to occur, but in terms of making sure that the legislation goes forward properly, we have to do this and put in the safety net provision.

The bill demonstrates the government's willingness to apply to itself the same standards that apply to the Victorian public sector workforce. As has already been mentioned, this is a matter of dealing with it in terms of basic inflation increases plus a measure for productivity

improvement. I am sure, Acting Speaker, you will be looking at it in terms of productivity increases. We are expected to have a productivity increase of 0.75 per cent, and I am sure the new computers — which were delivered to my office in Burwood today — will help that productivity increase.

I am sure the speed of the new computers will be much faster than the current ones, which happen to be as slow as a dead dog, I am afraid. I am hoping very much that the new computers will add to our productivity. I am sure the member for Box Hill will join me in looking to our improving productivity, not only as members of Parliament but throughout the whole of the Victorian economy.

Treasury papers from a couple of years ago said that given the socioeconomic profile and the age profile of the Victorian community we needed to improve productivity at least by 2 per cent or 3 per cent — probably 2.5 per cent — a year in order to ensure that the economy is sound and that we can provide the services we need in society, particularly when we have an ageing population where the number of people over 80 years is expected to double in a matter of just a few years.

As a nation we worry about the productivity lags which have occurred over the last 10 years. It is very much the objective of the Victorian government to make sure that we try to increase productivity in terms of skills, and this is the measure, in terms of both, through the whole of the public sector — and we acknowledge that. We want to make sure there is an element there which encourages productivity improvement and is being reflected particularly in the wage packages which are negotiated for the public sector, and we have included an element of that in our own package here which is being suggested in terms of an increase of 3.25 per cent.

The government benchmark for the public sector wage increases has already been mentioned — 2.5 per cent, reflecting Reserve Bank predictions. People will remember that in one of the most recent quarters inflation has been around about 0.1 per cent and is averaging a bit over 2 per cent at the moment. There obviously have been some influences recently — such as the drought; I know the price of lettuce is quite expensive at the moment at almost $5 for a lettuce, but hopefully it will go down in the near future.

We are seeking to provide some balance here. Under the current arrangements there is an entitlement. Interestingly this bill is retrospective to 1 July and because there is a legal entitlement for the Victorian MPs to do that, we need to pass this bill as soon as possible.

I commend the presiding officers because they have decided to implement the necessary administrative measures not to pass on the higher 6.82 per cent increase to Victorian MPs until the Victorian bill is enacted. That is very sensible decision.

This is a sensible bill. It is looking for fair, sustainable and affordable outcomes for this state. It reflects judicious fiscal management on behalf of the Victorian government, and sensible fiscal management has been the hallmark of the Bracks government, which we will continue. This bill will be another hallmark of that particular attitude of the government, and I am very pleased that the other parties are joining us in supporting this bill.

Mr HOWARD (Ballarat East) — The Parliamentary Salaries and Superannuation Amendment Bill is a bill that I clearly support, and I am pleased that other members of this house who have spoken ahead of me have also supported it. The bill sends the message that what is good for the goose is good for the gander.

Mr Dixon — You're the goose!

Mr HOWARD — I think the honourable goose for Nepean has just spoken, but I do not need to take up that interjection. The point is that while we know we are entitled under the federal Remuneration Tribunal decision to 6.85 per cent, we are expecting employees of this government to accept a lower amount and to show wage restraint in line with inflation, so it is appropriate that we do likewise. That will send a clear message that we are not prepared to take a higher wage increase than we are expecting of government employees.

The federal Remuneration Tribunal may have had sound reasons for finding that a 6.85 per cent pay increase was appropriate. However, as the year progresses we will be undertaking further enterprise bargaining agreement negotiations, and those will be based on recognising that the inflation rate is of the order of 2.5 per cent, and we are allowing 0.75 per cent on top of that for service improvements and so on, so 3.25 per cent is an appropriate level. In moving this way, we are sending a message to government employees that we are going to be doing the same as what we hope they will accept — that is, wage restraint.

The other message we are sending to other employees out there in the field is that they might think about doing likewise. Too often we see employees in the

private sector saying that they do not want their employees to receive more than other sectors.

Business interrupted pursuant to standing orders.

ADJOURNMENT

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

That the house do now adjourn.

Hospitals: Bass electorate

Mr K. SMITH (Bass) — I wish to raise a matter for the new Minister for Health. I ask him to provide a health service that is going to be of benefit to the people of Phillip Island and the Bass Coast area. The minister will be aware that I have for some time been asking for an upgrade of our Wonthaggi public hospital, Bass Coast Regional Health, yet nothing appears to be happening that is going to give the local people some relief or promote the prospect that, if they are taken to hospital, there will be doctors or specialists who can assist them in their treatment and recovery. It is a very busy hospital. Accidents and emergencies are up by 25 per cent and admissions are up by 10 per cent, and the accident and emergency section of Warley Hospital on Phillip Island is closed. There is a crisis down there.

One of my constituents, Mrs Michelle Peters, and her young family, have on numerous occasions had to be transferred by ambulance to Melbourne because Wonthaggi hospital cannot treat her children. We have no paediatric services down there, not even for bronchitis. I should say it is not the hospital's fault; it does not have the money or resources. It is the Brumby government's fault. The minister would also be aware that people with serious heart problems are constantly being flown out by helicopter to Melbourne hospitals. It is just not good enough. They should be treated in their own hospital, not in a hospital 100 kilometres away. It goes without saying that the public hospital facilities on Phillip Island itself are negligible.

There is a crisis in health care on the Bass Coast. The doctors are walking out in September, and they will virtually close the accident and emergency section of the hospital. This is an area that has been promoted by the government as a top tourist attraction in Victoria. The government says, 'Come and see the penguins. Come and see the koalas. Come and see Churchill Island. Come and see the world's best motorcycle track', and there are other, less talked about attractions. I say, 'Come and see the $80 million government fiasco called the Nobbies Centre, formerly Seal Rocks. Come and see what was a great local hospital that the Bracks government has neglected and downgraded. Come and see the world's biggest desalination plant that could not be completed because there was no local hospital for the workers or contractors if they were injured'.

The government has to look after the taxpayers down there. It has to do us a favour. It should do Michelle Peters and her family a favour. It should do our aged and infirm people down there a favour. It should do the visitors to the area that the government keeps attracting a favour. Government members should come and see the hospital, talk to the doctors, talk to the locals and listen to what they have to say and not neglect them any longer. The government should give us sufficient funds to have a hospital that can treat community members in their local area so they do not have to be taken to Melbourne or the Latrobe Valley to get treatment for crippling injuries or the other difficulties that they may have.

We have had enough. The government should treat us properly down there, not the way it has been treating us over the years since it has been in office.

Schools: bike sheds

Ms GRALEY (Narre Warren South) — I rise to raise the issue of the allocation of funding for bike sheds in schools within my electorate. I ask the Minister for Sport, Recreation and Youth Affairs to take action to provide funding for bike sheds in school grounds in my community.

Members of this house are no doubt aware of the need to increase involvement in exercise and sport by the whole of our community. Nowhere is this more evident and important than among our school-aged population, where unfortunately obesity has become a problem of epidemic proportions. Statistics tell us that one in four of Australia's school-aged children is overweight and that childhood obesity is the most common health problem for small children. Worrying health reports also warn us about the health-care crisis that is looming if we do not manage to control this epidemic.

Clinical evidence underlines the need to schedule regular exercise into the daily lives of our children — this also applies to adults — partly to keep them healthy now and partly to instil in them lifelong good exercising habits to keep them fit in their adult years. One way of incorporating some exercise into a student's daily routine is to ensure they are active whilst travelling to school rather than passively sitting in mum or dad's car. That is why initiatives of this government like the walking school bus program and other similar

activities have been so vital in improving the wellbeing of our children.

For students who live a reasonable distance from their school, another very important alternative is for them to cycle, just like we used to do. This is a very cheap form of transport. It is also safe when students practice the necessary safety measures, such as observing the highway code, wearing the necessary protective helmet and wearing clothing that makes them highly visible to traffic coming from any direction. In the Narre Warren South electorate we have recently opened the Road Safety Education Centre, where students from my electorate are able to go to get bike education.

Another advantage of school students cycling is that the number of cars on the roads can be reduced. Traffic around most schools at pick-up and drop-off times is very busy. Fewer cars would mean easier traffic flow for cars still on the roads, and fewer journeys for parents would cut down wear and tear on vehicles, to say nothing of the very important saving in petrol and environmental costs.

As members of this house are well aware, my electorate is a fast-growing area, and there are lots of new houses being built. Since the abolition of the public transport zone 3, people have taken to catching the train. Just as we are trying to build new car parks around train stations, in the same way we are trying to support and encourage students to ride their bikes to school and are providing them with shelter for their bikes. I am well aware of the financial — —

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

Housing: Morwell electorate

Mr NORTHE (Morwell) — The matter I raise is for the attention of the Minister for Housing. The action I seek is for the minister to provide detailed plans on how the state government intends to reduce the public housing waiting list in the Morwell electorate. Victoria currently has 34 150 applicants waiting for public housing, and people in the Morwell electorate are eagerly waiting to hear from the state government how the waiting list will be reduced.

In his own press release, dated 25 July 2007, the minister acknowledged that the Gippsland region had experienced the largest percentage increase in waiting list figures in Victoria — namely, 5.2 per cent over the last quarter. I am sure the minister is aware that just the Morwell office has experienced a 15.5 per cent increase in its waiting list during that period. He would also know that the number of applicants on the public housing waiting list through the Morwell office has climbed by 37 per cent in the last six months.

Most concerning of all is that the number of applications for early housing in Morwell, encompassing those experiencing or at risk of homelessness and people with disabilities or other special needs, has soared by 58.8 per cent since last December. These are some of the most vulnerable people in the community, and it is quite apt that this week is National Homeless Persons Week. Statewide there are over 3000 people on the waiting list to access disability support services, including supported accommodation.

The minister has indicated that the Brumby Labor government will allocate $1.4 billion over the next four years to housing, which will assist in constructing up to 4000 new dwellings. Whilst that news is welcome, my affected constituents are asking when, where and how will these moneys be spent in the Morwell electorate. In my letter to the minister on 7 June this year I asked if he could release specific information on the Gippsland region and say how the public housing waiting list concerns would be addressed following considerable community concern. I raise the same question in the house tonight.

My staff and I receive calls for assistance with public housing issues conservatively every other week. As such I can inform the minister that staff in the Morwell Office of Housing and emergency accommodation providers such as Quantum and Common Equity Housing are working hard to find suitable accommodation for applicants. However, their limited resources will only stretch so far.

Given the increasing pressure on the state's limited public housing resources, the minister may be interested to hear of his government's endeavours to hinder residential growth in our region. A Traralgon bypass inquiry is currently being conducted by the government after intervention from the Department of Primary Industries, despite the majority of stakeholders and the community agreeing to an initial proposal. If the government upholds the DPI's decision in this inquiry, there will be minimal residential land to develop in Morwell and Traralgon, which could also adversely affect the ability to improve public housing requirements in the Morwell electorate.

I certainly understand that the need to maintain the delicate balance between residential growth opportunities and the resource needs of the state is imperative, but I think it important that the minister

understand the potential lack of residential land that may be available due to these other influences.

In closing, I ask the Minister for Housing to provide detailed plans on how the state government intends to reduce the public housing waiting lists in the Morwell electorate.

Epping Primary School: bike shed

Ms GREEN (Yan Yean) — I wish to raise a matter for the attention of the Minister for Sport, Recreation and Youth Affairs, and the action I seek is that he fund the construction of bike sheds at Epping Primary School. Today's *Herald Sun* and *Age* both point out the growing problem of obesity in Australia. That is probably so among those of us in my age group, but I would say that my sisters and I all had the advantage of riding our bicycles to school. In the 1970s and 1980s some 80 per cent of children rode their bikes to school and/or walked, so I am a bit concerned that the 80 per cent has dropped to about 20 per cent.

If people in my age group are having problems with their expanding girths, I do not like to think about what it might be like if we do not get our kids active right now. An active life is important for our kids' health, for a better environment and to even improve the problem of road congestion, particularly around schools during school pick-up and drop-off times. I think it would be a lot less stressful for parents if their children had a safe and healthy way to get to school.

One of the reasons there has been a drop-off in kids riding to school is the decline in bike facilities available at schools. I am really pleased that Epping Primary School has taken the opportunity of submitting an application under the excellent Go for Your Life program run by the minister's department. The program offers seeding grants of up to $5000 for bike sheds.

I commend Epping primary for their forward thinking in applying for this grant. It is always a pleasure to visit Epping Primary School; there is always something new and exciting happening at the school, although it is a school with great history. It is ably led by the principal, Lu Jakober, and a fantastic school community. I had the pleasure in 2003 of opening at the school a new wing of six new classrooms, and I am pleased that the Bracks government supported the school in that way.

At that time the school had wings built in the 19th century, the 20th century and the 21st century, and I think it is the only one to have had that happen. The school is showing again that it is forward looking. It is looking after the health of its kids, and I urge the minister to support the school's application for a funding grant for a bike shed at Epping Primary School.

Ambulance services: Yarra Valley

Mrs FYFFE (Evelyn) — The matter I wish to raise for action is for the Minister for Health. In this house on 3 May during the adjournment debate I raised the issue of the tragic loss of life in Yarra Glen of a young boy. Jake died of an asthma attack at his home in Yarra Glen. He was one month short of his 12th birthday. The ambulance took 30 minutes to arrive. I urged the minister to take action to improve ambulance services to the Yarra Valley. I begged and pleaded with her not to leave residents in the Yarra Valley unprotected.

On Saturday, 21 July, a player was injured in a football match at Lilydale. There were serious and genuine concerns that the player may have suffered a spinal or neck injury. A call was made to 000 and an ambulance urgently requested. Correct coordinates of the ground were given. The trainers responded to the incident in the correct manner and refused to move the player. The ambulance had not arrived after approximately 20 minutes. Another call was made. The ambulance arrived 40 minutes after the first call for help. The reason given was that the crew had been given the wrong location by the 000 emergency response operators. Although fortunately the young player was not as seriously injured as was initially thought, he had shown every sign of a serious injury and the trainers had acted accordingly.

In October 2006 in an article in *Mountain Views Mail* reference was made to ambulances on 13 occasions taking 30 minutes to respond to code 1 incidents. Warburton is 20 minutes away from Lilydale. On 1 May 2007 again an article in *Mountain Views Mail* quoted a source who asked not to be identified but who said that:

> … a lack of resources and a dispatch system which is designed to meet response times rather than medical needs were driving ambulance paramedics into chaos.
>
> 'We are solely being driven by response times, which means a lot of experienced paramedics are responding to calls to "stop the clock" …

The action I request from the Minister for Health is that he ensures the Yarra Valley has adequate ambulance coverage at all times before we have another tragic loss of life, and that he investigate why it took 40 minutes for an ambulance to respond to a serious injury in Lilydale, a suburb of Melbourne. The Yarra Ranges has the second highest number of road fatalities in the state. I also ask the Minister for Health to look at the

problems in the dispatch system, to have investigated why errors that are putting young peoples' lives at risk in the Yarra Valley are being made.

Calder Freeway: funding

Mr SEITZ (Keilor) — I raise a matter for the attention of the Minister for Roads and Ports. It concerns the current submissions and negotiations related to AusLink that are taking place between the minister and the federal government. I particularly want to ensure that the Calder Freeway is included in the next round of AusLink funding so that the longest 'car park' on the Calder Highway can be changed into a freeway. We need that road to be fixed.

The Brumby government has allocated funds towards its share of the cost of overcoming this problem and fixing the access to off-ramps and on-ramps, but it needs money from AusLink to be able to fund the completion of that project because it is a national highway. If we look at the section of the Maribyrnong River where the bridge crosses Green Gully Road and connects to Keilor Park Drive, we see that an overpass is required at Sunshine Avenue, and we need a cloverleaf interchange at Kings Road and Calder Park Drive.

All of those works need AusLink funding. I ask the minister to ensure that funding is made available through AusLink for the region and for those in the community who use those roads. I am sure that members of this house who travel to Bendigo at peak times during the morning or evening would find it disturbing to be sitting in a 'car park' when they had thought they were on a freeway but had come to a section of road with a speed limit of 80 kilometres an hour, which is necessary to reduce the danger of fatalities in the region. VicRoads has imposed that limit, which naturally causes more slowing down and jamming up of traffic, particularly before motorists get to the Melton Highway off ramp from the Calder. Again the roads in that area are insufficient to cater for the traffic flow.

I ask that the minister vigorously take up this issue on behalf of the western suburbs. Now that the Deer Park bypass is well and truly on the way to being constructed, our next major project must be the Calder Freeway. It must be made part of the AusLink program. The last communiqué I had from the federal minister said that it is not going to be funded in this round but that it will be part of the submissions and negotiations in Canberra for the next three-year term of AusLink funding.

Croydon Hills Auskick: facilities

Mr R. SMITH (Warrandyte) — The issue I raise is for the Minister for Sport, Recreation and Youth Affairs. I ask the minister to urgently meet with the executive members of Croydon Hills Auskick to discuss an upgrade to its facilities. Auskick is a fantastic national program which aims to develop and promote Aussie Rules football amongst children. It began in Victoria some years ago and attracts over 100 000 primary school-aged children annually. It is the largest grassroots sporting association of its kind in Australia, and as such it should strike a chord with the minister because the minister often talks about grassroots sport.

During the adjournment debate on 23 May the minister spoke of the Bracks government continuing 'its strong commitment to grassroots sport and recreation'. A media release from the minister's office dated 2 May 2007 talks about the 'Minister for Sport, Recreation, James Merlino, reaffirming his commitment to keeping grassroots sports alive in Victoria'. Another release from the minister's office dated 4 July 2007 talks about 'sustaining sporting facilities well into the future so that grassroots clubs can continue to provide opportunities for active participation in sport and the local community'. Auskick's own slogan of 'Where champions begin' typifies its commitment to grassroots sport.

Croydon Hills Auskick, which is held at Lipscombe Park Reserve, caters for around 220 children and is a great program for the community. When I met recently with the past president of Croydon Hills Auskick at his request to inspect the club's storage and kiosk facilities, I was shocked to see the disrepair of the dilapidated buildings. The buildings are little better than shipping containers. In fact one corner of one building is not even on flat ground; it is just chocked up with bits of wood. Because of the age of the buildings they cannot be adequately secured, and that has lead to a number of thefts over the last few years. This has meant that the club has had to dip into its own meagre funds to replace the stolen equipment.

The club is looking for funds of the order of $150 000, which will be used to upgrade the club's storage and kiosk facilities as well as renovating the park's public toilets. Maroondah City Council has generously committed $80 000 to the project, with the club also raising a good contribution to the funds needed. I ask the minister to stop off at Lipscombe Park Reserve, which is only a short detour from the route the minister takes from his electorate to his ministerial office, at a time of his choosing to meet with the executive

members of Croydon Hills Auskick to discuss what the Brumby government can do to assist this club in providing the kind of facilities that kids who are involved in grassroots sport deserve.

Penders Grove Primary School, Thornbury: bike shed

Ms RICHARDSON (Northcote) — I wish to bring a matter to the attention of the Minister for Sport, Recreation and Youth Affairs. The matter concerns the need to encourage our primary and secondary school students to get active, get on their bikes and travel to and from school everyday. The action I seek from the minister is to ensure that funding is allocated to our schools to provide for the building of bike sheds as part of an integrated strategy to get our kids cycling to and from their schools.

Schools in my electorate are keen promoters of active kids programs. Fairfield Primary School, for example, has in partnership with VicRoads developed a safe route trail around the local community to enable its children to travel safely to and from their homes and school. We know cycling is one of the best ways to improve fitness. We also know that fitness built as a young child carries over into adulthood, so the more active you are as a child the more likely you are to be fit and healthy as an adult.

I cycled every day from the railway station to school. I went to the same school as the member for Doncaster. She may recall that way back then cycling to school every day was not seen as an unusual event; it was seen as part of what we did to get to and from school. Yet we know these days that only 20 per cent of kids are cycling or walking to and from school. Back in the 1970s, 80 per cent either walked or cycled to school, so clearly the trend is going in the wrong direction.

The Labor government is committed to reversing this trend and getting more kids cycling and walking to school — for example, we have sponsored numerous safe bike route trials around Fairfield Primary School, as I mentioned earlier. All of these measures increase the uptake rate of kids cycling and walking to school. I am not sure how many members of the house cycle to and from Parliament, but it is certainly something we should all consider as part of a get fit program.

I know that Penders Grove Primary School is very keen to create a first-rate bike shed for its students. Penders Grove Primary School is a school that has led the way with many innovative programs for its children. In particular the garden program that it has for its kids is a good model for all schools across my electorate and the rest of the state. By installing a bike shed Penders Grove will no doubt increase the rate of cycling rate to and from the school. Therefore I urge the minister to take action to ensure that Penders Grove Primary School gains the funding required.

Mildura Base Hospital: funding

Mr CRISP (Mildura) — The matter I wish to raise is for the Minister for Health. The action I request is that he review the funding for the Mildura Base Hospital and increase it to meet the needs of my growing community. Mildura is the fastest growing inland city in Australia, at 2.2 per cent, and with that growth level having been sustained over many years, funding for the Mildura Base Hospital now lags behind other hospitals in the state.

Funding announcements have been made for the Mildura Base Hospital over time, and as recently as July the former Minister for Health announced that funding for the hospital had increased by 113 per cent. However, an analysis of this amount shows that the base figure relates to 41 weeks of a 52-week year when the hospital was first opened. When you compare that with the initial figure you realise that Mildura falls well below the 96 per cent mentioned by the new Minister for Health during question time last night. Based on that figure and the above average growth, Mildura is disadvantaged in its hospital services above and beyond the other centres in Victoria.

The issues at Mildura Base Hospital include accident and emergency services, where there is a GP shortage, which is very common in Victoria. A growing population and an ageing population are making life very difficult at our accident and emergency department. Similarly there are bulk-billing issues among our GPs. Maternity services at Mildura Base Hospital are under enormous stress. The private hospital in the town ceased doing maternity procedures some time ago. We have increased to over 1000 births. The stay in hospital for many new mums is remarkably short.

In addition Mildura has a large Aboriginal population. Their presentations at accident and emergency departments are putting further pressure on hospital facilities. The Mildura Base Hospital needs a reviewed service plan to manage the changes that are occurring in our community. It needs the funding identified to meet both the current challenges and our future needs for a growing community. The minister has shown interest in the Mildura hospital. I encourage him to continue that interest by reviewing the funding at the Mildura

hospital and increasing it to meet those community needs.

Geelong ring-road: funding

Mr CRUTCHFIELD (South Barwon) — The adjournment matter I wish to raise is for the Minister for Roads and Ports. The action I seek is that the minister obtain funding for stage 4 of the Geelong ring-road and the upgrade of the Princes Highway West to Colac.

Members would be well aware of the state government's commitment in regard to stage 4A of the Geelong ring-road — the $125 million overpass that would go over the Princes Highway and up Anglesea Road. It is a significant addition to the AusLink-funded stage 3. Certainly the minister articulated this at a forum in Colac. On Friday a week ago Minister Pallas was in Colac at a forum hosted by the Colac shire, represented by the mayor of Colac, Cr Warren Riches. It was attended by representatives of some nine councils, all the way through to the South Australian councils past Mount Gambier. It was attended by the local federal member, Stewart McArthur, and the local Labor candidate, Darren Cheeseman.

I noted that the member for Polwarth was not in attendance and was an extremely late apology. I can understand why. The minister put a very strong case about previous governments, where there has been a uniformity of views across political boundaries. The Kennett government argued quite strongly that Victoria does not receive its fair share of federal funding for roads. The Brumby government is doing exactly the same in that regard, agreeing with the previous Kennett government. It is also arguing that these two projects are worthy of funding. Princes Highway East is funded as an AusLink road through to Traralgon. My understanding is that duplication through to Traralgon is being supported by the local federal members. Members opposite may be able to help me about the situation down at Gippsland, but I am sure that is the case.

That is different from the federal Liberal member in our patch, Stewart McArthur, and indeed the federal Liberal member for Wannon down at Warrnambool. Those individuals have not advocated at all in regard to these two projects being added to AusLink. There is no difference in terms of fatalities on these roads, in terms of the usage of the roads, in terms of distance or in terms of the benefit to both the national economy and the Victorian economy. The issue has been the lack of advocacy from these two individuals.

I can certainly attest to the fact that Labor councillors were very appreciative of the minister's view and very supportive of the fact that they need to be lobbying both parties in the federal sphere.

The ACTING SPEAKER (Mr Nardella) — Order! The Minister for Sport, Recreation and Youth Affairs to respond to the members for Narre Warren South, Yan Yean, Warrandyte and Northcote.

Mr Dixon — Acting Speaker, I draw your attention to the state of the house.

Quorum formed.

The ACTING SPEAKER (Mr Nardella) — Order! I call again on the Minister for Sport, Recreation and Youth Affairs to respond to the members for Narre Warren South, Yan Yean, Warrandyte and Northcote.

Responses

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — The members for Northcote, Yan Yean and Narre Warren South all raised the issue of funding applications regarding the highly popular bike shed seeding grants. I thank the members for their questions and their ongoing interest in sport in their electorates. The communities in the electorates of Northcote, Yan Yean and Narre Warren South should know that they have local members who are constantly advocating to me the various issues and needs of their local sporting clubs.

As has been mentioned tonight, the bike shed seeding grants are a part of the Brumby government's overall Go for Your Life strategy. It is interesting to look back 20 to 30 years ago. Coming home from school meant convincing your mum and dad that you had finished your homework so that you could go out onto the street, kick the footy, play backyard cricket or go racing around the streets on your bike. Today the landscape is much different; very few children do even 1 hour of physical exercise per day. In many cases PlayStations, computers and TVs replace the role of riding a bicycle or kicking the footy.

That is why the Brumby government is committed to its Go for Your Life strategy. It is about increasing the physical activity and healthy eating of all Victorians; it is about reversing the prevalence of obesity and diabetes; and it is about everyone working together to create a healthier and more active Victoria. A sum of $57 million has been pledged over the next four years to achieve this goal, and $400 000 of that money is to build bike sheds in schools which, as we have seen

from the response of the program, many communities are crying out for.

The logic is simple: build a secure and safe bike shed and students will feel more comfortable about riding their bikes to school. This may be simple, but it is very effective: schools that provide secure bike sheds report a dramatic increase in the number of students riding to school. This is critical, because to maintain a healthy weight and to protect against diseases later in life primary-age schoolchildren are recommended to do several hours of physical activity a day. This includes mucking around with their friends during playtime, physical education and sport activity at school or walking or riding home from school.

The Brumby government will continue to lead the fight to create a healthier and more active Victoria; it is one of our key priorities. The opposition's election policy document, entitled *A Liberal Government Plan — From the Grass Roots to the Grand Final*, pledged its commitment to the Go for Your Life program. However, while the commitment is pleasing, the opposition's policy highlights the key difference between its approach and our approach. While this government is about action, the opposition is about hollow rhetoric. I have a couple of examples.

The opposition says it will retain some elements of the Go for Your Life campaign, but it does not say which ones. It says it will refocus Go for Your Life, but it does not say how. The opposition says it will increase participation rates among schoolchildren, but it offers no ideas as to how it will achieve that goal, and most importantly, despite making such statements, the dollar figure the opposition set aside as going towards these goals stands at zero — not one single dollar was put towards these goals.

While the opposition talks pure rhetoric with no substance, the Brumby government will continue to build on a Go for Your Life legacy through implementing a $57 million commitment that Labor made at the last election. I can assure the member for Northcote, the member for Yan Yean and the member for Narre Warren South that I am closely considering the grant requests from Penders Grove Primary School and Epping Primary School and those from schools in the Narre Warren South electorate. I look forward to announcing those successful schools shortly.

The member for Warrandyte raised an issue regarding Croydon Hills Auskick and the state of its facilities. The Auskick program is a very successful program which encourages young boys and girls to get involved not only in football but in organised physical activity. It is a terrific program right across the state.

In answering the question let us talk a bit about the Brumby government's support of community facilities, community sport and physical activity in local communities across the state. I will raise a few of the programs that we run. The community facilities funding program will provide $76 million over the next four years. To date that program has invested over $146 million towards 1650 community sport and recreation projects across the state. If you are fair dinkum about community sport, increasing participation and supporting local clubs, that is where you invest the money; that is where you make a difference.

Let us talk about what the opposition says about community facilities. In the very same election policy to which I referred the Liberal Party said:

> Labor has spent $118 million since 1999 on community sporting facilities and Victorians are entitled to ask where all that money has gone.
>
> The money can be better spent.

That is what the Liberal Party said in its sport and recreation policy at the last election — that the money can be better spent. Tell that to the recipients of the $500 000 to assist Moreland council establish an all-abilities playground in Harmony Park; tell that to the East Gippsland community about the $250 000 for the Keenagers table tennis stadium; tell that to the cities of Casey and Cardinia and the shire of Yarra Ranges about the $20 000 for a soccer study; tell that to the community in the Macedon Ranges about the $2.5 million for the Kyneton sports and aquatic centre.

In addition to the community facilities funding program, the $10 million country football and netball program is making a real difference in country football and netball facilities across the state, and the $6.7 million for drought — —

Mr R. Smith interjected.

Mr MERLINO — No, it does have something to do with community facilities. Your question was about what the state government can do in regard to community facilities. There is $6.7 million for our drought assistance programs, and a fantastic initiative coming out of the Commonwealth Games savings of uniform grants of $1000 for clubs in disadvantaged areas.

In regard to the Maroondah City Council and the needs of the Croydon Hills Auskick, the Maroondah City

Council can make an application to the community facilities funding program on behalf of Croydon Hills Auskick to improve its facilities. That is what — —

Mr R. Smith — You knocked them back!

Mr MERLINO — Let me answer that question in regard to the response and recommendations of Sport and Recreation Victoria. Councils determine the priorities of their local facilities. If an application to Sport and Recreation Victoria is not recommended to be successful, there are reasons for that. Often SRV and the local teams out of Victorian Communities, now Planning and Community Development, will work with the local councils and with the local clubs to get the applications up to a standard where they are able to be supported.

I will be talking to my department about having some discussions with Croydon Hills Auskick and with the Maroondah City Council to discuss their applications. The point that needs to be made is that if you are fair dinkum about improving local community facilities and fair dinkum about increasing participation rates of young people in physical activity, you need to invest in community facilities.

All that was in the opposition's policy at the last election was $10 million for country sporting facilities — $10 million compared to $76 million for only one of our programs. The Brumby Labor government is fair dinkum about local community sport, and it is investing that money. I encourage Croydon Hills Auskick and Maroondah City Council to work with my department on any future application.

The ACTING SPEAKER (Mr Nardella) — Order! The Minister for Sport, Recreation and Youth Affairs, to respond to the members for Bass, Morwell, Evelyn, Keilor, Mildura and South Barwon.

Mr MERLINO — The members for Bass, Evelyn and Mildura raised issues for the Minister for Health.

The member for Morwell raised an issue for the Minister for Housing.

The members for Keilor and South Barwon raised issues for the Minister for Roads and Ports.

I will refer those issues to those relevant ministers for their response.

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

House adjourned 10.41 p.m.