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The Lieutenant-Governor

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Thursday, 16 September 2004

The SPEAKER (Hon. Judy Maddigan) took the chair at 9.34 a.m. and read the prayer.

NOTICES OF MOTION

Mr Ryan having given notice of motion:

The SPEAKER — Order! Before I proceed I need to apologise to two members — the member for Footscray and the member Burwood, who is not here, whose motions I ruled out of order yesterday. We found them later, so I apologise to them. I will call the member for Footscray next.

Mr Batchelor — On a point of order, Speaker, I was seeking your guidance on previous rulings about the length of notices of motion, and I ask you to take this up with the Leader of The Nationals in relation to his notice of motion.

An honourable member interjected.

Mr Batchelor — No, I am making reference to this one.

Mr Mulder interjected.

Mr Batchelor — That is right, but you’ve got none!

The SPEAKER — Order! Would the Leader of the House like to continue with his point of order?

Mr Batchelor — I am referring to Speaker Plowman’s ruling in 1998 that said that notices of motion should be within the word limit of 250 words, so I would ask you to take that up with the Leader of The Nationals.

Mr Ryan — On the point of order, Speaker, I understand the sensitivities of the government over this issue, having abandoned the pledge that it made to the people of the Wimmera Mallee, at least. But I refer you, Speaker, respectfully to notice of motion 1 on the notice paper, which is far in excess of the few words I contributed this morning and is there well after the ruling to which the Leader of the House has already referred. I think it would be better if the Leader of the House put aside his sensitivity on these issues and dealt with the standing orders, which were mainly of his own making.

Mr Plowman — On the point of order, Speaker, far be it from me to disagree with Speaker Plowman.

Mr Hulls — He disagrees with you on a daily basis!

Mr Plowman — But despite the fact that I disagree with the Attorney-General on that issue, it is fair to say that you, Speaker, have agreed to very lengthy notices of motion, including notice of motion 255, which was not objected to by the government. I wonder why it was not prepared to object to that one, whereas it is now prepared to object to the notice of motion given by Leader of The Nationals. I suggest that as you have not ruled in respect of motion 255, you should consider that in your ruling in respect of the notice of motion from The Nationals.

The SPEAKER — Order! In ruling on the notice of motion I have not insisted on that minimum length before, so it is difficult for me to suddenly impose it at this stage. However, I remind members that they are notices of motion; they are not the opportunity to make speeches in the house.

Further notices of motion given.

MAJOR CRIME (INVESTIGATIVE POWERS) BILL

Introduction and first reading

Mr Haermeyer (Minister for Police and Emergency Services) introduced a bill to provide for coercive powers in relation to the investigation of organised crime and to amend certain acts to make further provision for the director, police integrity, and for other purposes.

Read first time.

MAJOR CRIME LEGISLATION (SEIZURE OF ASSETS) BILL

Introduction and first reading

Mr Hulls (Attorney-General) — I move:

That I have leave to bring in a bill to amend the Confiscation Act 1997, the Sentencing Act 1991 and the Drugs, Poisons and Controlled Substances Act 1981 and for other purposes.

Mr McIntosh (Kew) — I seek a brief explanation from the Attorney-General about this bill.

Mr Hulls (Attorney-General) — This bill is about being tough on crime. This bill will ensure that assets that are believed to be the proceeds of criminal activity can be forfeited — —

Mr Honeywood interjected.
Mr HULLS — Obviously the member for Kew does not read it! They can be forfeited unless the person whose assets have been forfeited can show that they have been appropriately obtained. It is what I have described in this place before as ‘prove or lose it’.

Motion agreed to.

Read first time.

PETITIONS

Following petitions presented to house:

Preschools: funding

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

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

- recognise the value of preschool education and respect the work of preschool teachers;
- recognise that preschool teacher qualifications are equal to primary teachers by offering pay parity;
- recognise that preschool is an educational experience and move responsibility to the Department of Education and Training;
- retain and attract preschool teachers to tackle the preschool teacher shortage by offering pay parity, reasonable workload and appropriate group sizes;
- resource preschools in order to:
  - provide access for all children irrespective of their family’s economic circumstances
  - alleviate unacceptable workloads for volunteer parents and teachers
  - provide for salary parity with school teachers so that the cost to parents (fees) does not increase
  - support children with additional educational needs.

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

By Mr TREZISE (Geelong) (1313 signatures)

Rail: Sandringham line

To the Legislative Assembly of Victoria:

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

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

By Ms ASHER (Brighton) (54 signatures)

Dental services: funding

To the Honourable the Speaker and members of the Legislative Assembly of Victoria:

This petition of residents of the state of Victoria draws to the attention of the house:

- that the planning, funding and delivery of public dental services has always been the responsibility of the state government;
- that the commonwealth government will provide more than $1.81 billion to the Victorian government this financial year (2003–04), and more than $1.91 billion next financial year (2004–05) under the Australian health care agreement specifically for the delivery of health services;
- that the Victorian government will receive over $6.97 billion this financial year (2003–04) and more than $7.1 billion next financial year (2004–05) in GST revenue;
that despite all this additional funding, the Victorian state government has let the public dental system fall into disrepair — with waiting lists growing and Victorians unable to receive urgent dental treatment.

The petitioners therefore request the house demand that the Victorian government urgently increase funding to the public dental system, so that it properly and adequately meets the needs of Victorian residents.

By Mr DIXON (Nepean) (64 signatures)

Taxis: multipurpose program

To the Legislative Assembly of Victoria:

The petition of the residents in the state of Victoria draws to the attention of the house the detrimental impact of funding cuts under the multipurpose taxi program and in particular the annual cap of $550 for service users who are not wheelchair bound.

Prayer

The petitioners therefore request that the Bracks government abandon the proposal, which will detrimentally impact upon the elderly and infirm members of our community in the following way:

1. they will be unable to use a taxi for health services such as medical, optical, dental, podiatry and related appointments;
2. they will be unable to access day programs, social networks, libraries or shopping centres;
3. they will be unable to visit their partners or loved ones who are cared for at hospitals or nursing homes;
4. their quality of life will be severely diminished.

By Mr THOMPSON (Sandringham) (44 signatures)

Laid on table

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

DRUGS AND CRIME PREVENTION COMMITTEE

Overseas evidence-seeking trip

Mr COOPER (Mornington) presented report for July 2004, together with appendices.

Tabled.

Ordered to be printed.

BUSINESS OF THE HOUSE

Adjournment

Mr BATCHelor (Minister for Transport) — I move:

That the house, at its rising, adjourn until Tuesday, 5 October 2004.

Motion agreed to.

MEMBERS STATEMENTS

Western suburbs: debutante ball for people with disabilities

Mr MILDENHALL (Footscray) — On 27 August I had the pleasure of attending on behalf of the Premier an inspiring and enjoyable function, the inaugural debutante ball for people with disabilities in the western region at Grandstar Receptions in Altona.

It was a well-organised event organised by the diploma in disability studies students at Victoria University, service providers in the western region and friends and relatives of the debutantes. The very well-presented debutantes were Jenny Porter, Filomina Fiorilla, Kristie Bloggs, Mary Roberts, Maria Tonin, Valma McAlister, Mary Rumble, Janine Lauder, Danee Ercut, Glenn Milham, Bruce Morrison, Ron Jelbert, Michael McLennan and Steven von Raligen.

There were some very smooth moves on the dance floor, good food and drink and a good deal of hooting and hollering around the venue throughout a fun evening. An active social life and an opportunity to mix with other people in a relaxed and enjoyable environment are important. Symbolic events like debutante balls are things we all should have the opportunity of enjoying at least once in our lives, and this was a great event enthusiastically participated in by all present. A great night was had by all.
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Industrial relations: common-rule orders

Mr McIntosh (Kew) — I wish to state categorically the Liberal Party’s opposition to the reintroduction of common-rule orders into the state of Victoria. In a little over three months the Victorian industrial relations matrix is about to have this overwhelmingly disastrous industrial activity imposed upon it. The Liberal Party expressly excluded the orders in its original referral of industrial relations power to the commonwealth in 1996. The Liberal Party has opposed Labor’s attempts to reintroduce common-rule orders into the state of Victoria on two separate occasions. Regrettably on the second occasion they went through.

The federal Liberal Party opposed the referral to the commonwealth but reluctantly had to accept it because there was a gun pointed at its head, which was the reintroduction of a state-based industrial relations system. Tony Abbott, the former federal workplace relations minister, opposed it, and Kevin Andrews, the current minister, opposes it. Can I say that the Liberal Party will repeal this legislation and repeal common-rule orders in the state of Victoria.

Can I also say that it is disingenuous for people such as the Minister for Industrial Relations and the Pineapple Princess from Bendigo East to say — —

The SPEAKER — Order! The member will refer to members correctly.

Mr McIntosh — It is a matter of some importance — —

The SPEAKER — Order! The member’s time has expired.

Wellington Secondary College: greenhouse project

Mr Andrews (Mulgrave) — I was pleased to again visit Wellington Secondary College recently — one of the many fine schools in my local community — to meet with students and senior staff to discuss the school’s success in securing a $19 200 grant as part of the government’s Victorian greenhouse strategy schools project. This grant will help fund the construction of a new bike shed as part of the implementation of the school’s recently developed school travel plan. Wellington Secondary College is one of 33 schools across Victoria benefiting under this $1.05 million program.

I had an opportunity to inspect the current bike shed and to be briefed on the plans for the new facility. The project enjoys broad support within the Wellington Secondary College school community and will be of real benefit to the students and the environment, not to mention the benefits of increased physical activity and improved security and weather protection to be offered by the new bike shed. This is significant support for Wellington Secondary College and yet another demonstration of this government’s practical commitment to better education facilities and outcomes in my local community. Further evidence of this commitment came last Sunday with the announcement of maintenance grants for Mulgrave electorate schools totalling almost $750 000, with Wellington Secondary College receiving $48 831.

In concluding I take this opportunity to acknowledge Wellington Secondary College principal Mr John Coulson who retires tomorrow after nearly 47 years as an educator and 18 years leading the Wellington community. His leadership has benefited not only Wellington Secondary College but the lives of many young people in my community and across our region. On behalf of the Mulgrave community I say, ‘Well done, John! Thank you, and best wishes for the future’.

Tertiary education and training: Swan Hill

Mr Walsh (Swan Hill) — Information from the last census shows my electorate of Swan Hill ranked last for proportion of persons attending tertiary education. The main reason is the huge exodus of Victorian certificate of education students going elsewhere to complete a tertiary qualification. Few return, and the rest are lost to the regional economy and their community. Despite the massive economic growth in the region only 16 per cent of the population holds some sort of certificate — the lowest qualification level in Victoria.

I commend the Swan Hill regional education and training master plan completed in June 2002 for highlighting the need for more opportunities for people in the Swan Hill region. The Rural City of Swan Hill, the Shire of Gannawarra and the Murray Mallee local learning and employment network are forming a working party to entice a university to the region. This will not necessarily be a campus initially, but it will definitely provide a greater presence for the delivery of courses for the many employees wishing to upskill and assist the students who currently have to defer due to the high cost of leaving home. For the economic growth of the region to be sustained it must be underpinned by a resilient, well-trained and up-to-date work force. I look forward to the time when we have a regional university presence and a locally managed TAFE college rolled together to capture the synergies of both for the region.
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John Kennedy

Mr LANGDON (Ivanhoe) — Last Sunday I had the honour of attending the Loyola College jubilee celebrations for the appointment of John Kennedy as the founding principal of the college on 12 September 1979. Not only was he the founding principal, but 25 years on John Kennedy is still the principal of Loyola College. In anyone’s language it is an outstanding achievement to be not only the founding principal but the principal 25 years on. As I said, it was a great pleasure to be at the jubilee celebrations. John Kennedy’s is a remarkable achievement — not only his 25 years but his part in the establishment of the college and its growth over 25 years.

Loyola College is in the seat of Bundoora but services a large section of the north-eastern suburbs. I know the member for Bundoora would share my sincere appreciation of John Kennedy’s 25 years of service to the school community and the community in general. Again, it was a great pleasure to be there, and I welcome John’s continuing his service as principal. I know his wife, Bronwyn, was there. No principal could do such work without their loving spouse, and I extend my appreciation to Bronwyn for her support of John over those 25 years.

Treasurer: performance

Mr CLARK (Box Hill) — Yesterday the Treasurer told this house that the Bracks government’s measures were providing more encouragement and more opportunities for first home buyers in this state than in any other state in Australia. However, even after the first home owners grant, on a $350 000 home Victorian first home buyers still pay $11 660 stamp duty compared with $4500 in Queensland and nothing in New South Wales. No mortgage duty is payable in New South Wales, and in Queensland the mortgage duty would be $400. On a $250 000 home Victorian first home buyers still pay $5660 stamp duty while New South Wales and Queensland first home buyers pay nothing.

Yesterday’s statement is one of a growing list of statements by the Treasurer that are completely detached from reality.

On 26 August the latest Sensis survey reported that Victorian small and medium businesses had the worst results of any state for employment levels, sales and profitability. Most recently, ABS data on 1 September showed that in seasonally adjusted terms Victoria’s state final demand grew by only 4.8 per cent for the year, compared with national growth of 6.2 per cent.

The Treasurer’s continued boasts in this place and elsewhere simply show how lacking in economic credibility he is.

Clifton Springs Neighbourhood Watch

Ms NEVILLE (Bellarine) — This week I had the pleasure of attending the 10th anniversary of Clifton Springs Neighbourhood Watch. I want to thank and congratulate the following people who have spent 10 years helping to make our community safer: Jan and Clem Anderson, Sandy Atkinson, Yvonne Houtsma, Doug McKinnis, Sue Metcalfe, Mitch Mitchell, Noel Tribe, Jenny and Laurie Sandilands, Joy and Mick Wallis, Charlie Adornetto, Leanne Arnott and Anthony Heyward, Margaret and Graeme Faulkner, Dorothy and Bob Hutchinson, Norma Knowles, Mary and Don Peace, Vicki and Alf Pye, John Ryan, Noel Schofield, Ian Steppnell, Glenyse and Robert Stevenson, Joan and Len Strachan, Nola Thomas, Doreen Burgoyne, Leo Steger, and also the Clifton Springs Bowls Club that donated the use of its facilities over those 10 years.

I enjoyed attending the awards night on Monday, where over 60 people attended and a beautiful supper was provided. Members of Neighbourhood Watch have put in a lot of effort over those 10 years to ensure that Clifton Springs is one of the best places to live on the Bellarine Peninsula. They have also made a contribution overall to achieving Victoria’s lowest crime rate in a decade, and they have certainly raised awareness in the local community about how to improve community safety.

Omeo Highway: sealing

Mr DIXON (Nepean) — The Omeo Highway running from Bairnsdale right through to Tallangatta via Bruthen, Omeo and Dartmouth — which you, Acting Speaker, would be most aware of — was gazetted as Victoria’s first highway. Unfortunately it is the only unsealed highway in Victoria, and that is quite a travesty.

About 30 kilometres of the total length of that highway are unsealed, but there are also sections of the highway, especially the southern section, where safety and maintenance concerns have been expressed by a
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number of people who are frequent users of it. A group has been set up which includes the local councils on both sides of the mountains as well as tourism and business operators to lobby the government to have this 30-kilometre unsealed section sealed. The former coalition government had an ongoing program of sealing the road, which left only 30 kilometres unsealed, but that ground to a halt in 1999 and there has been none sealed since. If the road were sealed it would result in a large increase in tourists and the flow-on effects to the local community economy would be fantastic.

The Great Alpine Road has recently been sealed and there has been a fourfold increase in touring through that area, with huge economic benefits subsequently. I travelled the road recently, and I totally endorse the program to complete the sealing of the Omeo Highway.

Schools: Macedon

Ms DUNCAN (Macedon) — I wish to give honourable members a snapshot of the great things that have been happening in just some of the schools in the Macedon electorate over the last few weeks. Gisborne Secondary College got into the finals of the Rock Eisteddfod. This is only the second time the school has entered this event. I also had the pleasure of judging the students’ artwork at Mount Macedon Primary School. This artwork will be used to illustrate the cookbook that the school is preparing for sale at its annual fair.

I attended a performance of The Wiz by Sunbury College students at the memorial hall in Sunbury. It was a great production, and there is some terrific talent at this school. It was a tremendous effort by staff, students and their families.

I was also invited to speak to students at Sunbury Downs Secondary College. They have achieved excellence and are highly motivated in their approach to their schoolwork. It was a great pleasure to meet those young people who have done terrific things and who are consistently performing very well.

As I said, this is just a snapshot over a few weeks of some of the great things going on in government schools in the electorate of Macedon. Lots of great things are occurring in all of our schools. I congratulate the terrific staff in our schools, the hardworking students and their supportive families for all their ongoing efforts in making sure the schools are wonderful places for students to be, to learn and to work together to produce the terrific things we are seeing throughout the education system.

Meals on Wheels: volunteers

Mr SAVAGE (Mildura) — I rise to indicate my appreciation for all those volunteers in Victoria who contribute to Meals on Wheels. On 1 September I was invited, like many other members I would imagine, to participate in celebrating National Meals on Wheels Day. I went out with a delightful volunteer by the name of Barb Tilley who delivers Meals on Wheels in Irymple. Every year hundreds of thousands of meals are delivered across the state by volunteers taking meals into the homes of people who appreciate that service. I had the privilege of participating with Barb Tilley on that day. She is an indication of the type of volunteer in Meals on Wheels. They are quiet achievers; they do not seek any recognition for their efforts. Barb has been doing this for approximately 25 years and she, like many others, does not even claim her petrol money. She does it at her own expense.

The first person we delivered a meal to was a gentleman at Irymple called Henry Petty. Henry is elderly now, but he was a Meals on Wheels volunteer himself and now he is a recipient. So it is a cycle that goes on, and people who have done it are now receiving those opportunities. I congratulate all the thousands of volunteers who do Meals on Wheels across the state, and I know this Parliament does the same.

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

Cranbourne: youth round table

Mr PERERA (Cranbourne) — I rise to inform the house of the successful youth affairs round table held in my electorate of Cranbourne on 9 September attended by my colleague Jacinta Allan, Minister for Employment and Youth Affairs. I thank the minister for giving members of my electorate the opportunity to speak directly to her on their concerns and ideas in her portfolio area.

The round table, the third such held in my electorate this year, was attended by the student welfare team from Monterey Secondary College; Yvonne Watts, principal of Cranbourne Secondary College; Terry Feely, principal of St Peters College; and David Roycroft, principal of Carrum Downs Secondary College. Two students from each of the schools attended, as did Janette Green and Anthony Basford from of the City of Casey and the Reverend Paul Creasy from the Cranbourne and District Uniting Church, whose work with youth is well known in the area.
The round table was a constructive session which provided much useful information on people’s needs in the local area. Issues raised included body image, mentoring programs for young people, mental health services and the important role played by schools in young people’s lives. The minister encouraged the attendees to consider making a submission to the parliamentary inquiry into body image, noting that the young people had many valuable insights that would assist the committee in its work.

I thank all those who attended for their time and input. I particularly thank the young people who attended and look forward to working with them, as I have no doubt they will be — —

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

Aquaculture: licence fees

Mr Smith (Bass) — This morning I would like to raise the issue of the lack of consultation by the Minister for Agriculture with the major stakeholders in his portfolio. First we saw his total ignorance of the long-term damage his decision on introducing PrimeSafe into the fishing and aquaculture industry would cause when he licensed and levied charges against the lobster and yabby industries. They do not process their products; they have to deliver their products live and fresh to their wholesalers and retailers. Why would this happen? Yabby farmers have closed their doors and lobster fishermen cannot get answers to simple questions. Why did they have to be involved in this new tax on their product? The minister will not give them an answer and neither will PrimeSafe.

Melbourne Wholesale Fruit and Vegetable Market: relocation

There is another important issue. The minister has totally ignored the stakeholders in the fresh fruit and vegetable market here in Melbourne and has proceeded to employ costly consultants to arrange the rebuilding of a new market in the northern or western suburbs. This is against the wishes of the majority of market users, but the minister will not listen to their concerns. Like the chief executive officer at Southern Health, he needs a good shake around the neck. I can only say to him that arrogance will get him nowhere — except out the door at the next election.

East Bentleigh Primary School: playground

Mr Hudson (Bentleigh) — Recently I had the pleasure of opening the Infinity playground at East Bentleigh Primary School. It is one of the most interesting playgrounds I have ever seen. It has a wonderful swirl in the shape of a boat with several levels and a tower in the middle that gives a great sense of adventure. In my day it would have been a great tower for Robin Hood to rescue Maid Marion from, but today it is just as likely to be Shrek rescuing Princess Fiona. As the name suggests, the possibilities for all sorts of play are endless. The playground is a great credit to the school.

So often we lose sight of how important play is to children. Here their creative imagination can transport them into another world as they construct many different games with a wide range of characters. It is not only great fun but also educational. It gets them away from the PlayStation or the TV and into doing something active.

Aboriginals: young offenders facility

Dr Sykes (Benalla) — I wish to highlight the ongoing concern of local residents with the Bracks government’s continuing intent to locate an Aboriginal offenders centre at Mount Teneriffe, near Euroa, in north-east Victoria. Since the government’s decision was announced as a fait accompli to the local community, concerns over personal safety and fire have been utmost in the minds of local residents. Recently a draft fire risk management plan was circulated in the community for comment. The plan is very thorough and considers many issues raised by local people with the consultant at an on-site meeting several weeks ago. However, there is one fundamental flaw — the plan relies upon inmates at the offenders centre behaving responsibly in complying with risk-management strategies and during a fire crisis. Regrettably one of the
reasons that many of the inmates will be in the centre is the failure to act responsibly in their everyday lives. Any plan which relies on people who do not have a history of acting responsibly doing so in a crisis is doomed to failure.

I again call upon the Minister for Corrections to honour his commitment to meet local people on site, to listen to their concerns at first hand and to come up with an alternative to the current, ill-conceived plan, which has been imposed upon local people without consultation.

James Hardie: asbestos compensation

Mr MAXFIELD (Narracan) — Last week with the Attorney-General and other Labor members of Parliament I attended a rally on the steps of Parliament House about asbestos-related diseases. Many sufferers of asbestos-related diseases were present, as well as lobbyists — for example, Gippsland Asbestos Related Diseases Support, or GARDS, was well represented by a busload of people from Gippsland.

Asbestos-related diseases have tragically affected people across the state and around Australia. In the Latrobe Valley in particular, with its concentration of power stations, we have seen a very high number of people affected by asbestos-related diseases and a very high number of deaths. While this has been occurring attempts have been made to ensure there is adequate compensation. Members can imagine the dismay of people in my community when they hear what James Hardie has done in moving to the Netherlands to try to avoid accepting its responsibilities.

I commend the Attorney-General and the state government for their strong support of those who will need compensation in the future. We cannot allow a situation to develop where people are unable to be properly compensated. The misguided suggestion that we should have a statutory scheme where the state limits compensation is ridiculous. I call upon members of the opposition to also come down hard on James Hardie and to call upon it to deliver proper compensation to those who deserve it.

Port Phillip Bay: channel deepening

Mr COOPER (Mornington) — While the dredging of shipping channels in Port Phillip Bay may be substantiated as environmentally neutral by the independent panel which is currently considering the proposal, there is no doubt that the intended dumping of 28 million cubic metres of dredged material off the coastline of Mount Martha would be environmental vandalism at its worst. It should be noted that a further 15 million cubic metres of dredged clay and silt from this project, which has been soothingly described by the Port of Melbourne Corporation as ‘moderately contaminated’, will be dumped in the existing dumping ground south of the Fawkner Beacon if the corporation has its way.

Recently Dr Graham Harris, a renowned environmentalist and an expert on Port Phillip Bay, said there are fundamental uncertainties about dumping such a huge amount of dredge material off Mount Martha and Brighton. His view has added to the sense of alarm that is felt by a great many people who fear for the future of Port Phillip Bay.

The Bracks government should immediately cease its contemplation of this ‘easy way out’ approach to the disposal of the dredge material, and it should clearly understand that many thousands of Victorians will not stand by and allow the government to go unscathed should it give the green light to the creation of another dumping ground anywhere in Port Phillip Bay. There are alternative onshore locations for the government to consider and it should make it clear right now that it will only be those that will have any hope of approval should the channel deepening proceed.

National Paediatric Constipation and Faecal Incontinence Conference

Ms McTAGGART (Evelyn) — On 12 August I represented the Premier at the National Paediatric Constipation and Faecal Incontinence Conference at the Royal Children’s Hospital. This conference attracted almost 300 participants from all over Australia and New Zealand. Attendees were made up of multidisciplinary groups consisting of medical professionals, allied health professionals, community support groups and, most importantly, parents of children suffering chronic constipation and incontinence problems.

The event was founded and coordinated by an extraordinary, committed and passionate parent, Julie Jordan-Ely. Julie is to be commended for her work in coordinating an event of this magnitude. Julie established an organisation called NIDKIDS, which provides education and support to children who are suffering from neuronal intestinal dysplasia. The office of NIDKIDS is based in Lilydale in my electorate and I look forward to a strong association with this group in the future.

The Department of Human Services has provided a grant of $10 000 to sponsor the launch of a peak organisation, Paediatric Continence Association of
Australia, to represent the needs of families and sufferers of paediatric constipation and faecal incontinence. As a godmother of a child with a chronic bowel problem, I am pleased that this funding will help ease the pressure on families, but, most importantly, ease the emotional suffering these illnesses cause. Children suffering from chronic constipation often suffer from drug and laxative misuse, social isolation and uncommon eating patterns, which in turn can lead to mental health problems. Once again, special thanks to Julie for her vision and commitment to raise awareness and to provide support to children and families. It was a pleasure to launch the conference, and I wish the association every success for the future. Well done.

Northland Secondary College: industry training program

Mr LEIGHTON (Preston) — Last week we welcomed the Deputy Premier to Northland Secondary College, where he announced a grant of $1.3 million for the college for the ntec@nsc project. The grant will fund stage 3 of the development of an innovative industry standard manufacturing and technology education and training program and facility based at Northland Secondary College. The full value of the three-stage project is over $3 million.

The facility will offer vocational education and training certificate courses in engineering, automotive, furnishing and electronics in both the Victorian certificate of education and the Victorian certificate of applied learning. The facility will also meet the retraining needs of the long-term unemployed and a range of other community learning and skills development needs that exist for the broader community of northern Melbourne.

The project is based on a school community-industry partnership model of collective responsibility for achieving improved outcomes for young people. Significant partners in the project include the secondary schools network across the region, community agencies concerned with learning and employment, Koori agencies, the TAFE sector, the Darebin community building project, a large number of companies from within the manufacturing sector in Melbourne’s north, industry associations and the trade union movement.

Local industry has strongly supported this project. Our local industry recognises that in meeting their future employment needs it is important to invest in our young people today. The connection local manufacturers and industry associations have with this project goes well beyond agreeing to consider ntec@nsc graduates.

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

Mooroolbark: Jim Fuller community house group

Ms BEARD (Kilsyth) — It gives me great pleasure to inform the house about a highly successful initiative in group housing in Mooroolbark. The Jim Fuller community house group is a joint venture funded by the Shire of Yarra Ranges, Mooroolbark Lions Club and the Office of Housing. Purpose-built and opened in July 1988, it is ideally situated in walking distance to the Mooroolbark shops, medical centres, railway station, social clubs and other services. The house is available for older people who have links to the area and who wish to live in a group house situation. Tenants are responsible for preparing their own meals and doing their own laundry but are able to access support through local council services.

The house is managed by a community committee of management consisting of representatives from Mooroolbark Lions Club, the Shire of Yarra Ranges, Eastern Tenancy and the local community. I am proud to say I have recently joined the committee. Special mention must be made in relation to the overall success of this particular project to the contribution of Bob and Bette Gatherum, whose wonderful commitment to the house’s residents since its opening has been extraordinary.

The secretary of the house, Kate Coleman, is always available to add that little extra over and above her normal duties. Sheila Todd, as treasurer, Bob Hovendon as public officer and maintenance engineer, and Kim Swinson, as the representative from the shire, complement the other outstanding contributions. Marie Britnell and Di Price clean, organise and offer support to the residents. The house provides a wonderful example of a self-funded style of housing which could be replicated in other parts of Mooroolbark and elsewhere. It has particular emotional significance to me, and to my family, as it was named in honour of my father in recognition of his contribution to the Mooroolbark community.

Mountain District Women’s Cooperative

Ms ECKSTEIN (Ferntree Gully) — Last Saturday I attended the 30th birthday celebrations of the Mountain District Women’s Cooperative. This is a remarkable achievement and an important contribution to adult community and further education in Victoria. I would particularly like to acknowledge the outstanding work of Janice Corban, director and founding member,
Margaret Neith, founding member, and Patricia Rivett, board member.

The Mountain District Women’s Cooperative was established in 1974 in response to the isolation that many women in the district were experiencing at the time. It grew out of the women’s liberation movement and was set up by a group of women who established craft groups and classes for themselves and other local women. Some of these women are still involved with the cooperative. They established a child-care facility so that young mothers could take part in craft activities and classes, and the crafts they produced were sold at a shop, initially in The Basin and later in Ferntree Gully, to fund further activities by the cooperative. The Mountain District Women’s Cooperative is like a family, with three or four generations of some families now involved in its activities.

The cooperative provides over 38 000 student contact hours, with an extensive range of classes for adults in literacy, numeracy and vocational programs, including at the Victorian certificate of education level, as well as general interest courses in history, art, languages, music, cooking and of course a range of crafts. It provides classes for both men and women, particularly for young adults trying to get back into education after unsuccessful educational experiences at school and TAFE. The cooperative still provides — — 

Dr NAPTHINE — The cabinet secretary interjects that it was, and we all agree with that.

The second-reading speech clearly and rightly explains that there have been developments over time that have caused some difficulty in the administration of both Lake Tyers and Framlingham because the act was based on a shareholder model. Over time, as the second-reading speech says, local participation has declined due to the movement of shareholders out of the area and the transfer of shares to non-residents. Because participation is linked to shareholding, there has been a decline in the relative capacity of residents to participate in decision making, particularly at general meetings. There has been some difficulty at both Framlingham and Lake Tyers in holding general meetings with appropriate quorums.

As I outlined last night, it is proposed to amend section 23(4) of the Aboriginal Lands Act so that a quorum, instead of just being half of the persons entitled to vote, as in half the shareholders, will in future be half the shareholders who are residents on the reserve on the day the meeting was called in accordance with section 22(4).

Last night I briefly mentioned, and I will follow up today, some discussions I have had with a number of Aboriginal community leaders in the Warrnambool area who have expressed concerns about how this is to be administered, how it is to be interpreted and how it is to be understood. I know the Minister for Health will sum up, and I am sure she will give a detailed explanation of how this will be undertaken in practice, because there are some concerns about the definition of ‘a resident on the reserve on the day of the meeting’.

Unfortunately and tragically in many Aboriginal communities — and Framlingham is not Robinson Crusoe in this — there have been family disputes, tribal disputes and a number of discussions whenever meetings are held about who is eligible and appropriate to vote. Using a definition based on who is a shareholder and who is a resident of the reserve on the day of the meeting may cause further argument and discussion as to who is eligible to vote and whether a quorum is present.

I am making the point that I believe there is a need for proper oversight, proper advice on interpretations and bodies available to adjudicate if there is a dispute. I will give an example of another Aboriginal affairs issue in my electorate which highlights the lack of resources available to provide that sort of advice to the Framlingham community. I refer to a letter from Michael Bell, chairperson of the Winda Mara
Aboriginal Corporation, to Mr Gavin Jennings, the Minister for Aboriginal Affairs in the other place, dated 9 September. It states:

On behalf of Winda Mara Aboriginal Corporation, I write to express our extreme disappointment with the South West Wimmera Cultural Heritage Organisation.

For the past 12 months, we have had no direct assistance from the South West Wimmera Cultural Heritage Organisation in enforcing the Aboriginal and Torres Strait Islander Commission Cultural Heritage Protection Act 1984 in the area scheduled under the Karrup Jmara Elders Corporation. This situation has placed an immense amount of pressure on our community members involved with cultural heritage protection.

We are almost certain that cultural heritage has been destroyed due to the lack of consideration that South West Wimmera Cultural Heritage Organisation has provided to our community.

I raise that as an example because if the government and the minister are not able to provide adequate resources to assist in the protection of cultural heritage, how can we be sure they will provide adequate staff and resources to assist the Framlingham community deal with potential disputes and arguments that might arise with regard to the interpretation of this new amendment to the act?

We need timely, quick advice on the ground at the time a meeting is held because we do not want minor discussions and disagreements to blow up into major disputes, and potentially even court cases. I believe it is important to recognise that the Aboriginal community in south-west Victoria is a very strong and proud community. It can be very proud of the work it is doing at Tower Hill, which is an absolutely outstanding credit to the Aboriginal community — the Worn Gundidj Aboriginal Cooperative that is helping to manage Tower Hill and providing services there. It can be proud of the work that is being done at Lake Condah on heritage protection and identification of heritage values, which is unique in proving for the first time in south-west Victoria that the Aboriginal communities there were not nomadic but had a sophisticated form of aquaculture in eel trapping and farming, that they had permanent residents and a strong culture and history in the area.

In the Condah and Tyrendarra areas there are Aboriginal cultural sites that are of enormous heritage value to the Aboriginal community and the broader Victorian and Australian communities. If they are not being protected properly and the Aboriginal communities are not being supported properly in that very important area, a question is raised about what advice, support and assistance will be given to the Framlingham and Lake Tyers communities on the issue of determining who is eligible to vote at a meeting. This is an important issue. It is important that there be good management and good administration within Aboriginal communities. It is absolutely vital that they be self-managing, self-administered and self-empowered. It is also important that the Minister for Aboriginal Affairs and his department provide the appropriate advice, support and assistance to facilitate and ease that management where potentially there are disputes, confusions and misunderstandings, because those sorts of things can be enormously disruptive to and can disadvantage an Aboriginal community and its aspirations for self-management; and it can bring into disrepute in the broader community the ability of Aboriginal communities to manage themselves.

I support the legislation but urge the minister to make sure this legislation is properly supported with advisers on the ground to assist those communities.

Ms PIKE (Minister for Health) — On behalf of the Minister for Aboriginal Affairs in another place, I am happy to sum up the debate on this bill.

Firstly, let me thank all members of the house who have participated in the debate on the Aboriginal Lands (Amendment) Bill 2004. I say with confidence that all members of this house have a genuine desire to improve the democratic participation and self-determination of people within the particular Aboriginal communities that have been identified in this bill — that is, the people who are involved in the Lake Tyers and Framlingham Aboriginal trusts.

Members of this house have clearly demonstrated in this debate that they recognise that having a sound democratic base for decision-making facilitates access to services and supports that are fundamental to improve the quality of life for people living in those particular communities.

The member for South-West Coast has raised a matter regarding people’s rights to vote at the meetings that are called. The changes in the act are intended to make it easier for a trust to hold valid general meetings as well as to increase the opportunity for resident members to participate in those meetings. It is a requirement that people who are on the share register are then given the opportunity to participate in the meetings. Trust members who are recorded on the share register as residents and who are given the 14 days notification, at the time of the meeting are accordingly determined to be residents for the purpose of establishing the quorum. I think there has been due recognition of this matter within the framing of the bill, but I thank the member for South-West Coast for raising it as a matter of
concern. Obviously further clarification will be available, if required.

Once again I thank all participants for their engagement in the debate on this very important piece of legislation. We all wish it a speedy passage.

Motion agreed to.

Remaining stages

Passed remaining stages.

MAJOR CRIME (SPECIAL INVESTIGATIONS MONITOR) BILL

Second reading

Debate resumed from 15 September; motion of Mr HULLS (Attorney-General).

Mr HULLS (Attorney-General) — As people who have contributed to this legislation have noted, this bill is part of a package of measures to deliver on the government’s commitment to provide enhanced powers to tackle organised crime and police corruption in Victoria. The government has made a commitment to provide the police ombudsman with new covert investigation powers to investigate corruption within Victoria Police. This commitment will be implemented by two complementary bills — the Major Crime Legislation (Office of Police Integrity) Bill and this bill. This bill establishes the statutory Office of the Special Investigations Monitor, the role of which will be to oversee the use of covert powers by the director, police integrity, to ensure that they are used appropriately. These bills certainly reflect the government’s commitment to ensuring that the director, police integrity, has appropriate and effective powers to investigate police corruption whilst of course ensuring that the use of those powers is subject to robust and independent oversight. It is a matter of getting the balance right.

I note that both the opposition and The Nationals are opposing this legislation. As I understand it they are also opposing the related Major Crime Legislation (Office of Police Integrity) Bill. It seems to me that that is quite an extraordinary step. One could only come to the conclusion that despite all their huffing and puffing and their I’ll-blown-your-house-down mentality they are actually soft on crime, not serious about wiping out any corruption within the police force and not serious about fighting organised crime in this state. Government members certainly are, and we hoped that this matter would be beyond politics. We hoped that we would have bipartisan support for this very important legislation. Nonetheless the public has a right to know that the Liberal opposition and The Nationals are soft on crime and are not prepared to support this very important legislation.

Some questions were raised about reporting obligations and the lack of obligation in the bill requiring the special investigations monitor to report on the use of covert powers by the director, police integrity, as part of the oversight functions. The Major Crime Legislation (Office of Police Integrity) Bill gives the Office of Police Integrity covert powers under the existing investigative powers schemes. As there are oversight and reporting obligations in those schemes the Office of Police Integrity bill provides for the special investigations monitor to undertake equivalent obligations in relation to the Office of Police Integrity. So in this regard the Major Crime (Special Investigations Monitor) Bill has the same reporting obligations in relation to the director, police integrity, and his use of covert powers as the Ombudsman has in relation to the use of these powers by Victoria Police. I am more than happy to outline the relevant obligations in these schemes.

In relation to controlled operations the Crimes (Controlled Operations) Act currently requires a relevant ombudsman to provide annual reports to the Attorney-General and to the Parliament on the work and activities of a law enforcement agency using powers under that act. Part 8 of the Major Crime Legislation (Office of Police Integrity) Bill amends the Crimes (Controlled Operations) Act to give the Office of Police Integrity covert powers under that act and to provide for the special investigations monitor to undertake the above reporting obligations in relation to the exercise of those powers.

The Surveillance Devices (Amendment) Act amended the principal act by introducing a new oversight regime in relation to the use of surveillance devices. Of course this includes a requirement for a relevant ombudsman to inspect the records of a law enforcement agency using surveillance device powers and to report twice a year on those inspections both to Parliament and to the Attorney-General. Part 6 of the Major Crime Legislation (Office of Police Integrity) Bill amends the Surveillance Devices (Amendment) Act to include the Office of Police Integrity as a law enforcement agency under that act and to provide for the special investigations monitor to exercise the relevant inspection and reporting functions in relation to the use of those powers.
The Telecommunications (Interception) (State Provisions) Act requires the Ombudsman to inspect the records of Victoria Police relating to the use of telecommunications interception powers and to provide annual reports on the results of those inspections to the Minister for Police and Emergency Services and the Attorney-General. Part 9 of the Major Crime Legislation (Office of Police Integrity) Bill amends that act to include an equivalent requirement for the special investigations monitor to report on the use of telecommunications interception powers by the Office of Police Integrity.

Despite the protestations of the opposition the special investigations monitor will be subject to specific reporting obligations under these investigative power regimes. As a result it was unnecessary to include any other reporting obligations in the Major Crime (Special Investigations Monitor) Bill. It is absolute nonsense for members of the opposition to be standing up in this place and saying that there is no oversight in relation to the special investigations monitor. It shows that they have not done their homework. As usual they are too lazy to read the other relevant pieces of legislation that show quite clearly that there are stringent reporting conditions attached to the special investigations monitor. It is all about getting the checks and balances right, and government members believe we have done that.

The opposition is opposing the legislation purely on the basis that there are no appropriate reporting conditions, and I have absolutely refuted that argument. I have said that they simply have to read the other relevant legislation to see that there are very tight reporting conditions in place. They should have done their homework. I would advise them to change their minds and support this legislation. Otherwise they will be walking around their electorates with egg all over their faces and ‘Soft on crime’ tattooed to their forehead; and they will be judged accordingly, because there are appropriate checks and balances in this legislation.

The opposition also criticised the government for giving the special investigations monitor all-embracing and untrammelled power. That is just a nonsense. Clause 12 of the legislation is merely a facilitative provision to give the special investigations monitor general powers to perform his or her functions. The legislation gives the monitor the power to perform his or her functions. Once you give that facilitative power you then ensure that there are appropriate checks and balances in legislation which the special investigations monitor will be oversiting. It is simply a nonsense to say that there are untrammelled powers. The functions which are contained in the Major Crime Legislation (Office of Police Integrity) Bill are clearly defined and are limited to oversiting the use by the director, police integrity, of covert powers. The special investigations monitor will have the same oversight functions in relation to the director, police integrity, as the Ombudsman has in relation to the Victoria Police. You do not hear the opposition running around saying that the Ombudsman has outrageous untrammelled powers.

**Mr Wynne** — Where is the difference?

**Mr Hulls** — There is no difference. The special investigations monitor has exactly the same powers as the Ombudsman — that is, oversight powers that are restricted — and there are checks and balances in relation to those powers.

I am trying to do the opposition a favour by pointing out the error of their ways and by pointing out how ludicrous their arguments are in relation to these very important pieces of legislation. I do not want them to be walking around their electorates with egg on their faces — although in some cases it would probably be a better look than their current look. Nonetheless I am urging them to get on board this piece of legislation; otherwise they will be branded by the Victorian electorate as being soft on crime. We simply cannot fail to act as a Parliament on police corruption, and we cannot fail to act as a Parliament on organised crime. This government has introduced legislation that we believe will go a long way towards addressing any police corruption issues and any issues relating to organised crime. We have done it in a fair way to ensure there are appropriate checks and balances and appropriate oversight in relation to the new powers that are being given to the director, police integrity, and the new powers that will be given to the Victoria Police.

This is an important piece of legislation. In my view it would be foolhardy to oppose it. The arguments that have been raised by the opposition are specious. They should not be trying to play political point-scoring games in relation to what is very important legislation. I wish this legislation a speedy passage.

**House divided on motion:**

_Ayes, 64_

Allan, Ms  
Andrews, Mr  
Barker, Ms  
Batchelor, Mr  
Beard, Ms  
Beattie, Ms  
Bracks, Mr  
Brumby, Mr  
Buchanan, Ms  
Languiller, Mr  
Leighton, Mr  
Lim, Mr  
Lindell, Ms  
Lobato, Ms  
Lockwood, Mr  
Lupton, Mr  
McTaggart, Ms  
Marshall, Ms
Mr McIntosh (Kew) — Obviously the purpose of the bill is to set up a special investigations monitor who would monitor the Office of Police Integrity in its dealings with the investigation and prosecution of police corruption — a matter of concern to every person in this house. As I have said, many members of the Liberal Party and other people in this house were very concerned about this and were truly interested in obtaining a proper model.

One of the most important issues about this is that the Ombudsman, who currently has oversight of a number of government activities generally, was given another role in relation to monitoring police corruption as the Office of Police Integrity by a previous bill that we dealt with yesterday. Under this bill the relevant officers are given the role of not just oversight but of investigation and ultimately prosecution, and those investigations can be conducted on their own motion. The government has indicated it has properly resourced all of these officers with all the necessary powers, including the ability to have assumed identities, to operate under the Surveillance Devices Act, to conduct controlled operations such as so-called sting operations, and most importantly to operate under the telecommunications interception act — that is effectively telephone tapping.

Given the fact that the Ombudsman oversees the police in relation to those matters, one of the questions I have for the Attorney-General is: what would happen if during the oversight by the Ombudsman of normal police activity in relation to those matters the Ombudsman discovers particular material that the police may have in relation to police corruption? The Ombudsman would be acting as the Ombudsman overseeing police in their normal business of fighting against drugs, organised crime, terrorism and whatever, and if material became available and the Ombudsman saw that in his capacity as the Ombudsman, would there be any legislative mechanism to prevent the Ombudsman, who would then be in the Office of Police Integrity — he would be the police ombudsman at this current stage — from investigating that material that could ultimately lead to a prosecution and using that material?

There is a blurring of the office. It is a matter of profound concern to the privacy commissioner, who has written to the Scrutiny of Acts and Regulations Committee. I understand the government was forwarded a copy of that submission independently of SARC’s tabling of the Alert Digest. But the most important question is: is the Ombudsman able to use material he discovers in his capacity as police ombudsman to investigate those matters and then could they ultimately lead to a prosecution? It is that issue of the overlapping responsibility that is a matter of profound concern. I ask the Attorney-General to deal with that matter.

Mr Hulls (Attorney-General) — If the issue that has been raised by the shadow Attorney-General is the basis on which he is opposing the bill, I find it quite extraordinary.

We are dealing with clause 1 of the bill. Clause 1 sets out the purposes of the legislation, and the purpose is to provide the employment of a special investigations monitor and to amend the Public Sector Management and Employment Act, the Whistleblowers Protection Act and the Juries Act. The issue he raises is an issue that is now dealt with. The fact is that now we have a police ombudsman and we also have an Ombudsman, and if he is saying that the relevant oversighting by the police ombudsman in relation to police corruption is in
conflict with the role of the Ombudsman now, where has he been for the last however long he has been in Parliament?

What this does is change the name of the police ombudsman to the director of police integrity and indeed give appropriate powers for the director of police integrity to investigate police corruption. Obviously if the Ombudsman were currently investigating a complaint and he came across corruption in relation to the police, that would be referred to the police ombudsman to investigate. There will be no difference from the current situation, but there will be appropriate oversight in relation to these matters and new covert powers have been given to the director of police integrity. The powers include the ability to conduct sting operations, the ability to conduct telecommunications intercept — subject to where the federal government is going to go in relation to this — and other matters. We are setting up an appropriate oversight body. I simply caution the shadow Attorney-General in relation to the issues on which he is purporting to oppose the bill, because there is no difference in relation to the relationship that currently exists between the Ombudsman and the police ombudsman except for the new oversight powers.

Mr Ryan (Leader of The Nationals) — I have listened with interest to the position put by the shadow Attorney-General and to the Attorney-General’s response. The concern that we have as a party is the notion of a potential conflict of interest between the role that the Ombudsman has as ombudsman and the role that the Ombudsman has as director of police integrity. Specifically, within the Ombudsman’s office the Ombudsman of course is not subject to any form of oversight. The Ombudsman discharges his role as Ombudsman and reports to the Parliament as an officer of Parliament, and he does that with complete freedom in the fulfilment of his role. That is to be contrasted with the position that applies in the Ombudsman’s role as the director of police integrity, because under the terms of this legislation, the special monitor has been created to have oversight of the Ombudsman in this other role.

Mr Hulls — You mean oversight of the DPI.

Mr Ryan — Oversight of the DPI (director, police integrity) as the Attorney-General says, but effectively my concern relates to the Ombudsman fulfilling the role of director. It opens up the prospect of there being some activity undertaken by the director — also known as the Ombudsman — which is subject to criticism by the special investigations monitor. You would have the extraordinarily unseemly situation — this is the potential — where the Ombudsman of the state of Victoria, in his role of Ombudsman, was subjected to criticism by the special investigations monitor in that same Ombudsman’s role but as director, police integrity. That opens up the potential for an awful conflict in those respective roles. That is why in addressing the terms of the legislation, albeit as I said in the second-reading debate The Nationals support the tenor of it, there is a problem here with the basic construction of these two pieces of legislation. You cannot have the same individual fulfilling these two roles.

Mr Hulls — You do it now.

Mr Ryan — The Attorney-General says we do it now. However, when you are talking about the capacity for the oversight that is being introduced through the operations of this bill, the simple fact is we do not do it now. Let us take the Telecommunications (Interception) (State Provisions) Act 1988 as an example. The Ombudsman certainly has a role of overseeing the way the police conduct their affairs and the activities they are entitled to pursue under the 1979 federal telecommunications interception legislation. Under the delegation in section 34 of the commonwealth act the Ombudsman in Victoria has the role of providing oversight of the way the police do their job. That happens now — the Attorney-General is right to that extent. However, what does not happen now is the Ombudsman himself being subject to oversight.

There is nothing in the Victorian structure at the moment in any way, shape or form that makes the Ombudsman subject to oversight. What we are going to have now is a special investigations monitor created under this bill who will have the capacity to walk into the office of the director, police integrity — also known as the Ombudsman — and ensure compliance with the terms of the legislation now before the house. We do not have that structure in Victoria at the moment.

My basic concern on behalf of The Nationals is that the government is setting up a scenario for a conflict to occur. What happens if, in his report when he is overseeing the operations of the bill, as contemplated by this legislation, the special investigations monitor criticises the director, police integrity, and we then have the terrible position where our Ombudsman is subject to criticism in his role of director, police integrity, and yet on the other hand we have this official who is entrusted with the important task of ensuring appropriate administrative oversight of the way departments function, in the historical sense of the Ombudsman’s role? On one side of the hall he is doing...
one job and on the other side of the hall he is doing the other job. On one side of the hall he is not subject to oversight and on the other side of the hall he is subject to oversight. Just by actual construction that is setting up a position where you have a terrible prospect of conflict.

Mr HULLS (Attorney-General) — I disagree with the Leader of The Nationals. It is like saying the best way to resolve this is not to have oversight.

Mr Ryan interjected.

Mr HULLS — I take the point made by the Leader of The Nationals and I thank him for his comment at the outset that he is supporting the legislation. As opposed to the Liberal Party, which is opposing this legislation, the National Party understands that there should be appropriate oversight when you are giving quite far-reaching powers to the director, police integrity. That includes powers in relation to the conduct of covert surveillance, sting operations, telephone intercepts and the like. The government believes — and I know the Victorian public believes — that giving such powers is appropriate to help combat police corruption, but because they are substantially greater powers than the police ombudsman currently has there should be independent oversight. That is all this legislation does — it facilitates independent oversight of these appropriate powers.

If you carry the argument of Leader of The Nationals to its logical extension, he is asking what happens if the special investigations monitor makes some recommendations in relation to these new powers not being used appropriately. The public and the Parliament have a right to know that and the special investigations monitor will report to Parliament. If those powers are being used inappropriately, that needs to be rectified. It is like the Ombudsman reporting to Parliament and parliamentarians getting up in this place and criticising the Ombudsman. That happens from time to time — it is what a democracy is all about. The fact is we do not shy away from setting up a bill which will allow appropriate, independent oversight of the new coercive powers being given to the director, police integrity. We believe these powers should not be untrammelled powers. They should not be powers which do not have appropriate oversight.

Mr Doyle interjected.

Mr HULLS — I do not know if the Leader of the Opposition, given his inane interjection, or other members of this place have actually read the bill. What we are currently dealing with is a bill that sets up the oversight of the new powers that are to be given to the director, police integrity. We believe those oversight powers are absolutely appropriate.

Mr McIntosh (Kew) — The situation is there is a direct conflict of interest. This is an appalling situation because what the people of Victoria actually want is an independent commission. It is not just the people of Victoria generally, you can name people. You can talk about the chairman of the criminal bar association, who is out there at the present time criticising the commonwealth government over the Hicks trial. It is also criticising you in this particular model — —

The ACTING SPEAKER (Mr Ingram) — Order! Through the Chair!

Mr McIntosh — I am sorry, Acting Speaker. The situation is that people such as Arie Freiberg, who has recently been appointed by the government to the Sentencing Advisory Council, are criticising this model the government is setting up because of the apparent conflict of interest that will occur. People such as Colleen Lewis at Monash University are criticising this model. People want an independent tribunal. They want an independent body. They want an independent Ombudsman and they want an independent corruption commission. By having the Ombudsman and the director, police integrity, as one and the same person the government is creating an enormously difficult situation for itself.

All the oversight in the world will not remove that conflict, because it is in the actual construction of the model. I will give the house a case in point and I would like a simple answer to this. The situation is that in this legislation the government is persisting with its intention to tap phones and use that power in its fight against police corruption. We have been told countless times by the Premier, the Attorney-General and many other ministers, including the Minister for Police and Emergency Services, that police telephone tapping is a very important tool in the fight against corruption. It is so important that without the permission of the federal Attorney-General — who has the call on this — the government has unilaterally decided that the existing powers of the police can be used and provided to the current Ombudsman, now to be the director, police integrity, for the purposes of his fight against corruption in the police force. The government has decided that that power can be provided to the director, police integrity, and the special investigations monitor is going to come back and say, ‘You cannot do it, it is illegal’. Everybody knows it.
The Attorney-General might have his own opinion, but the real issue is if it is an matter of whether the government is right or wrong, that will be tested by the courts. By using telephone intercepts — telephone tapping — the government could potentially hold prosecutions up for years. It will go to a court and a court may rule it in or rule it out and that may well be appealed to the Court of Appeal which may rule it in or rule it out. Ultimately this will go to the High Court.

So every single prosecution relating to police corruption, before or after, may be held up for years because of this appalling model. What you need to have is an independent commission, not something you have cobbled together on the run. It is cobbled together on the run because when you announced the power for police to tap phones and provided that to the Ombudsman you forgot to even consult with the federal Attorney-General. You have landed yourself in one big pickle because this is not an independent body. Setting up all of these bizarre schemes is not going to fix the problem. You are creating one difficult problem.

Let us take the Attorney-General’s best case for a moment, where he says that you need an independent oversighting entity for the person who is director.

Taking the logic of the Attorney-General’s position, I put it to him that if you had a completely independent entity, apart from the Ombudsman, fulfilling the role of director and being subject to the oversight provisions which he is putting up in his model, I would not object to that. The problem here is that he is putting the Ombudsman in an extraordinarily invidious position, and in doing that he is risking one of the great notions that underpins the way our system functions in this state. The Ombudsman has always stood apart from all manner and means of criticism, if you like, out there in the public arena, let alone in the Parliament. The government is now putting that same person into a situation in his role as the director, police integrity, where he will be subject to these oversighting provisions. That is where you have a fundamental flaw. That is why you cannot, in my opinion, have the Ombudsman in both of these roles.

It is risking the integrity of the office of the Ombudsman to do it, because — and yesterday there were plenty of ‘with great respects’ and all that sort of thing tossed in; we are having a clinical conversation here — the problem is that the very notion of the structure establishes the prospect that it could occur. When you are dealing with something so essential to the way our system functions as the office of the Ombudsman you simply should not put that prospectively at risk. Without a shadow of doubt, that is what this bill does.

There are provisions in this bill which draw upon the powers given to the monitor in the previous bill — I think it is section 27 — and the functions and powers the monitor will have will entitle him to walk into the office of the director and use all sorts of investigative powers to make sure that the director has undertaken his task appropriately. Whether it be for the most minor of breaches or major breaches, or anything in between, there is the distinct prospect under the very structure of this legislation that in the course of the monitor carrying
out their role the director, police integrity, will be subjected to criticism for the way he has undertaken his task. I believe that that is untenable when you are also putting that person into the role of the Ombudsman of the state of Victoria. That is the fundamental flaw in this issue that I am very concerned about; and it is that fundamental flaw that I ask the Attorney-General to address.

Mr HULLS (Attorney-General) — I will address, first of all, the issues raised by the shadow Attorney-General. In fact he did not actually raise any issues; instead he made a political statement on what his view is, which is that if it is Tuesday it is a royal commission, if it is Wednesday it is an independent commission against corruption, and if it is Thursday it is some other commission that he wants set up. He has just made that political statement, and he has made it time and again. The fact is that, as the Ombudsman himself said in a recent report tabled in Parliament, it does not matter what you call these bodies as long as they have the appropriate powers. That is what the Ombudsman himself said. That is what George Brouwer himself said.

You either have faith in George Brouwer or you do not. If you do not, stand up in this place and say so, and then we can see where you are coming from. Alternatively, if you have faith in him, you should agree with his recent report which was tabled in Parliament. You can get all het-up and hot under the collar about what you call these bodies, but it is all about giving them appropriate powers. He is of the view that the powers he has now been given in relation to fighting police corruption are as strong as those of any other body set up in any state in Australia. We believe that is appropriate, and we do not take a backward step from that.

The shadow Attorney-General can go on making all his political comments about royal commissions, crime commissions, telephone intercepts and the like, and he even started to stray into the area, without mentioning it — and do not forget we are talking about clause 1 — of whether or not police received appropriate legal advice in relation to telephone intercepts powers and the like. But the fact is that the Ombudsman himself, George Brouwer, believes the powers he has been given are appropriate and will go a long way towards helping fight police corruption.

The Leader of The Nationals again raised the issue of the Ombudsman being placed in an invidious situation if he were criticised, particularly if he were criticised in relation to the new powers he has by the special investigations monitor. All that has been done here is that the police ombudsman has been given a change of name — he is now the director, police integrity — and he has been given some extra powers. Those extra powers are covert powers, and we believe, and I know the Leader of The Nationals believes, that they require independent oversight. That is what this special investigations monitor legislation will do. He raised an issue which could be addressed now in relation to the police ombudsman vis-a-vis his role as Ombudsman — that being the same person. From time to time — —

Mr Ryan — It is not subject to oversight.

Mr HULLS — It is subject to oversight by the Parliament. The fact is that from time to time the police ombudsman has made investigations in relation to police, has made findings and has been criticised by the police. The fact is that the director, police integrity, who was the police ombudsman, is the same person as the Ombudsman, and we believe that is appropriate. We also believe it is appropriate to give extra powers to the director, police integrity. They are substantial and wide reaching, and as a result we believe there should be independent oversight. That is done by the special investigations monitor, who will report to Parliament. That is absolutely appropriate, and we do not believe it infringes in any way on the credibility of the Ombudsman or the Office of Public Integrity. That is why we believe the legislation is appropriate, remembering that it simply sets up the structure for independent oversight. The further checks and balances in relation to the powers of the special investigations monitor and the Office of Public Integrity are in other pieces of legislation.

Clause agreed to.

Clause 2

Mr McINTOSH (Kew) — I notice that clause 2 is open ended in the sense that the act will come into operation on a day or days to be proclaimed. I refer to the explanatory memorandum for the benefit of the Attorney-General. It lists the various acts dealing with the covert powers to be given to the Office of Police Integrity, including the Crimes (Controlled Operations) Act 2004 and the Surveillance Devices (Amendment) Act 2004. Is there any difficulty with the proclamation of the legislation in relation to those two acts? I see there is also reference to the Telecommunications (Interception) (State Provisions) Act 1988. This house would be aware of the issue that is extant between the Commonwealth and the state in relation to the provision of those powers and the federal Attorney-General’s concern, as it is the concern of many people in this
house, about the independence of the model that has been set up.

Is there anything preventing the proclamation of this legislation with respect to the Surveillance Devices (Amendment) Act and Crimes (Controlled Operations) Act? In relation to the Telecommunications (Interception) (State Provisions) Act, if the commonwealth does not grant the power that is referred to in the explanatory memorandum notes on clause 2, will the government be proceeding with the proclamation in any event? It is common knowledge that the government has announced that the existing police telephone tapping powers are apparently being used by the ethical standards department and that the results of those police taps are provided to the Ombudsman. According to the announcement by the Minister for Police and Emergency Services and the answer by the Premier to my question without notice yesterday, there would be no apparent reason to have this act proclaimed as soon as it passes through the upper house.

The other matter I would like to raise is whether the Attorney-General is aware of the intentions of the alternative federal government, given that we are in the middle of an election campaign? Does he know what the federal Labor Party — in particular the federal opposition leader, Mark Latham, and Nicola Roxon, the alternative commonwealth Attorney-General — intends? Can the Attorney-General clarify when this may come into operation, and given the fact that the government has already embarked upon a course of action that does not really need, in its mind, the permission of the commonwealth Attorney-General, is there any apparent reason why this could not proceed as expeditiously as possible?

Mr HULLS (Attorney-General) — I am trying to understand the argument of the shadow Attorney-General. He seems to be suggesting that this legislation should be proclaimed as soon as possible and should proceed as soon as possible, but he is opposing the legislation. So I do not know — —

Mr McIntosh — I think you do.

Mr HULLS — I do not understand his argument. On the one hand he is saying, ‘Quick, proclaim it as soon as possible!’; and on the other hand he is opposing the bill.

In relation to the issue of the Surveillance Devices (Amendment) Act and the Crimes (Controlled Operations) Act I understand that before those pieces of legislation can be proclaimed the commonwealth needs to make appropriate regulations in relation to them. So we will obviously have to ensure that those regulations are proclaimed as soon as possible.

In relation to the telecommunications intercept aspect, as I have said — and I think the shadow Attorney-General knows my views, as does the Leader of the Opposition and the Leader of The Nationals — the federal Attorney-General has just been playing politics with this. That is the reality.

Mr Doyle — And you are so far above it all!

Mr HULLS — I am pleased that the Leader of the Opposition is here and is agreeing with me wholeheartedly! The federal Attorney-General is simply playing politics with this. He knows that there is no legal impediment to him granting telephone intercept powers to the director, police integrity. There is no legal impediment whatsoever. As I have said outside this place, the federal Attorney-General, Philip Ruddock, has two pretty simple choices. He could side with the Victorian government in its attempt to wipe out any corruption that may exist in Victoria Police and also join with us in fighting organised crime. Alternatively he could stand on the other side of the fence and give solace to people involved in organised crime or police corruption. They seem to be the two choices.

We believe this is important, and it is not too late for the federal Attorney-General, during the election campaign, to make a clear statement that he got it wrong, that he knows there is no legal impediment whatsoever to his granting these telephone intercept powers and that he is prepared to join Victoria in fighting organised crime and police corruption. I am not expecting an apology from him; I just urge upon him a bit of commonsense. He should do the right thing by the Victorian public.

In relation to the final point issue raised by the shadow Attorney-General — that of the alternative government — I have no doubt that the independent oversight that is being created in this legislation by way of the special investigations monitor is absolutely appropriate for the granting of telephone intercept powers. Philip Ruddock knows that; he would have legal advice that there is no legal impediment. He wanted appropriate, independent oversight; that is being done through this legislation.

Mr RYAN (Leader of The Nationals) — I must say it was not my intention to re-enter discussion on this particular clause, but there is a clear legal impediment to what the Victorian government wants to do. The
impediment is the fact that in the definition provisions of the federal 1979 telecommunications interception legislation, the definition of eligible agencies does not include special investigations monitors, which is the model that the state government wants to establish. The only eligible agencies that are referred to by the federal legislation are the police of any jurisdiction to which the power is delegated or any one of the commissions — the crime and corruption commissions that exist under various names and in various forms in Queensland, New South Wales and Western Australia. They are the only two categories of eligible agencies. The special investigations monitor is not an eligible agency.

This whole discussion centres around the fact that what the Victorian government wants to do is introduce a third category of entity — and the Attorney-General agrees with that proposition, as I put it. Therein lies the legal impediment. If the Victorian government was introducing a commission we would not even be having this discussion, because the commission that The Nationals have sought the establishment of would fit very neatly into the second of the two categories that exist under the federal legislation. It would be a complete non-issue. The legal impediment is one entirely of the making of the Victorian government, because it suddenly discovered at some point in time that it simply did not have a model that fitted in with the federal law when this federal law, quite rightly, jealously guards the way in which this power can be administered by eligible agencies, as defined. It is given to the police, and we have the power granted to the police here under our 1988 act — this is part of what is amended under the bill now under discussion. The second category of entity it is given to is these commissions — about a dozen of them around Australia. I pose the question: what would those other commissions and states say to the federal government if — —

The ACTING SPEAKER (Mr Ingram) — Order! I remind the Leader of The Nationals that clause 2 is a fairly narrow clause on the commencement, so he should keep his remarks to that issue.

Mr Ryan — If we do, as the Attorney-General suggests, simply lob up with this third category that is absolutely unrelated to the two that already exist, of course that is a legal impediment.

That is why the federal government is very reluctant about all this. I hear the confident assertions by the Attorney-General about Mr Latham’s position on this. I think it is very relevant that he be able to produce something or say to the house that he has the assurance from the alternative government of this nation that this legal impediment that in fact exists and about which he is so confident as to its removal is a proposition that is supported by the alternative government at the federal level.

Mr HULLS (Attorney-General) — I know this is a very narrow clause, but lest there be any misunderstanding as to the proposition I am putting, there is no legal impediment to the federal government making a declaration in relation to the director, police integrity (DPI), being an appropriate entity. I agree with the Leader of The Nationals that it will require legislative change. So when I say there is no legal impediment I am saying there is no legal impediment now for that legislative change to be made after the request was made by Philip Ruddock to have appropriate oversight powers. Philip Ruddock wrote to the state government when this was first enunciated. Despite playing some politics regarding the type of body he would prefer after an announcement had been made by others, he said that for any consideration to be given to telephone intercept powers and changing the legislation there would have to be appropriate independent oversight. That is exactly what the special investigations monitor (SIM) does, and he knows that with that independent oversight there is no legal impediment to his changing the legislation to include the DPI as an appropriate entity in relation to telephone intercept powers.

Mr Ryan — The SIM!

Mr HULLS — No, the DPI, because the SIM actually has the oversight powers. So in setting up the SIM there is no legal impediment imposed on the federal government to amend its legislation to ensure that the DPI is declared an appropriate entity to undertake telephone intercept powers.

Mr McINTOSH (Kew) — I have a very simple question in relation to clause 2. Given the fact that the government has embarked upon a course of action already and has legal advice justifying the action of obtaining telephone taps through the ethical standards department and providing them to the Ombudsman in his capacity as the police ombudsman, soon to be the director, police integrity, looking at clause 2 and its open-ended proclamation there does not appear to be any reason why this bill could not be proclaimed as soon as possible with or without the consent of the commonwealth. The consent of the commonwealth would appear to be irrelevant, given the current legal opinion and the course of action embarked upon by the government already.
Mr Lupton (Prahran) — Clause 2 is a simple clause dealing with the commencement of this legislation. It is expressed to be a commencement that is open ended because it deals with the interrelationship between this legislation and other legislation that also has an open-ended commencement date. The way this clause is worded is entirely appropriate. In listening to this debate so far I have not heard members of the opposition or the National Party say anything other than that the clause is appropriately worded. They are using the debate on the nature of the commencement of the legislation to raise a lot of issues that are irrelevant to the clause. I reiterate the issues that have been raised by the Attorney-General in his earlier responses — that where we are dealing with independence, where we are dealing with the names of bodies, or where we are dealing with the question of functions or powers there is nothing in this clause — —

Mr Doyle interjected.

Mr Lupton — I can and I will. I have got 3 minutes and 39 seconds left so I am perfectly happy to continue. I thank the members of the opposition for their great assistance in my continuing to deal with this important issue. The opposition is attempting to use the debate on the commencement of the legislation to go fishing around, dealing with all sorts of other irrelevant issues to do with independence, functions and powers. The Attorney-General has well and truly completely pointed out the fallacy of the arguments that have been raised by members of the opposition and The Nationals. This legislation sets up appropriate independent oversight powers. That is what we are dealing with. The special investigations monitor is an appropriate independent body. This is necessary and sensible legislation. I support the clause.

Mr Hulls (Attorney-General) — I thank the member for his contribution. In relation to the issue raised by the shadow Attorney-General, I repeat that a very strong commitment has been given by the Commonwealth government to introduce regulations as soon as possible in relation to the legislation referred to in this explanatory memorandum on clause 2. The reason for that is that it is part of the major antiterrorism legislation. That legislation is being enacted by every state. I understand the federal government has already enacted its legislation and that it is just a matter of passing regulations, which will be done very shortly after the caretaker period.

This legislation will be proclaimed as soon as possible. I repeat: it would be far better if we were not playing politics with an issue such as this. We believe it is a very important issue. We believe fighting police corruption and organised crime is something that ought to go beyond politics. That is why we would welcome the support, even at this late stage, of the shadow Attorney-General and the Liberal Party generally.

Clause agreed to; clauses 3 and 4 agreed to.

Clause 5

Mr Cooper (Mornington) — I would like to get a response from the minister regarding the eligibility of people appointed as special investigations monitor. Clause 5(2) says that a person is eligible if they are an Australian lawyer of at least five years standing. Why is the appointment restricted to lawyers. I have nothing against lawyers, but there would be eligible and eminent people within the community who are not lawyers who I believe would have the ability to carry out this role. This is a matter that I wanted to explore at the briefing that was going to be held for the opposition on this bill. Regrettably the briefing was set for a particular time, and at the last minute, in fact as we assembled in the committee room, a note was handed in to say the briefing would not occur then but would be delayed by half an hour. That half an hour was critical to me, and I had to leave. I asked my colleague who remained at the briefing to ask that question and another question on my behalf. I was told the response my colleague got was, ‘This is a policy matter’; therefore, that was a fairly pointless exercise.

It is regrettable that I have to stand on this and on another matter to raise this issue, but I would be interested now in getting a response from the minister on the matter I have raised — a matter which could have been quite easily responded to if the briefing had taken place at the time set and in an open and transparent way. Then we would not have needed to go into the consideration-in-detail stages on this bill.

Mr Hulls (Attorney-General) — On the last point, I do not know if the honourable member for Mornington remembers the days when he was in government and we were in opposition, but — —

Mr Doyle — Very fondly, indeed!

Mr Hulls — I remember them not so fondly. To actually get a briefing on legislation was as rare as hen’s teeth, I have to say.

Mr Cooper — We did not get one on this.

Mr Hulls — It is a bit cute to have a go at a briefing that may have been half an hour late simply because the member for Mornington could not get there.
CONSTITUTION (RECOGNITION OF ABORIGINAL PEOPLE) BILL

Second reading

Debate resumed from 26 August; motion of Mr BRACKS (Premier).

Mr DOYLE (Leader of the Opposition) — The opposition has looked at this bill carefully. At its heart we think it is probably well intentioned, but we have some concerns which I hope will be addressed in the context of this debate.

The first concern is pretty basic. I am sure many members of Parliament have had primary school groups in here and have talked to them about what it is we do in here. When you ask them what we do as members of Parliament, you get some pretty remarkable and frank answers. But in the end they get to the right answer. They look at the statute books in front of us and they get the answer that we actually make the law; that is what we do.

This bill is in some ways remarkable because it is to be a law which purports to create no legal rights — in other words, we will pass into law something which will not be enforceable at law. In that sense it is not really a law or a bill at all. It is more a political or social opinion about our history. That may be an accurate opinion; it may be a valid political opinion.

Mr Mildenhall interjected.

Mr DOYLE — I will get to that. It may be a valid opinion, but it is hardly a law. It is to be a part of the preamble to our constitution, but it does not help us with the interpretation of the Constitution Act 1975 or support the validity of the Constitution Act 1975. It is really a statement that this Parliament recognises certain things. That may be a good thing, but I put it on record that it is unusual and perhaps unprecedented that we are passing into law a bill which does such a thing.

Looking at that, do we have in this Parliament — and I am trying to look at this reasonably — a function which says we are not just a law-making function through legislation? The answer to that is ‘perhaps’. It is interesting that whatever your conclusion, so far as that goes, what we are doing today is a symbolic gesture. It is not about practical reconciliation. I am not offering that judgment by way of criticism; that is simply my judgment of what the legislation does, and that really gives the lie to the grandiose claim of the second-reading speech that this bill is an important step towards reconciliation with indigenous Australians.
because, as I said, it is simply a symbolic statement of the political opinion of this particular Parliament.

Notwithstanding that the bill is probably well intentioned, it suffers from problems that are typical of Labor legislation. We only have to reflect on the last time we altered our constitution, which followed the last election because of one of the major election promises made by the present government, to see that Labor legislation dealing with the constitution is often sloppily handled. Regrettably that is typical of this legislation as well. It suffers from sloppy thinking and sloppy drafting, it has ambiguities in it and it rests on some pretty questionable assumptions.

Mr Hulls — What do you really think?

Mr Doyle — Let me tell you, I will let you know — in the most supportive and constructive way possible, of course.

First, let us ask ourselves — because this is an important philosophic question and I am sure the government went through this thinking — when thinking about our constitution should we, as a matter of principle, entrench any reference to a single group in our society? Should this be a document where we divide off groups each from the other? If the answer to that is yes, then where do you begin and end? Do you, for instance, enthrone the contribution — —

Mr Mildenhall interjected.

Mr Doyle — If it is only a start, though, I would like to know that. I take up the point raised by interjection by the member for Footscray. It is a good point, and I was going to raise it anyway.

Mr Mildenhall interjected.

Mr Doyle — No, I am not, but have you thought through the principle that you are enthroneing in our constitution? If you are saying, ‘This is once for all, because our indigenous Victorians have a special place’, then — —

Mr Mildenhall interjected.

Mr Doyle — Yes, but just listen to the argument rather than doing the colouring in, okay? If that is the case, then that is a reasonable assumption and we can proceed on that principle. If it is, however, about the constitution recognising a number of groups that have made a significant contribution, that is a different principle. Do we then enthrone the role of women, our Chinese community and our Jewish community? All I am saying is that I want to know the government’s thinking on where the line is drawn. It may well be that government members have said to themselves, ‘No, our indigenous people have a special place’, and that would be true. But that is not made clear in the argument that has been put forward so far.

I say that because of a very puzzling line in the second-reading speech, which I must say I think is misplaced, because it is not reflected in the legislation as a whole. The second-reading speech says that this piece of legislation is introduced to enhrone the contribution that our indigenous people ‘continue to make to this place’. I think that is misplaced, because there are many groups in our community who have continued to make a contribution to Victorian society. We do not enhrone or entrench the continuing contribution that they have made, and the legislation itself does not reflect the sentiment of the second-reading speech. So that gave rise to my thought as to whether this is a once for all about our indigenous population or whether it is the precursor to including and recognising man such groups.

My counsel would be to draw the line, because I believe that if you go further than that you have the capacity to divide us rather than unite us using the preamble to our constitution, and I think that would be regrettable. I look forward to the answer to that question from the government. If it is about entrenching once and for all the role of indigenous Victorians, I think that would be an acceptable addition to the preamble of our constitution. However, I do not believe it would be acceptable to continue to include groups, because, as I said, that would be divisive rather than uniting.

There are some problems here, though, and the first real problem is something I touched on earlier. Is this about practical reconciliation or about a symbolic gesture towards reconciliation? It is symbolic, of course, because the bill is at pains to point out that it confers no legal rights and does not give rise to any civil cause of action. There is something that I think is a matter for regret — and it was a matter touched on in the last debate by the Attorney-General. We were prepared to accept that proposition from the government, because we were advised that there was legal opinion — I believe by Hanks, but I do not know — that that advice and this drafting are correct and that this does not give rise to any civil cause of action or any legal rights.

My chief of staff was promised at that briefing that we could have that legal opinion. We asked for that in a spirit of bipartisanship in order to be able to understand that the thinking and research behind the bill were appropriate. I regret to say that when we requested that
legal opinion, our request was then refused, despite the fact that we had been promised it at the briefing. I think that is regrettable. In matters dealing with our constitution, it is far better if we can proceed on a bipartisan basis where the Parliament itself agrees.

These matters are of too great a moment to play politics with, and I think the refusal of that legal opinion was absolutely petty. But I will move beyond that.

One of the other things that worries me is the entrenching provisions, although I know what the government is trying to do. There is, first of all, a sort of philosophic issue to the effect that says we have passed a law amending the constitution which allows us to entrench provisions with the requisite majority, which can then only be altered by referendum. But it begs the question that if that is the way you want to alter it, why is that not the way you put it in the constitution to begin with? It seems to me to be illogical that you want the Parliament to continue to have the ability to entrench provisions which can only be removed by referendum. It seems to me for the sake of logic, and I would have no objection to that, that you should go to referendum if that is what you want to do to entrench a particular proposition. The government has chosen not to do it. I find that inconsistent and strange, but nevertheless that is what we are dealing with. But what if it has got it wrong?

**Mr Cooper** — That’s likely.

**Mr Doyle** — The member for Mornington interjects, ‘That’s likely’. You will recall the last debate we had on the centrepiece of Labor’s policy at the last election, proportional representation and alterations to the way this Parliament is elected. When that bill was brought in — the centrepiece of Labor’s re-election — I think from memory something like 35 amendments were dumped on us at 7.30 p.m. the day before we were going to debate them and again at midday the next day. Labor could not actually get our constitution right! Then I recall standing here and letting the Premier know that the government had got the amendments wrong. It managed to get out of that because it was designated as a transcription error, but what it would have effectively done is entrench in the constitution an error that would have had to be removed by referendum. It just could not get its drafting right, and then it could not get its redrafting right. Do I have confidence in its assurance that this will not launch legal rights or bases for civil action? I must say I have to be cynical about that.

There is a way around that, and I would ask the Premier in his summing up to make this commitment to us. If it has got it wrong and if this does give rise to a civil cause of action or legal rights, will the ALP commit to coming back into this place and joining with us in the necessary enshrining or entrenching majority to fix it? Not having seen the Hanks opinion, that would give me some degree of comfort. We will make that commitment now. If Labor has got it wrong, we will join with the government to change it so we can fix it, but I need that commitment from the ALP side as well.

I do not intend to take a huge amount of time on this, but there are couple of things in the bill that give me pause to think and make me slightly concerned that I have not seen that legal opinion.

The first is in clause 3, which is designed to entrench an economic relationship with traditional lands and waters. I will not play partisan politics there, but I would be interested to know why it is that that would not give rise if not to a future legal action then to giving more support to an existing claim. Does that have any effect on existing claims or future ones — and what impact does it have on those?

Secondly, and this to me is really bizarre, in the very clause in which the government is designating that there can be no legal action, the wording itself is ambiguous. It says:

\[(3) \text{The Parliament does not intend —} \]

and ‘intend’ is the crucial word —

by this section …

Then it goes on to say:

\[(a) \text{to create in any person any legal right or give rise to any civil cause of action; or} \]
\[(b) \text{to affect in any way the interpretation of this Act or of any other law in force in Victoria} \]

The question is simple: why ‘intend’? If you simply took that word out, so it read: ‘The Parliament does not by this section …’, that would make sense to me. Ambiguity in language in black-letter law which is to be entrenched in our constitution and altered only by referendum is sloppy, to say the least. These things have to be tight, not sloppy, and precise, not loosely wrapped — and this one is loosely wrapped.

Words in legislation have their normal meaning, so why not just leave that word out? If that amendment were to be made between houses to bring greater certainty, we would support it. And even if that would bring us greater certainty in terms of future legal actions or future civil causes of action, that is not to say this new section could not be used to establish what existing rights are. That is why I think this clause does not go far
enough in making sure that the intention is given fact. You could argue that rights may arise in the future from this new section. Maybe that is drawing a long bow, but why take the risk?

If this is what the government really intends, why not preclude that right from the start? I do not want to go on and on, but I will make three quick points. This bill is so typical of Labor’s iconic legislation. It is perhaps well intentioned but it is so sloppy. Have a look at where it refers to recognition of Aboriginal people. It talks about recognising that the events described in the preamble occurred without proper consultation. That is like a mix of sociology 101 and some Labor mantra. Proper consultation! Is this some sort of lesson in social history? What would proper consultation with our indigenous population have meant? Should we have listened to the way they thought Victoria should have been governed?

Mr Mildenhall interjected.

Mr DOYLE — Hang on! So what would we do then? I will take up the interjection from the member for Footscray. Would that then mean we would agree to govern this state on the premise of male seniority rather than democratic election? Would that have been proper consultation? All I am saying is that you need to be precise about these things. It did not occur, and we acknowledge that, but you have to be careful about this sloppy, sociology 101, feel-good language in the preamble to our constitution.

My second point — and I am not raising it by way of trying to be clever; it is because I simply do not know the answer — proceeded from my own experience and the use of the word ‘aboriginal’. I do not know whether that is the appropriate word or not. We know the dictionary meaning of it — that is, of races inhabiting a land from its earliest times and before the arrival of colonists — but it is comparable to the word ‘indigenous’. ‘Indigenous’ means belonging naturally to a place.

When I looked at this particular bill I thought of my experience talking to people in Alaska and in northern Canada. They hate being labelled ‘Eskimo’. They prefer the term ‘Inuit’, and that is because ‘Eskimo’ is a generic term that has no meaning for them. I think of the Canadians I have met who are among Canada’s First Peoples. They despise the term ‘Indian’ and far prefer the term ‘first peoples’, but they gave that a lot of thought before they gave due recognition to the terminology.

I ask the question: is ‘Aboriginal’ or ‘Aborigine’ the terminology we need; is ‘indigenous’ more appropriate? I do not know the answer to that, but the problem is that you are now going to entrench the terminology of today, even if it is accurate today, over such a sensitive issue for all time. I simply ask whether that is appropriate. Time passes, and even if you can assure me that the terminology is right now, are we sure it will be at all times in the future?

Thirdly, I want to raise the question of number. It might seem a semantic point but it is an important one, and it does give rise to what I think are some misconceptions in the legislation. The bill uses the singular all the way through. It talks of our Aboriginal people. Can I put the proposition that that is not how they would see themselves — that is, as a people. If you look back to that time around 1835 you see there were perhaps 25 nations in Victoria alone who certainly would not have seen themselves as the Aboriginal people. Peoples perhaps, indigenous perhaps, nations perhaps, but that terminology is also to be entrenched. You could take that further and say that it is not just a relationship that is spiritual, social, cultural and economic but relationships, because they were many, varied, complex and different relationships from nation to nation. It might be a small matter, but again, if you are going to open up our constitution and then entrench provisions, then get it right. That is all we are saying. Many indigenous people would argue that the plural would be more appropriate there.

As I said, I do not wish to go on and on about it. I must say that I would have liked to have seen that legal opinion and would have liked to have been consulted more and to have seen the legislation with some time to make these suggestions back to the government. When we are looking at our constitution what I am interested in is good legislation, not partisan legislation or legislation which is going to give rise to either ambiguity or argument in later parliaments as they try to interpret the opinion of this particular Parliament.

In conclusion, it concerns me that there seems to be some well-meaning but woolly thinking behind the framing of very important legislation. I make the point that there are technical deficiencies in the drafting and the wording of this legislation. Specifically I think proposed section 1A(3) is inadequately drafted because it doesn’t close off all the ways in which proposed sections 1A(1) and 1A(2) may be used. I do not believe that the government has closed off all the ways in which those particular parts of the clause and section can be used, and that may give rise to greater uncertainty in the future.
It also seems to me to be an odd way to legislate. Opposition members even considered a reasoned amendment — and I do not wish to be obstructionist about this — to say to the government, ‘Look, we are happy to work with you on this. These are concerns that we have. We have not seen the legal opinion. Why do we not take a breath, have a look, see if we can get it right, do it better and then bring it back into Parliament with the acceptance and agreement of all sides?’ That has not been the way we have chosen to go because, in the end, we decided that we would try to give the government the benefit of the doubt. I suppose my conclusion on this legislation would be that the government is trying in its own usual inept way to give recognition to the indigenous people of Victoria. If that is what it is trying to do by this legislation it certainly could have been done better and more precisely, but it is a worthy aim.

Mr DELAHUNTY (Lowan) — I congratulate the Leader of the Opposition for giving a very good summary of many of the concerns that we in The Nationals have about the Constitution (Recognition of Aboriginal People) Bill. I am the lead speaker for The Nationals on this very important bill. We know that it is about giving recognition to the Victorian Aboriginal people and their contribution to the state of Victoria, as many other people have contributed. The Leader of the Opposition has put forward some of our concerns. I do not want to focus on them for too long; I want to talk about some of the positive things that are happening within rural and regional Victoria, particularly in the Aboriginal community.

It is easy to criticise. The Leader of The Nationals always says, ‘If we are going to criticise we should put up a better option’. The Nationals will not oppose the legislation, but we think it is a bit unusual that the government, particularly in the last clause — that is, clause 4 — has put in an amendment that means that any other changes must go to a referendum. In this place we have not gone through the same process to make changes to our state’s constitution.

Interestingly I picked up an email — no doubt many other members get stacks of them too — in which appeared some survey questions. One question was, ‘Should the state’s constitution only be changed by state referendum?’ The yes vote was 83.4 per cent and the no vote was 16.58 per cent. The community out there feels that if there are going to be any changes to the constitution they should be made by referendum. But as we all know, the government has the majority in both houses and can make any changes — and it already has done so in this Parliament. This is the second change to the constitution. Unusually the government has put in a clause at the end of each bill to make sure that any changes from then on can only be made by referendum. The argument could be: if you are going to do it, why not do it at the front end?

I have asked my parliamentary colleagues to send this bill out and to speak to as many people as they can. I wrote letters to the papers to ask for comments. I must admit that I did not get very many, but the member for Shepparton was also very active in sending this information out. She sent a copy of the bill to a lady who is an historian so she could look at it. Her comment back to the member for Shepparton was that she did not have any real problem with it. I think that most people think that the intent of the legislation is to be embraced, but the concerns raised by the Leader of the Opposition are strong in our party, particularly those about clause 3, and in particular proposed section 1A(3), which states:

(3) The Parliament does not intend by this section —

(a) to create in any person any legal right or give rise to any civil cause of action; or.

(b) to affect in any way the interpretation of this Act or of any other law in force in Victoria.”.

If you are going to say that then, as the Leader of the Opposition said, it does not need the word ‘intend’. It should say ‘the Parliament does not by this section’ and go on with it. When you put in the word ‘intend’ it is black-letter law and we create an avenue for someone to take it through the court process. As we know, the courts are the umpires of this legislation before the Parliament today.

I would like to thank some government people for meeting with us and giving a brief summary of some things that are going to come in relation to this bill: Kerry Lewis, senior policy advisor; Sharme Bryan, principal legal advisor; and Annette Wiltshire, who is also a principal legal advisor.

The Nationals will not be opposing this legislation, but I want to go back to 26 August in this place when we had a ministerial statement entitled Recognition of the Past, Building a Better Future. In that statement we had five aspirations: strong communities, healthy families, land and cultural heritage, jobs and justice. What was missing in that statement was education. Education is vital to the continuing development of any individual and is important to any community. As individuals and as a community education not only gives us the tools to be involved in community activities but it also has a big impact on a person’s health and employment, justice and jobs. There has not been enough support given to
the education of the Aboriginal community in particular.

A couple of weeks ago I was involved with a business for a day under the Victorian Employers Chamber of Commerce and Industry program. I was at the Horsham campus of the University of Ballarat with the people there. I was very fortunate during that day to meet with the Aboriginal education officer of the University of Ballarat, Angela Singh, who is a highly qualified person for this job. She is the manager of the university’s Aboriginal education centres over four campuses — Ballarat, Ararat, Stawell and Horsham. I am informed there are 100 Aboriginals enrolled at TAFE and higher certificate courses at the University of Ballarat. Thirty of those are at the Horsham campus. At the meeting I also met up with the Jenni Beer, the Horsham Aboriginal liaison officer. I have had various dealings with Jenni. I wish those people at the University of Ballarat, its staff and particularly those 100 students all the best. As I said, education is a powerful tool in relation to employment, your own health and justice. Education is important for their development. Education was missing out of that ministerial statement.

My personal experience has been in education. I went to school with the Dodson boys, Patrick and Michael, who are commonly known as Pat and Mick. Pat was a fellow I sat with at school for four years. He was not the most brilliant student or sportsperson, but he was captain of the football team and head prefect because he was one of those people who put their shoulder to the wheel in relation to education and sport. We can see the benefits of that to him as a person but more importantly to his own Aboriginal community, where he has risen to a very high level. I have seen what education can do. It really develops great leaders like Pat and Mick Dodson.

Many of my colleagues have sent this bill to Aboriginal cooperatives. There are many of them across Victoria: the Ballarat and District Aboriginal Cooperative; the Bangarang Cultural Centre Cooperative at Shepparton; Brambuk Incorporated at Halls Gap; the Framlingham Aboriginal Trust at Purnim, which is just south of my electorate; the Gooloom Gooloom Aboriginal Cooperative in Horsham — I will come back to that because I have met with those people; the Lake Tyers Aboriginal Trust; the Mildura Aboriginal Corporation; and the Rumbalara Aboriginal Cooperative at Moorooduc. I know the member for Shepparton has sent that bill out to them for their comment. The Rumbalara — —

Mr Haermeyer — It’s Rumbalara! It’s a good football team!

Mr DELAHUNTY — Rumbalara; thank you. It is a good football team. They told me they played a draw in the grand final last week. I hear the Chief Commissioner of Police is their no. 1 ticket holder. I was told she was up there last weekend but unfortunately she could not help it across the line to win the premiership on Saturday. I have no doubt it will be playing again this week.

Mrs Powell — She is a great supporter of them!

Mr DELAHUNTY — The member for Shepparton tells me she is a great supporter of them, so that is great to see. I will go back to the ministerial statement. The Leader of The Nationals spoke at that time and highlighted the first Aboriginal bill to come into this house, which was on 19 August 1869 — 135 years ago. The title of that bill was the Aboriginal Natives Protection Bill, and it had a number of parts to it. It established a board which was empowered to do a wide range of things. But as we know, a lot of water has gone under the bridge since that time.

As I have outlined, today we have many Aboriginal cooperatives in Victoria. They are working with their own local communities and doing good work. One of the ones in my area is the Gooloom Gooloom Aboriginal Cooperative. I was very fortunate to meet with their acting chief executive officer, Chez Graymore, and their director, Alan Burns. I am told they have a seven-member board. They have employed an administrator, a health-care worker, a substance abuse worker and a youth worker, and they have an important Aboriginal education position at the Horsham North Primary School as well as at the University of Ballarat TAFE campus. As an economic incentive the Gooloom Gooloom people helped establish the Wirrimul Aboriginal Farm, and they also have an art gallery in the main street, Firebrace Street, in Horsham. They have also developed formal links with other agencies to assist in providing services to their community, particularly the departments of social security, housing and health. A lot of work has been going on with the local Aboriginal communities. They are good things that are happening in my electorate.

Many of my colleagues have spoken to the people in their areas. As the member of Shepparton said, I have had some feedback. My colleagues Damian Drum and Peter Hall in another place and others have passed on information. It was interesting to note that when I met with the Gooloom Gooloom people, including Chez Graymore and Alan Burns — who is also the cultural heritage officer and who nearly became a councillor of the Horsham Rural City Council at the last elections, which shows the level of acceptance and respect they
have for him — all of them spoke of having difficulty working with various government departments, even though there is a reasonable relationship between them. Importantly they are having difficulties with administrative funding. I call on the government to look at Goolum Goolum, because funding for the acting CEO position is for only 12 months.

It is important we do get funding to keep those people in those positions. I have had a good working relationship with not only Alan Burns, but also people like Tim Chatfield from Halls Gap, who is an excellent footballer and an excellent advocate for his community. There have been others like the Harridine brothers of Dimboola; Peter and those boys have been very active not only at Dimboola but also in the Wimmera community. Peter was a fellow I coached in football. You can talk about the silky skills of a person like Michael Long, but I am sure if Peter had his time over again he would have the ability to play Australian Football League football.

The Budja Budja Cooperative at Halls Gap is another group about which I have some information. It was established in 1999 to deliver necessary health and social services and facilities in response to the needs of the expanding local Aboriginal community. It is located at Halls Gap and provides the local community with a range of secondary health services such as physiotherapy, podiatry, dietetics, a maternal child and health nurse, a community health nurse, family counselling and occupational therapy. I know that they work closely with the local hospital and have formed great partnerships so that they do not duplicate but work in close cooperation. These are good things that are happening within the Aboriginal community in my area.

A real highlight I think is what happened last Saturday in the Aboriginal community. We have in western Victoria at a place called Antwerp, which is north of Dimboola, Ebenezer Mission. It is the oldest surviving mission in Victoria, it has many gravestones in its surrounds and it is a very significant site for the local Aboriginal people. There is a church, a kitchen, a dormitory and a toilet block all on site. Last Saturday we had the first wedding held there for about 120 years. The first wedding! The member for Footscray should have been there. They tell me there were 200 people there, it was an excellent occasion, and a great place for a wedding.

It has come about because under the previous coalition government, and to the credit of this government, there has been money put into that facility to upgrade it. We have got it to the stage that people have been able to hold weddings out there. The couple that did exchange their vows at this historic Ebenezer Mission was Robyn McDonald, who is 25, and Fabian Lauricella, who is 24. They have been engaged for five years and, as Ms McDonald said, she always wanted to get married at the mission. ‘Just because I am part of the Wotjobaluk people’, she said, ‘I feel very proud about it’. So there is a real good news story that we do not see enough of, but it was highlighted in the Wimmera Mail-Times last week.

In conclusion I will talk about the bill. We have no real problems with the intent of the legislation, but unfortunately the wording is a little bit sloppy. It also concerns some of our people that we have got to the stage where we have words such as ‘intend’ in there. Another thing I am concerned about is clause 3 highlights that the Aboriginal people were not involved in the preamble to the act or the constitution, but I am informed that there were also women and men who did not own land who were also not involved in the setting up of the constitution. So the concern I have — and I think it was highlighted very well by the Leader of the Opposition — is that if we are going to put in legislation that these people were not involved, why should not women also be part of this constitution? Why should men who did not own land not be recognised as having been involved in the developing of our constitution. Proposed section 1A(3) says Parliament does not want:

… to create in any person any legal right or give rise to any civil cause of action …

So we take its word on what the government intends with the bill. Can I finish by saying that there is another great centre in my electorate called the Johnny Mullagh Cricket Centre. It has been set up in Harrow. It was opened a couple of months ago by the Handbury family who put a lot of money into the centre, but importantly the government did contribute to it. Johnny Mullagh led the Aboriginal cricket team, the first test team to tour England, and the centre is a great place. So if I could put a plug in to anyone in western Victoria, please go to Harrow and visit the Johnny Mullagh Cricket Centre. It is a fantastic facility.

There are some words I would like to read into Hansard. It is the song by Judith Durham We Are Australian, and I think it really encapsulates what we all should be aiming to be and what we all should aim to do:

I came from the dreamtime from the dusty red soil plains
I am the ancient heart, the keeper of the flame
I stood upon the rocky shore
I watched the tall ships come
For forty thousand years I’d been the first Australian.

And the chorus goes:

We are one, but we are many
And from all the lands on earth we come
We share a dream and sing with one voice:
I am, you are, we are Australian.

I think that is what we should be encapsulating. Many cultures have come into Australia; we should ensure we put our arms around them and embrace them and make them feel part of our community, whether that be in the electorate I represent, Lowan, or Victoria in general. Whether it is the Aboriginal community as our first custodians of this land or the many people that now make up Victoria, I think we should always remember we are not only Victorians but also Australians. With those few words I wish the bill a speedy passage.

Mr MILDENHALL (Footscray) — It is a rare privilege to speak on a bill of this significance in this chamber. Before doing so I would like to acknowledge the people of the Kulin nation, the traditional owners and custodians of the land on which we stand, and pay my respects to their elders, past and present.

This debate, along with last month’s ministerial statement, the joint sitting after the Sorry Day in 2000, and the 1997 formal apology to Aboriginal people for the policies resulting in the forced removal of their children, has been among the finest moments of this Parliament. Or should I say this would have been one of those moments today but for the unnecessarily nitpicking, uncharitable and churlish comments by the Leader of the Opposition.

The Leader of the Opposition asked where it would end and whether the names of a whole series of other groups would be inserted into the constitution. I would have thought the use of the term ‘unique role’ would have indicated the answer to that. The government has a multicultural affairs bill being prepared. It does not involve inclusion in the constitution but a broader recognition. This is about the original custodians and inhabitants of this land. This inclusion is a unique, one-off situation and warrants a more charitable attitude than we have seen so far in this debate.

The Leader of the Opposition referred to the refusal of the legal opinion — it was never promised to the opposition. The release of a legal opinion in those circumstances would have been a first; it certainly would never have occurred under the previous government. As a matter of policy those legal opinions are not released. As for the entrenching and the question of what if we have got it wrong about the legal rights, I am assured that with all the work that has been done on this over a long period the advice is rock solid. In regard to the use of the terms ‘Aborigine’, ‘Aboriginal’, ‘indigenous’ or ‘Koori’, this bill has been prepared in light of explicit and comprehensive consultation with indigenous people around the state. The government is confident about the way the language is used.

This is an extremely important bill. My criticism of the opposition is that its members do not understand the nature of the reconciliation process. To progress complex and difficult issues like the policies relating to indigenous people we must move forward in partnership with the Aboriginal community. A strong and legitimate partnership requires honesty and commitment from each of the parties. This bill is a frank admission of some of the wrongs of the past. It deals with some unfinished business this society has with its past. That is part of a reconciliation process — you have to be honest and you have to move forward together. You should not attempt to paper over the cracks, nor should you proceed into a move like this without having a charitable and compassionate attitude.

As the Leader of the Opposition said, it is largely symbolic. That is its significance and its importance. The sections proposed to be added are intended not to create new legal rights or entitlements but to clear the way forward for a better relationship and for the substantial government investments and partnerships outlined by the Premier in the ministerial statement. I believe proposed sections 1A(2)(a) and (b) are self-evident as they describe the unique status of Victoria’s Aboriginal people as the descendants of Victoria’s first people and the nature of the relationship with the lands and waters within Victoria. However, proposed section 1A(2)(c) talks about the unique and irreplaceable contribution of Aboriginals to the identity and wellbeing of Victoria. The contribution to the wellbeing of the state, particularly post white settlement, is not often acknowledged.

Post white settlement Victoria provided the most extraordinarily difficult circumstances for indigenous people to contribute to the community as displacement, acts of aggression, illness and a progressive withdrawal of rights created huge barriers. However, some quite impressive leaders emerged in that time to take up the challenge in the face of this adversity. One such leader in the 1930s was William Cooper, a Yorta Yorta man from Cummeragunga, who lived at 73 Southampton Street, Footscray, in my electorate. He had left the Cummeragunga reserve in order to become eligible for an aged pension, which became the means of support for his campaign for Aboriginal rights. He helped form
and became the first honorary secretary of the
Australian Aborigines League — his house was the
league’s office. The honorary treasurer was Doug
Nicholls and the president Mr A. Burdeau. Margaret
Tucker — also known as Aunty Marj Tucker — and
Aunty Sally Russell Cooper were other prominent
Footscray indigenous residents involved in this.

William Cooper fearlessly campaigned for reforms
only realised 30 years later. He organised a mass
meeting on the Yarra bank for May 1938 to ‘support
the Aborigines in their stand for full citizen rights’.
Resolutions were passed asking the federal government
to establish a department of Aboriginal affairs, assisted
by an advisory council on which the Aboriginals
themselves would hopefully be represented. The
resolutions also urged that ‘full citizen rights be granted
to all civilised Aborigines in all states, such as the right
to own land, the old age pension, the basic wage and all
other social services’.

In 1935 Cooper prepared and circulated a petition to
King George V seeking the vote, land rights and direct
representation in Parliament for indigenous people. By
late 1937 the petition had been signed by
1814 Aboriginal people from right around Australia,
but the then federal government refused to pass the
petition on to the king, claiming it had no constitutional
right to do so. As celebrations were organised for the
150th anniversary of white settlement of Australia,
Cooper helped organise a mourning day. This action
prompted the Prime Minister of the day to meet with
the first ever deputation of Aboriginal people, during
which the Aboriginal people asked for a federal role in
Aboriginal affairs, which was subsequently refused.
Interestingly, the mass meeting welcomed the Victorian
government’s decision to grant security of tenure to the
Aborigines in their stand for full citizen rights’. The
resolution also urged that ‘full citizen rights be granted
to all civilised Aborigines in all states, such as the right
to own land, the old age pension, the basic wage and all
other social services’.

Mr McIntosh (Kew) — In my former career as a
barrister I had the unique opportunity of experiencing
both sides of the equation of native title claims. In my
time as a barrister I had the benefit of appearing on both
sides of the equation in two separate native title claims
as far afield as western Victoria right up to the Great
Sandy Desert in Western Australia. That time left an
indelible impression on me.

I remember standing in the middle of the Canning
Track in north-western Australia, just north of the Great
Sandy Desert, talking to the tribal elders of the Mardu
people, who have recently secured their claim over an
area of land that is about three-quarters of the size of
Victoria. I was struck not only by the stark beauty of
the place but also the appalling history of that track and
the royal commission that subsequently found the way
that the track was engineered, if you like, was based on
appalling treatment of the Mardu people and many
others in north-western Australia.

I have also spent time in western Victoria and
remember standing in an area of stark beauty at the
Ebenezer Mission, north of Horsham, in the electorate
of the member for Lowan. Again, it represented
perhaps a testament to Aboriginal history in this state
since white settlement. Many of the sentiments and the
notions that are encapsulated here we probably all
recognise as being an important and significant step
forward in the process of reconciliation.

Another part of my role as a barrister involved with
native title was dealing with the legalities, and like the
Leader of the Opposition and many people on this side
of the house, I do have some cause for pause — and no
more than that — about the current regime. The first is,
of course, the issue that it is the people of Victoria’s
constitution. It is not just the Koori people’s, the
Aboriginal people’s, or other people’s — it is
everybody’s constitution. The philosophical notion that
we pass a piece of legislation in this place by a
three-fifths majority but ultimately entrench that which would otherwise require a referendum to change is very much an undemocratic step in the sense that future generations may want to change it, alter it, or tweak it to reflect the wisdom of future generations with the benefit of hindsight. To prevent that occurring by way of a referendum is probably not a great step, and it is something that in other circumstances may be seen to be quite profoundly undemocratic.

On a constitutional issue, it raises the question of this entrenching process, and I raised this at the time we dealt with our constitutional amendments at the commencement of this Parliament. That really relates to the question of whether or not this Parliament has the constitutional power to entrench anything in our constitution that goes beyond the practices, procedures and processes of the Parliament itself, in accordance with the provisions of the Australia Act. I therefore question whether or not the entrenching provision is done lawfully in accordance with our constitutional parameters.

I also have a number of concerns about the way the clause is set out. I agree with the notion that it is a statement of what is probably universally accepted in this place as being a fundamental reflection of our wisdom with the benefit of hindsight but with the intention that it should not create any form of legal right which can then be exercised by way of a civil cause of action. My concerns are: firstly, that it is curious that we use the word ‘intention’, that it is Parliament’s ‘intention’ not to create these rights. A simpler expression may have been to say that the Parliament does not do it. Intention should be irrelevant. It should be an objective measure. Certainly our intention is reflected in the first two parts of the clause, our statement about it being a reflection of our wisdom with the benefit of hindsight, but with respect to legal matters, they should be right and it should just say ‘The Parliament does not create’.

My next concern is that if the intention is not to create any legal right, why limit it to the words ‘right’, ‘privilege’, ‘duty’, ‘obligation’ and ‘liability’? All of these are matters that can be created and taken away by this Parliament. I would have thought that perhaps the intention and spirit was to take it a lot further than just a legal right.

The next issue of concern is that while it may not be the intention to create any legal rights or give rise to any civil cause of action, the question is: does it provide any form of defence? While I cannot think of any examples of that on my feet, it is perhaps again a tad narrow in limiting it to just a civil cause of action. As to a legal right, I certainly understand that, but the issue I have is that it could be used as evidence in a court of law, and there is certainly a substantial body of legal material to indicate that a preamble in a piece of legislation is often used to assist with the interpretation of legal rights, privileges, duties, obligations or liabilities. Accordingly, while it is not the intention of this bill to create any legal rights, we have certainly not closed off or eliminated the possibility that it may be used as a mechanism for interpreting another right or otherwise that could be granted under this act or some other act.

The other concern I have is that the words used are ‘the Parliament does not intend by this section’. Again it may perhaps be a bit limited, because it does not exclude the possibility that this preamble, in combination with some other legislative enactment of this place, could create a legal right. Again the expression used may be somewhat confined and should perhaps be clarified.

The other thing is that it is not beyond possibility that the preamble could be used in a court in the form of evidence against the state of Victoria as some form of admission of fact. Clearly it is not intended to be a legal preamble creating legal rights. It would have the status of being admissible as a statement of fact, and that may lead to a consequence for the state of Victoria in making these admissions which, in company with other provisions of other enactments or the common law, could be held to create a legal right.

In conclusion, the underlying parameters and purpose of the statement based upon our conventional wisdom at the moment and with the benefit of hindsight is an important step forward. I am concerned that the exclusion of legal rights may be somewhat narrow and that we have not closed off every possibility. I do not think it would be a significant drafting exercise to eliminate all those matters or perhaps other matters that other speakers may raise. Clearly the intention is to make a statement of fact, and that should not give rise to any legal rights or other forms of duties or liabilities in combination with other enactments. I echo the words of the Leader of the Opposition: the opposition stands ready with the government to consider these matters and work together to create not just the statement but also the notion that we are trying to make a statement of fact rather than trying to create any form of legal rights, duties, obligations or liabilities.

Mr SAVAGE (Mildura) — I desire to move a reasoned amendment to the Constitution (Recognition of Aboriginal People) Bill. I move:

That all the words after ‘That’ be omitted with the view of inserting in their place the words ‘this house refuses to read
this bill a second time until consultation takes place with the people of Victoria concerning the principles of the bill and the impact it will have on the community’.

I have given more consideration to this issue than any other that has come before this house in my time as a member of Parliament. I have consulted many citizens, both indigenous and non-indigenous, on the amendment to the constitution. It is indisputable fact that Aborigines were the custodians of the land in Victoria before white settlement. And there is no doubt that Aboriginals were not consulted during the drafting of the constitution — and neither were women, who could not vote until 1911. I am equally sure that some of the participants at the Eureka Stockade in 1854 were driven by the fact that they were being taxed without representation. The constitution was being debated some months earlier in that same year.

I believe this amendment has the potential to divide our state and communities rather than to complement reconciliation. It is equally true that while indigenous Victorians were not consulted 150 years ago on the constitution, neither are a large number of people in Victoria being consulted on the issue that is being debated in this house today. There were large numbers of people at the time of the passing of the first constitution who could not vote because they did not have British citizenship or were not property owners, which was a prerequisite for voting. There has not been sufficient consultation across Victoria on this proposal. I was not briefed on the legislation until the day before it was introduced two weeks ago. The electorate I represent has no awareness of this proposal except for minimal information that was given to my local indigenous community. I do not believe this amendment has the level of support that the government believes it has.

I will quote the chairman of the North-West Regional Cultural Heritage Board, Gary Murray, who said today on ABC radio that at best the proposals are a starting point on more substantial change that will make a difference to Aborigines. He said further:

I don’t need the state government to recognise me as a Wamba Wamba person, for example; I’m quite capable of doing that.

He went on to say there should be more meaningful legislation on land rights, which is the crunch issue.

I have to say there are some huge problems facing indigenous communities across Victoria, and as I have the largest indigenous population of any electorate in Victoria I know well the problems that beset these communities. Members will have noted a double-page spread in the Age some weeks ago which indicated the problems we are facing with child welfare in Mildura. I have to give some credit to the Minister for Community Services, who is endeavouring to work with the Aboriginal community, with me and with the Department of Human Services to ensure we have some better outcomes in that area. That is a good example of the things that need to be addressed today which should have priority.

I have an excellent working relationship with members of the Mildura Aboriginal Corporation — Barry Stewart, Syd Clark and Sally Scherger, just to name a few. Members will know about the Warrakoo diversion program. It has been running for more than 10 years and it is an excellent program. It is a realistic approach to dealing with young Koori or indigenous offenders, and it works. It is a resounding success. These are the priorities this house needs to be aware of, endorse and promote.

There is much more to be done. Noel Pearson is a significant advocate for a change in the Aboriginal approach. A recent article in the Australian states:

Only farsighted Aboriginal leaders such as Noel Pearson acknowledge that promoting indigenous people as victims has done nothing to help them.

I have to say I agree with Noel Pearson. My belief, and I am sure other members would agree with me, is that indigenous Victorians across the state want secure employment and a share in the economic wealth of the state, and they want to raise their children in a safe, nurturing environment. They do not want to be patronised. Some of them have said to me that they do not like awards that are specifically targeted at Kooris. They want to compete with the wide community and not be treated as a special category. That approach is wrong. We should make sure Aboriginals are treated equally and are not given special arrangements.

I believe this bill should be deferred. The appropriate way would be to put the issue to a referendum at the next state election at minimal cost so that every Victorian can either endorse it or say no, they do not agree with this. This is a state constitution which is therefore every Victorian’s constitution. This has been done before.

In the 1999 federal constitution referendum there was a question — it was the second question put to the people of Australia. It was a more wide-reaching preamble than the provisions that this bill inserts into the Victorian constitution. It talked about national unity, recognising the sacrifices of people who went to war for Australia, upholding freedom, honouring Aborigines and Torres Strait Islanders, recognising
immigrants and being mindful of the responsibility to protect the natural environment. Two other areas were also mentioned.

This was only five years ago, and the outcome of the vote was an overwhelming no — 57 per cent of Victorians voted no, and 73 per cent of voters in the electorate of Mallee voted no. Maybe things have changed — I do not know. But there are more important things to worry about. In fact there was a significantly higher vote for the preamble amendment than for the actual republic proposal. The people of Australia do not want to be messed around with good ideals; they want to be given a choice, to have a say and to make sure they get appropriate, democratic outcomes through this house.

The constitution is for every Victorian, and we should not forget that. It is not something that has special status for some categories. Once you do that you lose the concept of what the constitution is there for — it is for every Victorian. This house can have a motion, as it did for reconciliation some years ago, making the statement that Aboriginal people were the custodians of the land before white settlement — that is indisputable. We cannot rewrite history, and I believe there are more important priorities that this Parliament should be facing at this time. This bill is potentially divisive, and it is ironic that the primary reason the government has given for this legislation is the failure of our government to consult indigenous Victorians. In fact Aboriginals, or indigenous Victorians, had the vote in the first constitution, but they had difficulty achieving the vote — as many other people did — because they did not own property.

I will obviously be supporting the reasoned amendment I have proposed to give this issue more widespread consultation with every Victorian — both indigenous and non-indigenous. If we do that, we may be surprised at the outcome.

Mr THOMPSON (Sandringham) — A young Aboriginal Australian artist, Lance Atkinson, painted a very fine painting called Reconciliation. Against the background of the Australian outback four young characters were featured. One was of Asian background, another was of Muslim background, another was of Caucasian background and the fourth was of indigenous background. Lance had his own view of what reconciliation meant in today’s Australia.

Tony Abbott recently stated in Sydney that because we cannot change the past we should be more determined to change the future. Noel Pearson and a number of other leading Aboriginal spokespeople for their communities — whether in Cape York, Mount Isa or other parts of Australia — have argued for the right of indigenous Australians to take responsibility to improve outcomes in practical areas.

Fred Chaney, a former federal Liberal Minister for Aboriginal Affairs, has argued that reconciliation has a number of forms. There is the symbolic side as well as the practical side, and in Australia today the Howard government has placed a very strong emphasis on practical reconciliation measures — improving health, education and housing outcomes and improving employment opportunities. Much has been achieved in those areas.

Under the Howard government since 1996 the indigenous year 12 retention rate has risen from 29 to 39 per cent. The number of indigenous TAFE students has increased from 26 000 to 60 000. There are 36 per cent more indigenous university students. The number of indigenous people employed in the private sector has risen from 44 000 to 55 000. The number of indigenous nurses has increased by one-third, and the number of indigenous doctors has increased by one-half. Since 1994 the indigenous death rate from respiratory illness and infectious disease has fallen by more than 50 per cent, though it might be noted that it is still four times the national average. Between 1996 and 2001 the proportion of Aborigines earning more than $600 a week rose 20 per cent faster than for the rest of the Australian work force. So there has been a changing landscape in important areas.

The first Aboriginal person to represent a major political party in the federal Parliament was the late Senator Neville Bonner. Interestingly in his maiden speech he made the remark that he craved, and I quote:

… the indulgence of honourable senators in that for a very short time all within me that is Aboriginal yearns to be heard as the voice of the indigenous people of Australia. For far too long we have been crying out and far too few have heard us.

There has been a lot of goodwill over the last 150 years from people who have had a genuine commitment to advancing the welfare of indigenous Australians. In a speech given in Sydney a week or so ago the story was told of how a Lutheran pastor, Carl Strehlow, died of pleurisy because he did not wish to leave the Hermannsburg mission, where he had dedicated his life to assisting and advancing the cause of indigenous Australians. There are many other great examples like that that stand alongside Simpson at Gallipoli in terms of the spirit of goodwill. The key word in contemporary Australia is ‘respect’ so that as a nation we can move forward in the terms of the vision of Lance Atkinson, whether a person be of indigenous background, Muslim...
background, Caucasian background or Asian background.

The bill before the house today makes a series of changes to the constitution. The first change I would like to comment on in a technical sense is under the heading ‘Recognition of Aboriginal people’.

Sitting suspended 1.00 p.m. until 2.05 p.m.
Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Schools: funding

Mr PERTON (Doncaster) — My question is to the Minister for Education and Training. I refer the minister to today’s release of the new funding model for state schools, and I ask: can she confirm that one in five Victorian state schools will get less money as a result?

Ms KOSKY (Minister for Education and Training) — I am glad that 104 Exhibition Street is now writing the questions for the member. At least he is getting some assistance with his questions. Today I was very pleased to announce changes to what were the school global budgets across the state. We are now putting in place a new student resource package which includes an additional $200 million on last year. That $200 million for next year comes on top of the extra $4.36 billion that we have invested in education since we came to office. I am very pleased that we are putting the new funding out to schools. There are a couple of anomalies — —

Honourable members interjecting.

The SPEAKER — Order! I ask members to stop interjecting in that manner, show some courtesy to other members in the house and allow the minister to respond.

Ms KOSKY — I will explain to the house why this anomaly existed. The previous government introduced a Schools of the Future program, and to entice schools into that fundamentally incorrect program it provided extra money to lure those schools in while it left other schools at the base rate. We are fixing that anomaly, and we are also fixing the difficulty with English as a second language (ESL) funding, where a student in year 7 received up to seven times the amount of funding that a student in grade 6 would receive to learn the English language. We are fixing those anomalies.

It may come as a surprise to the opposition, but we have worked with principals right around the state. The Victorian Primary Principals Association supports this, the Victorian Association of State Secondary Principals Association supports this, the Australian Education Union supports this and the parents federation supports this. It would appear that the only people who do not support this proposal are the members of the opposition, who are assisted and in fact have their questions written out by Brendan Nelson, the federal Minister for Education, Science and Training.

Honourable members interjecting.

The SPEAKER — Order! The member for Doncaster!

Ms KOSKY — I would like to read a quote which really distinguishes that side of the house from this side of the house. I quote from the member for Doncaster, where he said:

There are lots of highly intelligent children in St Albans whose parents have no interest and gain their cultural fulfillment from General Hospital, Days of Our Lives, Midday and Neighbours.

We believe every student around the state can learn if given the extra resources. That is what we have given through this new funding model. I am very proud of this new model, because it will mean more teachers providing more education for more students across our state.
Mr MERLINO (Monbulk) — My question is to the Premier. With all Australian states condemning the federal government for its decision to strip the states of $1.6 billion in national competition policy payments, can the Premier advise the house of the consequences of the federal government’s decision and the impact of this on Victoria?

Mr BRACKS (Premier) — I thank the member for Monbulk for his question. The historic Council of Australian Governments agreement to fund the national water initiative was hailed around the country and supported by state and territory governments, except for Western Australia, and also by the conservation movement, the National Farmers Federation and a whole range of other groups. I regret to inform the house today that each state and territory government, as a consequence of the Prime Minister’s decision not to provide any new funding for the national water initiative but rather to cut funding from the states’ national competition policy payments, has signed a joint letter to the Prime Minister which — —

Mr BRACKS — The letter goes on to refer to two other matters. I will briefly read those:

It is also a breach of your written undertaking to Premier Geoff Gallop of 15 October 2003 to consult the states and territories on the issue of competition payments beyond 2005–06.

The letter indicates in conclusion that this action by the Prime Minister constitutes a breach of the undertaking given to the premiers and territory leaders and therefore — —

Honourable members interjecting.

Mr BRACKS — I will conclude by indicating the action that will be taken as a result of the letter submitted to the Prime Minister by all the state and territory leaders. The letter states:

The policy you have outlined is not a reasonable basis on which the national water initiative can operate. You have effectively repudiated your commitment to the national water initiative and we take your actions as a termination of the national water initiative.

Therefore the Prime Minister’s response — —

Honourable members interjecting.

Mr BRACKS — The Prime Minister’s response is therefore seen as a repudiation of the agreement which we historically acclaimed and said was in the national interest. This is regrettable, because there was an opportunity for great cooperation between the state and federal governments on what is one of the major issues facing the nation. Instead of that the Prime Minister has effectively said that his commitment to water is not
there. The only way, therefore, that this matter can be resumed is for the Prime Minister to meet his commitment for new money, new resources and key new projects around the country. The actions of the Prime Minister have effectively torn up what was a great agreement for Australia.

**Population: government policy**

Mr **RYAN** (Leader of The Nationals) — My question is directed to the Premier.

Mr Maxfield interjected.

The **SPEAKER** — Order! The member for Narracan!

Mr **RYAN** — I refer the Premier to Australian Bureau of Statistics data released today which reveals that for the fourth consecutive quarter more people left Victoria than arrived from other states. Given that one of the Premier’s key objectives is growing the Victorian population, what action is the government taking to convince people to stay here rather than leave?

Mr **BRACKS** (Premier) — I welcome the question from the Leader of The Nationals and thank him for raising the matter with me. The figures released today by the Australian Bureau of Statistics show that the growth in population in Victoria is greater than the growth of the nation — and that is a good outcome. It shows that the growth in population is running at about 1.2 per cent in Victoria. That is higher than the national average and shows that there is a significant decline in the population moving interstate from New South Wales and from South Australia. In domestic immigration — and let us provide some facts for the Leader of The Nationals — —

Mr **Smith** interjected.

The **SPEAKER** — Order! The member for Bass!

Mr **BRACKS** — I am sure he — —

The **SPEAKER** — Order! There is far too much noise in this chamber. I ask opposition members to be quiet and allow the Premier to answer his question, particularly the member for Bass.

Mr **BRACKS** — If I can give some factual basis to the question asked by the Leader of The Nationals and show that in terms of our share of overseas migration — —

Honourable members interjecting.

Mr **BRACKS** — It was a good question and I want to explain the answer to the Leader of The Nationals. It shows that our share of overseas migration has risen to 34 per cent, which, when you consider that our population share is 25 per cent and our economy is 25 per cent, is a very good outcome.

Honourable members interjecting.

The **SPEAKER** — Order! That is enough. I will start removing members from the chamber without warning if they persist in yelling out in that manner. I ask members to show some courtesy and remember this is a parliamentary chamber.

Mr **BRACKS** — In terms of interstate migration there is a net reduction of 78 for Victoria compared to more than 1000 in New South Wales, and there has been a significant increase in South Australians who have left the state. Victoria has one of the lowest interstate migration drifts of any state in Australia because of the government’s strategy — and the Leader of The Nationals asked me about the government strategy — to actively seek a greater share of overseas migration for Australia. We therefore have had a greater share of that overseas migration and a population increase of 1.2 per cent.

Ms **Marshall** interjected.

The **SPEAKER** — Order! The member for Forest Hill!

Mr **Perton** — On a point of order, Speaker, I put it to you the Premier is debating the question.

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

Mr **BRACKS** — Speaker, I accept your ruling on the point of order. I will resist debating the opposition’s capacity in this state. There has been a net increase in migration to this state — the second-highest population increase in the country. It is 1.2 per cent, higher than the national population increase. That is because of our policies to encourage a greater share of overseas migration to this state.
Hospitals: funding

Mr Wilson (Narre Warren South) — My question is to the Minister for Health. Given that the government will open the first new hospital in this state for a decade at the end of this week, can the minister update the house on the improvements in the performance of the public hospital system?

Dr Napthine — On a point of order, Speaker, the standing orders require that questions be factual. The question is not factual, because the Northern Hospital has been open for the last decade.

Mr Thwaites — On a point of order, Speaker, it is not a time for debating.

An honourable member interjected.

The Speaker — Order! I warn the member for Bass.

Mr Thwaites — It is inappropriate, Speaker, for people to use points of order for debating measures rather than for raising proper points of order.

Mr Plowman — On a point of order, Speaker, clearly the question was not factual. Clearly the standing orders and Speakers’ rulings both determine that a question must be factual. If it is not deemed to be factual, it should be ruled out of order. The Speakers’ rulings on this are that the question would then go to the opposite side, which means it would be our question.

The Speaker — Order! Previous Speakers’ rulings say two things in relation to this. One is that it is not the Chair’s role to decide whether information given by the house is factual or not. That is left to the good graces of the members. If documents are provided or statements are made that require authenticity, the member can be asked to provide that authenticity. The minister, to respond.

Ms Pike (Minister for Health) — I thank the member for Narre Warren South for his question. On Saturday I will have the very great pleasure of joining the Premier for the opening of the new Casey Hospital in Berwick.

That day also marks the fifth anniversary of the Bracks government, and this new public hospital is a very tangible reminder of our commitment to health services. We have built Victoria’s newest hospital in the outer south-eastern suburbs. It is in one of the fastest growing population corridors in the country. We have delivered this hospital within the contracted time and on budget. It is worth remembering that this is after years of bureaucratic and legal bungling and the spending of buckets of wasted money to feed the Kennett government’s privatisation approach.

This fifth anniversary gives us an opportunity to remember the multitude of achievements there have been in health. The end of the privatisation agenda in health was announced by this government — by the previous Minister for Health — at the Austin Hospital at the end of 1999. We can see that redeveloped hospital now rising on the skyline, and we will be very pleased to open in the not-too-distant future the biggest hospital redevelopment in Australia’s history.

As people will remember, we invested around $1.6 billion of additional funding in the last budget alone to expand our services. Our hospitals now treat 1.2 million inpatients every year. That is 200 000 patients extra being treated in our hospitals than there were when we came into government.

We have also embarked on one of the largest programs of capital works, and we have invested about $2 billion. So whether it is the Austin Hospital, the Royal Women’s Hospital, the Royal Melbourne Hospital or the Casey, Maroondah, Angliss or Kyneton hospitals, hospitals right around the state are being rebuilt and redevelopment because of the Bracks government’s investment. We have purchased around $345 million of new equipment. We have employed more than 4000 extra nurses and an extra 400 paramedics. As a result of all of this investment our ambulance bypass rate is now nearly 70 per cent reduced, and we treat 100 per cent of category 1 elective surgery patients within the ideal clinical time — and we are one of the only states in Australia with such a record.

One would expect that the government would want to talk loud and long about its achievements, but there are other people who are ready to acclaim the achievements of the Bracks government in health. The AMA president, Bill Glasson, said in response to our May budget and the extra $2 billion for health that other states should follow Victoria’s lead in investing substantially in public health services. The Auditor-General said in his May report on emergency departments in public hospitals:

The approach that has been undertaken by DHS and hospitals is sound and needs to continue.

The Auditor-General went on to say:

This study concludes that Victoria’s metropolitan health services are responding effectively to continuing high demand for emergency care.
Finally, a media report on the commonwealth’s own report on public hospitals right around the country said:

Victoria’s public hospitals are among the best in the country for waiting times on elective surgery and for emergency treatment, according to the first report card on Australia’s public hospitals.

That is the commonwealth’s own report. A lot has been achieved over these last five years by the Bracks government in health. But we all know that we can never stand still in this area. We all know that there continues to be a lot of work — a lot of creative and innovative policy work — to be done. A lot of resourcing will now be flowing through into our system. We are very enthusiastic about the task. We are very committed to health. Just imagine what we could achieve if we had our fair share of funding from the Howard government!

Schools: funding

Mr PERTON (Doncaster) — My question is to the Minister for Education and Training. I refer to the minister’s previous answer and the fact that she says she is proud of her new funding model for state schools that will result in one in five Victorian state schools receiving less money and to her refusal this morning to release a list of the winning and losing schools under this model, and I ask: if the minister is so confident that this funding formula is fair and equitable, will she honour the Premier’s promise this afternoon and table the list of schools that are winners and losers?

Ms KOSKY (Minister for Education and Training) — I just want to correct the member on two counts. In fact, 85 per cent of schools next year will gain through the new funding model. They will actually get improved budgets — many in your electorate, I believe.

The SPEAKER — Order! Through the Chair.

Ms KOSKY — I would also like to correct the member on another count. I indicated this morning that I would talk with principals about whether they were comfortable with having the information on their budgets released.

Mr Perton interjected.

Ms KOSKY — That’s right. The way the previous government operated was to just roll over the principals, to just do it to the principals! We work with principals; we work with our schools.

Honourable members interjecting.

Ms KOSKY — I spoke with the different organisations and they were comfortable with the release, so it has already been indicated that the information will be released.

We are very pleased to be doing that, because we are proud of our record in education and very proud of the blueprint. Last year when the blueprint was released we indicated that we would be bringing in a new funding model that would be transparent, much more flexible for principals and much more streamlined, and that there would be a much fairer budget for all students and for all schools across the state. That is what we have produced in conjunction with the best researchers in the country and through discussions in conjunction with the principals right around the state. Right around the state every one of them has been involved in the development of this model. They believe it is fair, and I cannot understand why the opposition does not.

Children: protection reform

Mr LANGUILLER (Derrimut) — My question is to the Minister for Community Services. Can the minister outline to the house the government’s plans for the further reform of the child protection and family support system to ensure the better protection of vulnerable children in Victoria?

Ms GARBUTT (Minister for Community Services) — I thank the member for Derrimut for his question and for his support for our reform program in child protection. Last week was National Child Protection Week, and I was pleased to release a proposal for 10 major areas of future reform of the child protection and family support system. This government has been steadily rebuilding the system. It was rendered almost dysfunctional by the previous government. We have boosted funding by 55 per cent, with new programs seeing Victoria record a drop in child abuse notifications, defying increases across the nation. But clearly there is more work to be done. The problems facing families —

Mr Honeywood interjected.

The SPEAKER — Order! The Deputy Leader of the Opposition!

Ms GARBUTT — We must continue to reform the system —

Mr Honeywood interjected.

The SPEAKER — Order! The Deputy Leader of the Opposition will cease interjecting in that manner.
Ms GARBUTT — We must continue with our reform program to meet the future challenges. Central to our reform is a major overhaul of the Children and Young Persons Act 1989. Our reforms will ensure that the welfare of children is at the core of our decision making and guides all our decision making and that prevention is emphasised by creating an integrated support system to allow welfare agencies to intervene earlier, to share information, to better support families at risk and to tackle the overrepresentation of Aboriginal children in care. Aboriginal children are 10 times more likely to be involved in child protection than other children, and that is a statistic that shames us all and must be addressed. We want to provide more stable care for children who cannot live at home. We know that repeated and failed attempts at family reunification have a disastrous long-term impact on a child, and that must be addressed.

Some of the proposed legislative reforms include: the development of a charter for children in care in the act to reflect the United Nations Convention on the Rights of the Child; making the Children’s Court less adversarial through prehearing conferences and alternative dispute resolution techniques so we get better results and better outcomes for children; the inclusion of the Aboriginal child placement principle in the legislation itself; and the amalgamation of both pieces of legislation — that is, the Children and Young Persons Act and the Community Services Act — so we create an integrated policy platform and integrated child protection and family support system.

This government will undertake further consultation around those legislative proposals, and that will happen over the coming months with a view to new legislation next year. We are making hard decisions, getting on with the job and undertaking the big reforms to the child protection system — ones that the previous government certainly did not have an interest in.

Roads: tolls

Mr DOYLE (Leader of the Opposition) — I refer my question to the Premier — —

Mr Bracks interjected.

Mr DOYLE — Not bad, but not this time! I refer the Premier to his broken promise to build the Scoresby freeway without tolls. Will the Premier give an unequivocal guarantee that all other road projects under consideration, including any West Gate Bridge alternate or duplication and the Eastern Freeway link to the West Gate and Tullamarine freeways, will be built without tolls?

Mr BRACKS (Premier) — The government has already given an undertaking that it has no plans for other toll roads in Victoria. But can I indicate a couple of things about the toll road on the Scoresby corridor? Firstly, this is a toll on a road which is yet to be built — on a new road — and it does not affect — —

Mr Wells interjected.

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

Mr BRACKS — It does not affect the existing road system. It will still be the same as it always was, and it will be a choice for people to make to use it. Secondly, I remind the house — it is useful to remember, and I think members on all sides will remember this — of when tolls were introduced in Victoria and who introduced those tolls. I think we remember!

Honourable members interjecting.

The SPEAKER — Order! I remind members, including the Premier — —

Mr Bracks interjected.

The SPEAKER — Order! The Premier and the deputy leader! I ask members to cease interjecting in that manner.

Dr Napthine interjected.

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

Mr BRACKS — Firstly, it is useful to remember the origin of tolls in Victoria; and secondly, it is also useful to note that there are two recorded comments from the opposition leader which say — I cannot say the word ‘Doyle’ — that the opposition leader will keep tolls on in Victoria.

Mr Perton — On a point of order, Speaker, the Premier is debating the question. He has been asked a question about his government plans for tolls, and he ought to answer that question.

The SPEAKER — Order! The Premier must relate his answers to Victorian government business.

Mr BRACKS — I have answered that question. I will resist debating the opposition again. I said I would resist it, but I was tempted to do it again. Let me reiterate the point that the hypocrites on the other side introduced tolls and will also keep tolls on in Victoria.
Rural and regional Victoria: government initiatives

Mr LONEY (Lara) — My question is for the Treasurer. I refer the Treasurer to the range of Bracks government initiatives designed to grow provincial Victoria. Can he advise how the Australian Bureau of Statistics demographic statistics released today confirm that these policies are working?

Mr BRUMBY (Treasurer) — I thank the member for Lara for his question. Earlier today the Premier and I were at Federation Square where, with the managing director of the Herald Sun, Julian Clarke, we jointly launched the Herald Sun Tour, with sponsorship provided by the Bracks government. This is a fantastic event for the state. The tour has been running since 1952 and is the biggest international cycling event in Australia. It visits country towns and attracts something like 400,000 spectators who go right round the state. The tour goes for 1200 kilometres over 11 days. The sponsorship has been provided this year through Regional Development Victoria, so the slogan for the tour is ‘The Herald Sun Tour in provincial Victoria’. We used the — —

Mr Doyle interjected.

The SPEAKER — Order! The Leader of the Opposition!

Mr BRUMBY — I will have something in a moment just for you! We also used the opportunity today at Federation Square to launch the next stage of the Bracks government’s Make it Happen in Provincial Victoria campaign. Advertisements for what has been a sensational program for the state will start this Sunday night. In the last round that we ran last year we got something like 360,000 hits on the web site and hundreds of phone calls to country councils. It has been endorsed by 48 rural councils as a very significant and important initiative for them.

I was asked today about the Australian Bureau of Statistics (ABS) data, and the Premier referred in part to this before in response to a question from the National Party.

Mr Honeywood interjected.

Mr BRUMBY — We get these inane interjections from the Deputy Leader of the Opposition.

Mr Honeywood — They are based on facts!

Mr BRUMBY — They are based on facts? I will go to the facts.

The SPEAKER — Order! The Deputy Leader of the Opposition!

Mr BRUMBY — The ABS figures released today show that Victoria’s population increased by 20,642 in the March quarter. It is driven by strong overseas migration. This is the largest population growth of any state in Australia!

Mr Honeywood interjected.

Mr BRUMBY — What would you understand about growth?

The SPEAKER — Order! Through the Chair!

Mr BRUMBY — The Deputy Leader of the Opposition is in a bit of a time warp. The Sunday Age of 10 October 1995 — remember that period? — states:

Victoria diminishing as Australia grows.

The Age of 23 July 1996 states:

Victoria set for population slump.

It was the Kennett government! Here is another quotation from the Age in 1995:

Vic on the move out.

Here is another one. It is not just the Age saying this. This is from the Herald Sun of 25 July 1998, and it is headed:

Lure of sun tipped to burn the state.

This is an article by Ed Shann, and he concludes the gloomy piece by saying:

Victoria faces a big job to become a vibrant centre again, especially given the decline in Tasmania and South Australia. It must become more outward looking and link into Asia’s rapid growth centres by better transport and communications …

Guess what. We have done it! This side of the house has done it! We have gone from ‘The state of Victoria moving out’ to ‘Record migration’.

Honourable members interjecting.

The SPEAKER — Order! The Treasurer is to speak without the assistance of the opposition!

Mr Doyle interjected.

Mr BRUMBY — You hate good news, don’t you! What an instructive week it is. Here we are after five years of government, and look at this absolute rabble! No policies, no vision — —
Mr BRUMBY — Here we go. Stand up! Up you get!

Mr Ryan — On a point of order, Speaker, the minister is debating the question. As to your directions for succinctness, he has been speaking for more than 4 minutes.

The SPEAKER — Order! I uphold the point of order. I ask the Treasurer to conclude his answer.

Mr BRUMBY — The population growth in the last year in Victoria was 59 700. According to the newspaper articles that I quoted from before, the population growth was 23 000 for the whole year of 1995 under the Kennett government. We have had more growth in this state in one quarter under the Bracks government than we used to get for the whole year under the Kennett government. If ever you wanted proof about this group opposite being not ready to govern, never ready to govern and not up to the job — this group of has-beens, coodabeens and wannabes — we have seen it this week in Parliament.

Building industry: approvals

Mr Ryan (Leader of The Nationals) — My question is directed to the Treasurer. I refer the Treasurer to his statement yesterday that the value of building approvals in Victoria was the highest ever in July, reaching $1.55 billion, and that 25 per cent of all loans issued by banks and financial institutions in Victoria were for first home buyers. I ask: how does the Treasurer justify these statements when the Australian Bureau of Statistics disclosed that the value of Victorian building approvals in July was only $1.35 billion? This is far from the monthly record — $200 million short.

Mr Doyle interjected.

Mr BRUMBY — I am about to answer the question!

The SPEAKER — Order! The Treasurer is to speak through the Chair without interruption!

Mr BRUMBY — The Leader of The Nationals, although he has had —

Mr Pertin interjected.

The SPEAKER — Order! The minister for Doncaster — the member for Doncaster!

Mr BRUMBY — You will never ever be a minister, my friend. Enjoy the moment! The Leader of The Nationals has had 24 hours to get his research right.

Mr Doyle — That is two of you!

Mr BRUMBY — Would you like someone else to laugh at your joke? That is really bad form. You are the only one laughing at your own joke!

The SPEAKER — Order! I remind the Attorney-General and the Treasurer that when the Speaker is on her feet they are required to be silent. The Treasurer is to speak through the Chair.

Mr Lim interjected.

The SPEAKER — Order! The member for Clayton will not speak when the Speaker is on her feet!

Mr BRUMBY — Unfortunately the Leader of The Nationals has included loan finance data on refinancing. People who are — —

Mr Doyle interjected.

Mr BRUMBY (Treasurer) — Here we have — —

Honourable members interjecting.

Mr Ryan — Only 17.2 per cent — not 25 per cent — of loans issued by banks and financial institutions were for first home buyers.

Mr BRUMBY (Treasurer) — Here we have — —

Honourable members interjecting.

The SPEAKER — Order! I ask members to settle down. I remind them that calling people liars is unparliamentary.

Mr BRUMBY — The Leader of The Nationals has — —
loans are for first home buyers. The Leader of The Nationals — —

Honourable members interjecting.

Mr BRUMBY — The Leader of The Nationals is profoundly embarrassed and still does not understand the data.

Honourable members interjecting.

The SPEAKER — Order! The Treasurer, through the Chair.

Mr Cooper interjected.

The SPEAKER — Order! I warn the member for Mornington.

Mr BRUMBY — Instead of going to the — —

Mr Perton — Numbers were never your strong point.

The SPEAKER — Order! I warn the member for Doncaster.

Mr BRUMBY — Instead of going to the ABS and getting the correct numbers, the Leader of The Nationals has relied on a recent article in a newspaper which used a figure relating to all of the loans, including refinancing, and he does not understand the statistics.

Honourable members interjecting.

The SPEAKER — Order! I ask the house to cooperate with the Chair and the Parliament to allow question time to continue.

Mr BRUMBY — Again we have more proof about that side of the house not being ready for government. It could not run a bath, let alone a state. We are getting on with the job. We have had 30 consecutive months of $1 billion-plus building approvals — and get this, 30 months ago the state had never achieved $1 billion previously. So whether it is building approvals, jobs growth, export growth or the population figures today, no government can match the performance of the Bracks government.

Police: Blue Ribbon Day

Mr MAXFIELD (Narracan) — My question is for the Minister for Police and Emergency Services. Given the significance of Blue Ribbon Day to our police community, can the minister update the house on the recent achievements of the Victoria Police in combating crime?

Mr HAERMeyer (Minister for Police and Emergency Services) — I thank the honourable member for Narracan for both his question and for the strong support that he has always shown for Victoria Police. Blue Ribbon Day honours the memories of 137 police officers who have been killed whilst working to protect our community and whilst trying to keep it safe.

Mr Honeywood interjected.

The SPEAKER — Order! The Deputy Leader of the Liberal Party will cease interjecting across the table.

Mr HAERMeyer — It is very sad that some members opposite seem to think that the death of 137 police officers is something to laugh and joke about.

Blue Ribbon Day this year falls on 29 September. It constitutes what is a very special day of the year when our community pays tribute to the outstanding dedication of members of the Victoria Police and when it remembers those 137 members who have given their lives in protecting our community. Certainly our police force has had a tough time in recent months, but I want to make it very clear that I am very proud of our police force. I believe the overwhelming majority of the Victorian community is very proud of our police force. This police force is, I think, the best in the country and one of the finest anywhere in the world.

When you look at our crime rate, which is the lowest in the country, nearly 24 per cent below the national average and falling; when you look at our road toll, the lowest in the country per capita, the lowest on record last year; when you look at complaints against police, they are the lowest of any police force in the country; and when you look at, repeatedly, the levels of community confidence recorded nationally, Victoria Police enjoys the highest level of confidence of any police force in the country.

By wearing or displaying blue ribbons on 29 September, the public has a chance to send a silent but a powerful message to our police force. It is a message of respect, of appreciation and, importantly, a message of remembrance. It demonstrates the very strong and very supportive link between the community and its police force. I note most of the members here today are wearing blue ribbons, which indicate their support for our police force. I am happy to provide any member who does not have one with a ribbon later on. They are available from now until Blue Ribbon Day.
from police stations, newsagents, RSL sub-branches and 7-Eleven stores.

If I may also beg your indulgence, Speaker, Victoria Police this year is putting out its fifth edition of Constable T. Bear, which is an initiative —

The SPEAKER — Order! Members are not supposed to hold things up, so I will confiscate it and put it in my office!

Mr HAERMeyer — Constable T. Bear has been a very successful addition to Blue Ribbon Day. These things have become collectors items, and they are also available.

The Victorian community recognises that the men and women of our police force do have a very difficult job to do. Over the 151 years of Victoria Police, 137 of those police officers have put on their uniforms, gone out to work and not come back. We are remembering those police officers. We are acknowledging those who go out every day putting their personal safety on the line for our community.

I urge all members to support Blue Ribbon Day and to wear the blue-and-white check ribbon as a mark of respect for our police members and as a way of saying that we stand by our police force and stand by our policemen and policewomen — those people who put on that uniform every day and put their safety on the line for our community.

DISTINGUISHED VISITOR

The SPEAKER — Order! Before members leave the chamber, I welcome Sir Ninian Stephen to the gallery.

CONSTITUTION (RECOGNITION OF ABORIGINAL PEOPLE) BILL

Second reading

Debate resumed.

Mr Thompson (Sandringham) — The constitution is an important, permanent document which should only be amended with care and after wide discussion. It is contended that the discussion on these amendments has not been wide enough and that sufficient care has not been exercised. I wish to put a number of comments in that regard on the parliamentary record.

Firstly, in proposed section 1A(1) reference is made to ‘the Aboriginal people of Victoria’. It is my understanding that in Victoria there were more than 25 tribes and a range of different language groups. So there were many tribes, clans and peoples, and they did not see themselves as one. Following consultation a number of senior indigenous leaders in Victoria concurred that the appropriate expression should refer not to ‘people’ but to ‘peoples’. Secondly, reference is made in proposed section 1A(1) to ‘without proper consultation’. It has been suggested that the word ‘proper’ seems misconceived — because there was no consultation.

In relation to proposed section 1A(2) I hold the view that its opening lines are defective and misleading. It is expressly stated in the proposed section that Victoria’s Aboriginal people are the descendants of Australia’s first people. Clearly this reference is to the presently living Aboriginal people of Victoria. That is why they can have the relationships referred to in proposed section 1A(2)(b) and proposed section 1A(1). Those Aboriginal people of Victoria were not the original custodians of the land on which the colony of Victoria was established. To put it another way, Aboriginal people are being recognised as the current Aboriginal population. Proposed section 1A(2)(a) describes them as the descendants of Australia’s first people, but the opening words of subsection (2) refer to the same Aboriginal people as the original custodians. In other words, this subsection is speaking not of the current generation of Aboriginal people but of an earlier generation.

There is a similar infelicity of tense in proposed section 1A(2)(c), which speaks in a past tense when it says that these Aboriginal persons ‘have made’ a contribution. Significantly, and perhaps inappropriately, the proposed paragraph does not say they are making a contribution.

The bill refers to Australia’s first people as having a unique status, which carries overtones of legal rights and perhaps suggests a permanent difference of rights between different groups of Victorian citizens. Proposed section 1A(2)(b) refers to a spiritual, cultural and economic relationship with their traditional lands and waters within Victoria. Following widespread consultation a number of Victoria’s indigenous leaders concurred with a view put to them that it was not one relationship they had with their traditional lands and waters but a number of relationships. This is a catch-all statement when in fact there was a multiplicity of relationships. The original identity of indigenous Victorians has been transformed, but they nevertheless have a continuing identity.
Proposed section 1A(3) states:

The Parliament does not intend by this section —

(a) to create in any person any legal right or give rise to any civil cause of action; or

(b) to affect in any way the interpretation of this Act or of any other law in force in Victoria.

I put it to the house that this provision might be more strongly expressed by stating:

(a) This section does not create in any person …

(b) The Parliament does not intend by this section to affect in any way …

I would like to make a number of other comments on that, but importantly, I believe we should move forward as one people and as one state. A while back a couple of people attended a function here at the Victorian Parliament. One was a person of indigenous background and the other was a recent arrival from the Sudan. The person of indigenous background suggested to the person of Sudanese background that they should have lunch together one day. He said, ‘Come to Mildura and I will prepare for you a meal of spaghetti bolaroo: it will put a bit of a hop into your step’. Implicit in that remark was a common and shared understanding and a spirit of goodwill between all Victorians. Taking the image in Lance Atkinson’s fine painting entitled Reconciliation, to which I referred at the beginning of my speech, it is important that all Victorians walk forward together respecting one another, whether they be of indigenous, Muslim, Asian or Caucasian background.

Debate adjourned.

Debate adjourned on motion of Mr WYNNE (Richmond).

Debate adjourned until later this day.

BUSINESS OF THE HOUSE

Program

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

That so much of the standing orders be suspended so as to allow, with immediate effect, the government business program agreed to by this house on 14 September 2004 to be amended by omitting the order of the day, government business, relating to the Constitution (Recognition of Aboriginal People) Bill.

By way of an explanation, this will enable the debate on the Constitution (Recognition of Aboriginal People) Bill to continue until around 4 o’clock, when it will be adjourned. It will enable the house to continue the debate on this important bill in the next parliamentary sitting week.

Motion agreed to.

CONSTITUTION (RECOGNITION OF ABORIGINAL PEOPLE) BILL

Second reading

Debate resumed from earlier this day; motion of Mr BRACKS (Premier); and Mr SAVAGE’s amendment:

That all the words after ‘That’ be omitted with the view of inserting in their place the words ‘this house refuses to read this bill a second time until consultation takes place with the people of Victoria concerning the principles of the bill and the impact it will have on the community’.  

Mr WYNNE (Richmond) — I rise to support this very important and historic bill, the Constitution (Recognition of Aboriginal People) Bill 2004. In doing so I wish to acknowledge the range of contributions to the debate on this bill that have come from both sides of the house. In broad terms those contributions have been very supportive of the direction the government is seeking to take in relation to this legislation. In my comments I will pick up on the reasoned amendment moved by the member for Mildura and will seek to address a number of concerns which he raised and which are implicit within it.

Formal recognition of the Aboriginal people and their status as the original custodians of the land is significant for their future wellbeing and, in the view of the government, long overdue. This legislation acknowledges that the Victorian constitution was developed without proper consultation and without the recognition or involvement of the Aboriginal people of Victoria. The message this sent to our indigenous people and the broader community of Victoria was a strong and direct one of exclusion. There are many examples of how members of our community and successive governments have excluded, ignored and marginalised Aboriginal people.

When we were speaking last night on the bill covering Lake Tyers and Framlingham I made a passing reference to a wonderful Australian, Sir Ronald Wilson. Sir Ronald is very well known to this house as the person who wrote that seminal piece called Bringing Them Home, the report on the stolen generations. I have had the pleasure of knowing Sir Ronald Wilson and his family for a number of years. At a function I attended he gave a most compelling and compassionate speech
in which he talked about his experiences while working with Aboriginal communities across Australia. He talked about listening to the traumas and the dreadful experiences of so many people who were displaced from their communities and taken many kilometres from their homelands, and we shall not forget the terrible physical, psychological and emotional injustice that was done to those people. He documented his work rigorously, and in spite of the extraordinary vilification of that work he stands as a great Australian and a person who has truly told the story, at least in part, of the dispossession of the first people of this nation.

The Bracks government has decided that this must change, and it wants to enshrine the recognition of Aboriginal people and their contribution to the identity and wellbeing of Victoria in our constitution. This is intended to send a positive and, more importantly, an inclusive message to all sections of the community. Importantly the bill has been developed following extensive consultation with the Aboriginal community and the recommendations of the Premier’s peak Aboriginal Advisory Council. Clearly it has received bipartisan support across the chamber.

I turn briefly to the bill because it is important that we look at what different aspects of it entail. Proposed section 1A(2), which is inserted by clause 3, reads:

The Parliament recognises that Victoria’s Aboriginal people, as the original custodians of the land on which the Colony of Victoria was established —

the original custodians of the land —

(a) have a unique status as the descendants of Australia’s first people; and

(b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and

(c) have made a unique and irreplaceable contribution to the identity and well-being of Victoria.

These are the noble sentiments that are enshrined within this piece of legislation. They go to the very essence of what Aboriginal communities are seeking when they come to this state government. This is a symbolic gesture that represents this government’s long-term commitment to seeking reconciliation with the indigenous people of Victoria.

In that context it is important that we recognise some of the important work that has been undertaken within a whole raft of areas of our government. These range from the work of my colleague at the table, the Minister for Police and Emergency Services, to the fantastic work that is being done across Victoria in building reconciliation between the justice area and our indigenous communities, particularly in areas such as Shepparton, where we have a project afoot which is a joint federal, state, and local government initiative. This project brings the three levels of government together with the fantastic community around Shepparton in a coordinated effort to assist in dealing with what have been entrenched disadvantages in that area. Some fantastic outcomes have emerged from that initiative.

The key to the way this government is approaching its work with Aboriginal communities is that it is working with them as equals and working in partnership, not in a condescending sense but in the sense of two equal partners seeking to work together towards agreed outcomes. As we all know, one of the fundamental connections that Aboriginal communities seek is connection with land. It is absolutely fundamental. In that respect we know that successive High Court decisions have in a practical sense effectively robbed indigenous communities in Victoria of any capacity to claim land legitimately under native title. We have had this matter tested on a number of occasions, and it is now becoming increasing clear through legal precedent that the capacity of indigenous communities in Victoria to make the necessary connection to land cannot be met.

This government, particularly under the leadership of the Attorney-General, has established a different process to ensure that that connection between Aboriginal communities and their land is established. I refer specifically to the indigenous land-use agreements, which are very much the way forward in a non-litigation sense to achieving a settlement between Aboriginal communities and the state so that those communities can rightfully claim parcels of land that are critically important to them in a cultural, social, and in some cases even an economic sense. I welcome the approach that our government has taken to establish these indigenous land-use agreements. They are an important step forward because, as I indicated earlier, the relationship between the Aboriginal community and the land is absolutely fundamental to its health and welfare.

I want to briefly touch on the member for Mildura’s reasoned amendment. As I understood his presentation there were two reasons for his moving the reasoned amendment. The first asked the question: why are we specifically seeking to recognise Aboriginal communities in the constitution? I think it is fairly self-evident from my presentation. We recognise they have a unique status as descendants of Australia’s first people. That is a noble thing for a Labor government to do. It is righting an historic wrong and it is important
that we put on the public record in our constitution that we recognise the indigenous people as the descendants of the original people of this state.

The second issue that the member for Mildura raised was whether there had been adequate consultation. I want to assure him that my colleague the Minister for Aboriginal Affairs in the other place has quite literally crossed the state. He has travelled tens of thousands of kilometres to the most remote Aboriginal communities to consult with them about this proposal and about the wording of the legislation. There is very strong support across Aboriginal communities in Victoria for this initiative. To suggest that consultation has not been thorough, comprehensive, sensitive and very much in touch with the aspirations of Aboriginal communities is quite wrong. I commend the minister for his hard work and I particularly commend him for bringing this bill before the house.

Mr Baillieu (Hawthorn) — I rise to speak briefly on the Constitution (Recognition of Aboriginal People) Bill. The member for Richmond referred to consultation with Aboriginal communities and I am sure that has occurred. I know he has done his best with his community to do just that. In Australia and particularly in Victoria there is very broad support and respect for Aboriginal communities and the role indigenous people have played in the past and are currently playing. The vast majority of Victorians make no particular distinction; we are as one. There is great spirit among those of Aboriginal stature. As the member for Hawthorn serving the City of Boroondara, I know about the origins of the area, the place Hawthorn played in the development of Melbourne and the role that indigenous people played in Hawthorn. I am very aware of that from the days before Palmers punt opened the door to the south of the Yarra at that end of the city.

More recently I have paid a great deal of attention to the legal work that people like Jack Rush, QC, have done, and I have followed those cases with interest. I have paid great attention to the work of Michael Gordon, the Age journalist, who wrote a very compelling book about the position of Aboriginal people in this community. There is very broad respect for the role of indigenous people. People of indigenous background have played a significant role in both major parties in our political environment. Other members have mentioned Neville Bonner on the Liberal side and I note the role that Aden Ridgeway has played as well as the former member for Eltham on this side of the house. I also pay great respect to Jeff Kennett for the work that he did as Premier in ensuring that reconciliation was advanced on this side of the house.

The member for Sandringham has highlighted a number of ways the bill might have been improved. He has done an extraordinary job in making that assessment, which was done in good faith. He sought advice. He did not express substantive concerns about the content of the bill, but in terms of the way it might have been drafted. Those concerns are legitimate and they are reflected by the reasoned amendment of the member for Mildura. The fact that we have just witnessed the Leader of the House change the government business program so that this bill will not go to the guillotine today but will be continued in debate in the next week of sitting, which is essentially in three weeks’ time, is an indication that the government recognises it may have been hasty in the way it produced this bill.

The fact that it has taken until the 11th hour on Thursday when the guillotine was to be applied for the government to recognise that constitutional bills should not be treated in a whimsical way is significant. It has also recognised that consultation should not just be with the Aboriginal community but should be widespread, public and transparent because there is a much broader community with an interest. It might be that the bill would have been vastly improved if that had occurred. Some people hope some of the technical hiccups that the member of Sandringham referred to might yet be picked up and an amendment might be made to improve the bill.

When it comes to constitutional change it is certainly not the practice in Australia that constitutions of any organisation are taken lightly. There are normally very longstanding and significant processes to go through to change any organisation’s constitution, let alone the constitution of the state. Certainly the constitution of Australia has stood the test of time and has changed in very few ways. The sort of change here is not one that is unwelcome in the Victorian community, but it sends a signal that this is the way the government intends to deal with constitutional change. That in itself is an entirely separate issue to the substantive issue of the change that is being made here.

To some extent there was a precedent last year or early this year with the changes to the constitution on an electoral matter. The government is paying too little heed to those who say we should treat constitutions with the respect they deserve. Making changes at short notice by a government that has the numbers is a dangerous precedent to set. I am not ascribing any ill motive to the government in this particular change, but it does represent a problem we have to deal with.
The member for Richmond referred, as the legislation does, to the spiritual, social and cultural connection that Aboriginal people have with the land. A lot of Australians feel that way. Perhaps it is an opportunity in the future for non-indigenous and indigenous people to find common ground which is so fundamental in bringing everybody together to be part of a reconciliation process. That is a spiritual relationship with our land and indeed our waters. It is social and cultural for a lot of people. I very much respect the connection that Aboriginal people have with the land that is so often described. As I mentioned before, it is described very well in Michael Gordon’s book *Reconciliation — The Journey*, which was published two or three years ago and which I read with fascination and interest. He did a great job of bringing all those issues to the forefront.

As has been said, the opposition supports the bill. We would rather it had been introduced through a process more in keeping with the traditional processes of constitutional change. Indeed some have suggested that changes like this should be subject to referendum. I note that the government is seeking to entrench these provisions. That may well be a good thing, but bringing entrenched provisions into Parliament using numbers rather than using a process of widespread consultation and the broad dissemination of knowledge — at least in situations where there might have been a plebiscite or referendum — is an unfortunate precedent. We may come to regret it in the future because not all governments will necessarily have a benign approach to the constitution. Indeed those who followed the electoral changes debate would say that it was not a benign approach to changes, but I am satisfied that this government is making this change at least in good faith, if not in correct detail.

I note that much work has been done by the Howard government as well. As the member for Sandringham noted, in the years of the Howard government indigenous year 12 retention has increased significantly, the number of indigenous TAFE students has increased significantly, there is a vastly greater number of indigenous university students and those in the private sector have risen significantly. The statistics are encouraging.

Victorians have made efforts towards genuine reconciliation. The sort of reconciliation that is close and embracing is the sort that will last and endure through all sorts of hardships. I think that is the sort of reconciliation that we will reach in due course. I hope that is the case. I hope the government sees fit to treat the comments the member for Sandringham has made in good faith and consider any changes that might improve the bill. I trust that in future the government will not tread lightly on the constitution in terms of the processes it applies to changing it.

**Mr Lockwood** (Bayswater) — In rising to speak on the Constitution (Recognition of Aboriginal People) Bill 2004 I would like to acknowledge the people of the Kulin nation, whose land we occupy, and pay my respects to their elders. The process of reconciliation is quite important to me as well as to everybody else in this chamber. Clause 3 of the bill is quite strong on the word ‘unique’, referring to the ‘unique status of the descendants of Australia’s first people’, as well as to their ‘unique and irreplaceable contribution’. This recognition of indigenous people is quite important. Someone referred earlier to a preamble. It is not a preamble; it is going to be part of the act.

I have always been a city-based person. I have never lived in the country, so I have not had very much exposure to Aboriginal communities in the country. I lived for a while in Canberra and quite regularly saw the tent embassy that was outside Parliament House. It attracted my attention to the issue of Aboriginal people wanting to be recognised and acknowledged as part of the community. I also lived for a time in Sydney. There is an area in Sydney called Redfern, which was somewhat notorious at times for some of the unrest and the conditions of life there. I believe that is an ongoing problem for the government of New South Wales.

My message on reconciliation is simply to listen to our indigenous people and, most importantly, to acknowledge their existence. That is one of the things this bill is doing. We need to understand their concerns and involve them as much as possible, and I think that is happening as we go through our modern history. Some of my perceptions of indigenous people are ones I do not want to remember. I am a bit of a collector of my old books. I kept some of my old history books from school, so I was curious to see what I was exposed to as a teenager. I found an old year 10 history book and looked up a part of it that referred to Aboriginal people.

**Mr Baillieu** — Did you pass?

**Mr Lockwood** — I certainly did. I was quite amazed to read that Aboriginal people have a redundant culture — that they are dying out. It said we should assist that process and help them die out as they have no future in our modern society. I had completely forgotten that I had been through that at school. I could not believe I was taught that. I certainly could not
Mr Baillieu interjected.

Mr LOCKWOOD — I said I had certainly forgotten it, but it was instructive to see that it was in a textbook that a teacher at school had issued me at the time — in the 1960s. We have moved on a lot from that point.

Something else that was instructive for me was travelling overseas. I went to New Zealand at some stage several years ago and found the Maori culture far more prevalent in New Zealand society than the Aboriginal culture is here. I realise that the Maori is a different kind of culture — much more in-your-face, much more of a warrior culture — but it seemed to me then that their culture was side by side with the European-descended culture and that in Australia our Aboriginal culture was more hidden away. You had to go looking for it, as though we were embarrassed by having our indigenous people around us. I am glad to see that that is changing somewhat as well.

For a time I was on the Knox council, where I had an interesting experience. I was trying to persuade them to fly the Aboriginal and Torres Strait Islander flag on three occasions a year — Sorry Day, National Reconciliation Week and NAIDOC week. Some councils fly it all year round. This council had a particular problem with flying it at all. It was an issue to do it on two of those occasions, but they would not do it on the third. I could not see the difference. At the end of the day the reason for the rejection of that acknowledgements or symbolism was a fear that we were giving too much ground. I believe that showed a lack of understanding. It is a challenge to help people like that to understand and hear the message of our indigenous people rather than be confrontational about it. It simply reflects a lack of understanding. I think we should be sympathetic to that and be aware of it. A lot more understanding is needed in our society to progress the cause of reconciliation.

Another thing I did as a councillor was as a member of a committee called the Intercouncil Aboriginal Consultative Committee. It had 11 councils on it and met around the different councils. It was chaired by David Farrell from the Aboriginal community and it worked to achieve concrete outcomes for the indigenous people in our council areas. It worked to establish an employment program to get indigenous people employed. We actually had some success in getting people employed. The reason we were doing that is that the unemployment rate among young Aboriginal people is enormously high and we needed to remedy that.

Another thing that was achieved was getting an Aboriginal liaison officer employed by a group of councils to help with the understanding of indigenous issues among the councils. A more recent activity I have become involved in is the Knox reconciliation action group, which was started by Knox council late last year. It is addressing the issue of reconciliation within the City of Knox, and it is doing a good job of it.

It is everybody’s constitution, as was said earlier. That is the point. It should include indigenous people — it should include everyone. I think we should take a positive view of the future and acknowledge the past and the mistakes of the past but move on and move forward. As I said, I would like to think that we are listening to indigenous concerns and acknowledge their existence. Flying the flag, Aboriginal people tell me, is something very positive. They see it as a welcoming sign, an inclusive sign and a sign that we do recognce their existence. We need to involve them as much as possible. The situation has gone from their being invisible and ignored to now being active participants. I think we should keep going in that direction. On that note, I commend the bill to the house.

Mr JENKINS (Morwell) — In rising to speak on the Constitution (Recognition of Aboriginal People) Bill 2004 I recognise the people of the Kuln nation, the traditional owners and custodians of the land on which we stand. I also recognise the people of the Gunai Kurnai, the custodians of the area I represent in Gippsland. I pay my respects to their elders, past and present.

This bill seeks to alter the Victorian constitution in order to recognise Victoria’s indigenous people. It is not before time. This is the first constitutional recognition of an indigenous community in Australia — a fact which this Parliament can be proud of. I congratulate the Premier and the Minister for Aboriginal Affairs in the other place for their leadership in bringing this bill to this Parliament. This is an historic moment in Australia’s continued movement towards reconciliation. This house and this Parliament should be proud of that. Members speaking to this bill should remember that. It is disappointing that some members on the other side have taken the opportunity to point out some of the detail where they may have concerns rather than to acknowledge the historic
CONSTITUTION (RECOGNITION OF ABORIGINAL PEOPLE) BILL

Thursday, 16 September 2004

Mr INGRAM (Gippsland East) — I too rise to speak on the Constitution (Recognition of Aboriginal People) Bill. Like all members before me, I agree that we are here as a Parliament and we stand united in recognising the culture and heritage of our indigenous communities. I particularly recognise, as did the member for Morwell, the traditional inhabitants of Gippsland, the Gunai Kurnai. I know many of those people well. I know the deep respect they have for generations past and for the 40,000 years they inhabited Gippsland. It is quite easy to see in an area like Gippsland the middens and other remnants of where they lived.

I spend a bit of time on the rivers, and I know they were their pathways up into the mountains. In one area of my electorate near Stratford you can see the areas where stone axes were ground. It is inside private land, and the farmer has fenced off that site off his own bat in recognition of its heritage and significance, not only to him but to the Aboriginal community and the broader community, believing that the site should be preserved forever.

All Gippslanders and all Victorians recognise the contribution made to our society by the Koori community, a contribution it continues to make. The bill is about changing the state’s constitution to recognise that contribution. I am keen for the Parliament to do that. My question is whether the constitution is the right way to do it without publicly announcing it to the community and going out and consulting widely. I have seen the ministerial statement, and I know the Minister for Aboriginal Affairs in the other place has consulted with the Aboriginal community. But the constitution belongs to all Victorians and needs to be treated with some gravity. It is not something that we as parliamentarians should just come in here and amend because we have the numbers or because the majority of us agree on something.

I wish to quote the following to the house, and I think the majority of members in this place and members of the community would agree with it:

opportunity to continue our progression towards reconciliation.

This bill marks a continuation of this Parliament’s progression on issues of fairness for and recognition of indigenous people. Last night there was great discussion in this house about bipartisan support of the Parliament in 1970 for the then Aboriginal Lands Act. On 17 September 1997 this house unanimously apologised to the Aboriginal people on behalf of all Victorians for policies which had seen indigenous families torn apart. In 2000 this house also unanimously recognised the reality which was the stolen generations. On 31 May 2000 this Parliament held a joint sitting on Aboriginal reconciliation. For the first time in 144 years indigenous Victorians spoke in this place. Reconciliation is a journey which we travel alongside indigenous Australians, and this bill is an important milestone along the road.

We are making a statement of fact in saying within the preamble to the constitution that:

The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Victoria.

It is a valid and accurate fact, and it recognises that this Parliament not only has the capacity to do good but has the capacity to reflect and express the views of all Victorians without necessarily passing new legislation. It would be a sad day if this Parliament became simply a body of law-makers and regulators. Again the Premier and the Minister for Aboriginal Affairs need to be congratulated for their leadership. Other jurisdictions will follow our example.

I am proud to speak in support of a bill which recognises Victoria’s Aboriginal people and their contribution to this state. I am proud to speak in support of a bill which acknowledges that the events described in the act occurred without consultation with or recognition or involvement of Aboriginal people. I am proud to speak in support of a bill that recognises the unique status of Aboriginal people as descendants of Australia’s first people.

This bill specifically does not create any legal rights, but it does recognise a spiritual, social and cultural relationship between the lands and waters of the state and the traditional people.

The indigenous history of Victoria extends beyond 30,000 years. All Victorians today benefit from the custodianship of Aboriginal people. We will be fortunate if future Victorians recognise the custodianship of the people who sit in this place in as positive a manner as we recognise the custodianship of the people of the last 30,000 years. There will be those and have been those who argue that this Parliament is seeking to single out by law a class of people. They are wrong. This bill recognises history and demonstrates the capacity to honestly and fairly judge our previous collective decisions and decision making. This is a rare opportunity for the Parliament, and I feel privileged as a member to speak in support of an historic bill. I commend it to the house.
We the Australian people commit ourselves to this constitution:

- proud that our national unity has been forged by Australians from many ancestries;
- never forgetting the sacrifices of all who defended our country and our liberty in time of war;
- upholding freedom, tolerance, individual dignity and the rule of law;
- Honouring Aborigines and Torres Strait Islanders, the nation’s first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country;
- Recognising the nation-building contribution of generations of immigrants;
- Mindful of our responsibility to protect our unique and natural environment;
- Supportive of achievement as well as equality of opportunity for all;
- And valuing independence as dearly as the national spirit which binds us together in both adversity and success.

I stand for everything in that. The only problem is that when that was put to the Australian people as a change to the commonwealth constitution it was soundly defeated. That is what we have to be mindful of in this place: something we want to put into the constitution does not always have the absolute support of the community. That preamble is something I supported, and I voted for its inclusion, but I was significantly outnumbered in my electorate. In Gippsland 69.18 percent of people voted no at that referendum to change the constitution. This Parliament should be considerate of that. In that election I also voted for a republic, and in Victoria the republic vote was narrowly defeated. On the night of the count Victoria was called as the only state that had voted for it, but on the final count, after postal votes, it was narrowly defeated.

The point I make is that the constitution is something that Australians and Victorians hold dear. There are probably not too many people in this place who have read the constitution. I have gone back and looked at it: it is one of the most archaic documents that we have in this place: something we want to put into the constitution similar to what was contained in the proposed preamble I read before, which recognises the contribution of all Victorians.

An issue that needs to be raised is the concern in the community. I went to Rotary and Probus meetings and raised this issue. The community is slightly divided over it. They did not know it was happening, but there is some division. That is disappointing, because we should all embrace it.

No-one within this house or within the community would disagree that indigenous communities made a significant sacrifice when Europeans settled this country. I do not think anyone disagrees that the indigenous communities cared for our land much better than we have and that their culture and heritage are important to the future of this state. If we put to a referendum the proposition that a change to the constitution could be made by a vote of this Parliament, I think the majority of Victorians would say, ‘No, we would like to be consulted’. We consulted widely the last time the constitution was changed. A constitutional commission travelled around the state conducting hearings, and some people put submissions in. Some opposition members disagreed with that, but there was still wide community debate about how we should change the constitution.

Today on ABC radio the following comment was made:

Aboriginal groups say nothing of substance will be achieved by proposals to change Victoria’s constitution preamble to recognise indigenous Victorians as the state’s original custodians.
Many indigenous communities would like to go a lot further. I am not too sure whether that would get unanimous support here or out in the community, but it is important to recognise that indigenous communities have made great sacrifices.

Ms GARBUTT (Minister for Community Services) — It is appropriate that I start by acknowledging the traditional owners of the land on which we are meeting, and indeed of the state, and pay my respects to the elders, both past and present.

This is a historic bill not just for this Parliament but for any Parliament in the country, and I am proud to be able to speak on it and to be a member of the government which has put it forward. This bill rights a wrong, because it recognises that Aboriginal people were here in 1854 when our constitution was first enacted and presented to the Queen of the British Parliament.

In the past Australians have denied the reality of the impact of policies on indigenous people, and indeed our constitution reflects this denial. There has been a long tradition in this country of simply denying reality. Reality was often the opposite of what was said. I want to quote from a marvellous book released earlier this year called *Aboriginal Elders’ Voices — Stories of the Tide of History*. It describes some of the language used in the past in complete opposite and denial of the reality.

For example, there were phrases used to describe the expected extermination of the Aboriginal race — phrases like ‘the disappearance of the morning mists with the rising of the sun’ — as if it was inevitable. There were racial theories pushed saying that the Aboriginal race was destined for extinction. Then it was justified in terms like ‘the natural order of survival of the fittest’. Newspapers talked about the extinction of a supposedly inferior race that was natural or inevitable. Then there were terms like ‘clearing the land and teaching the blacks a lesson’. All of these are quotes from material from long ago describing what was going on. The detention of people on missions was expressed as ‘soothing the pillow of a dying race’. It is just appalling when you read these sorts of descriptions now, when the reality was that there were massacres and poisoned flour was being given out.

I want to quote from this book a story by Aunty Dianne Phillips, a member of the Gundidjmara people from Lake Condah. She said:

The old people would tell us about the invasion. There was massacres around Lake Condah. Gubbahs herded the Kooris together and ran them down and shot the lot and buried them in mass graves. We knew all about that as kids and we knew where the graves were.

Yet there was this language that completely denied the reality of what was happening. This constitution we operate under in Victoria followed this appalling tradition of denying the obvious, of denying that Aboriginal people existed at the time the constitution was made. There was no reference to them at all. This bill recognises Aboriginal people.

I am proud to say that I support this particular provision:

The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Victoria.

So we are putting that to right. We go on and recognise that Victoria’s Aboriginal people, as the original custodians of the land on which the colony of Victoria was established, have a unique status as the descendants of Australia’s first people and have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria, and have made a unique and irreplaceable contribution to the identity and wellbeing of Victoria.

That absolutely sets the record straight. We have to have that sort of recognition and acknowledgment to allow us to move forward with reconciliation. Without putting history right, without operating from a correct beginning, it is very hard to make progress in the future. Even after this we have a lot of work to do together to improve the situation for the indigenous population of Victoria. It does not matter which benchmark you use about the condition of people in Victoria — the indigenous population fares badly.

I want to go to through a few that are relevant to my portfolio. If we measure birth weight, which is an indication both of the mother’s health and of the health of the baby and their likely progress through life, we see that the level of low birth weight, under 2500 grams, for all Victorians is 6.7 per cent — they are the ones who have problems indicated by that benchmark — compared to the level for indigenous Victorians of 14.2 per cent. It is almost double. If you use an area that is the focus of my attention — child protection — substantiations in the total Victorian population are around 5.7 per 1000 children aged zero to 17 across Victoria. It is 55.6 per 1000 for indigenous Victorians.

For juvenile justice clients — and I will only quote the male figures, because the female ones are too low to be relevant — around 17.3 per 100 000 of young men in...
Victoria aged between 10 and 17 years are subject to the juvenile justice system. For indigenous Victorians it is 270.8 per 100 000. There are many indicators that we could use. They all tell a similar story — that we have much work to do together. But how do we move forward? That is the question now. This book also indicates the best way to move forward — and that is together. I want to read from page 235:

The long held goal of self-determination started to become a reality as Aboriginal run services developed. This marked the beginning of a new era, where Aboriginal people increasingly had the right to take control of their lives and meet their own needs in line with indigenous cultural values.

We have some very successful programs now under way based on that principle. I want to mention two or three of them. One is an indigenous family decision-making program where families that have come into contact with the child protection system bring together the elders of the community, the family involved — and the young person, of course — and the child protection workers and work out a solution together. Over the last two and a half years that program has been running, 78 children and their families have come under that program and only three have been renotified to the child protection system. It is an outstanding result because it is based on the Aboriginal culture itself, and the community runs it.

Another one is the East Gippsland shire’s maternal and child health service where a home visiting nurse working with the Koori population has improved the situation of Aboriginal children attending the maternal and child health centre. I do not think I have all those figures, but immunisation has lifted, say, from 2 Aboriginal children in 1997–98 to 85 in 2003–04. That sort of impact is amazing. I can give you figures about maternal and child health attendance. It went from 74 per cent to 94 per cent because a Koori worker was there encouraging mums to participate. That is the sort of result we can get when we work together with the Aboriginal community.

Finally, there is the indigenous family support innovations project, again a child protection one, where there have been spectacular results again in Shepparton but also in East Gippsland, where notification rates for child protection have dived dramatically because the community is involved in making those decisions. I believe that is the way to move forward. We need to build on that model of operation whereby we are already having successful results. I do not think we can claim the credit. I think we can say we have finally learnt that what works is asking the indigenous community how to operate these programs, how to involve them best and how to line them up absolutely with their culture. That is when we get good results, but there is a long way to go. I am also very pleased to read in today’s papers that Mark Latham has made similar promises to operate that way — not to impose plans on indigenous populations, but to work with them for the best results.

Mrs SHARDEY (Caulfield) — I rise to make a small contribution on the Constitution (Recognition of Aboriginal People) Bill. This change to our constitution revolves around the insertion of a new section 1A into the Constitution Act 1975 and will formally recognise that the Aboriginal people as the original custodians of the land within Victoria have a unique status as descendants of the original inhabitants of Victoria and have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria and have made a unique and irreplaceable contribution to the identity and wellbeing of Victoria.

I believe the Liberal Party has a very proud history of support for the Aboriginal community here in Victoria, particularly under a former Minister responsible for Aboriginal Affairs, Ann Henderson, who is now deceased. I recall on many occasions being with her and even attending Aboriginal functions when she was minister, which leads me to make that statement. In particular I recall that this Parliament supported an apology in relation to the stolen generations. While some people around the country may have had some problems with that as an issue, certainly here in this Parliament there were none.

I also recall a tripartite agreement which was something unique. It was an agreement between the federal government, the Victorian state government and Aboriginal health communities that it was hoped would lead to the betterment of the standard of health of Aboriginal people, who we know suffer health consequences or health outcomes which are far worse than they are for the average population. That was unique because it was going to bring all the various buckets of money from the state, federal and local governments together for these communities and achieve some rationalisation of the way that money was spent to look at real outcomes. Many people make disparaging comments about the amount of money that is spent on Aboriginal communities but by and large it is for their betterment, and so it should be. But also we need to ensure that the outcomes are there because Aboriginal people richly deserve good outcomes in almost very area of their lives.

I was very fortunate to work for six years at the federal level for a former Minister for Health and Aged Care,
Michael Wooldridge. For much of that time he was the shadow Minister for Aboriginal Affairs. That gave me a unique opportunity to travel around almost the entire country visiting Aboriginal communities in some of the most far-flung parts of our nation. Michael Wooldridge did not always have the budget to take me on these trips, but I used to pay out of my salary to go on some of them because I felt, particularly as a Victorian, that as I had had so little interaction with Aboriginal people I should go out and learn to understand. So I went on many of these trips just so I could have that experience, and it was a very rich experience. I certainly learnt a great deal.

One of the first places I went to was Alice Springs and to the communities surrounding it. I suppose I was a little shocked at first to see the conditions under which Aboriginal people were living and to learn of their very poor health outcomes. I remember going to their health service and seeing things that I had never seen before. Having seen those things I have had very little objection to the sort of funding that Aboriginal communities receive.

One of the most interesting times I had was in Western Australia visiting a tribe which I believe is called the Wangkajunga tribe. I could be wrong, but I believe that was its name — and they did call themselves a tribe, not a community. I was probably one of the first white women that that community had ever seen. We went into that community by air and spent a great deal of time with them. They presented to Michael Wooldridge the most beautiful painting they had done, which was unique. That whole experience was one through which I learnt a great deal. I remember when we landed the first person to come up to me wanted to touch my skin because he had never seen or touched a white woman. I learnt a great deal. I remember when we landed the first person to come up to me wanted to touch my skin because he had never seen or touched a white woman. I learnt a great deal.

I also travelled to the Torres Strait to Murray Island. I saw Eddie Mabo’s land and sat down with that community to try and get some understanding of what things had been like in the Torres Strait. I remember talking to an older woman there. She was very depressed about the way things had turned out for her people. She said that in the past, before they were given what she called sit-down money, they were a very vibrant community. She said, ‘We lived by fishing and cultivating the land, and now our people seem to have lost a lot of that and they sit and wait for their cheques to arrive’. It concerned me greatly that in some way a lot had been taken away in terms of these people being self-sufficient.

I also recall sitting down with people in New South Wales. It was a far more urban community. We were sitting in a circle and I asked some of the men and women, ‘What is it that you want for your children?’ They said, ‘We were exposed to the missionaries and so forth. Life was hard and we had to change so much, but what we want for our children is that they be able to be full participants in Australian society, that they have jobs and that they get an education’. For them that was the most important thing. Their heritage was important, yes, and I suppose in a sense this recognition is recognition of that heritage, but there are other things that Aboriginal people want for themselves and for their families, particularly for their children.

Therefore I think we need always to be cognisant of the fact that we need to recognise the role models in Aboriginal affairs — those people who are of Aboriginal descent who can stand up and show Aboriginal kids that they can achieve and can aspire to be almost anything they want to be in this country. There have been some huge gains over the last few years in relation to the number of Aboriginal TAFE students, significantly higher year 12 retention rates and doctors and nurses of Aboriginal descent. I think they are great achievements.

I believe Noel Pearson is a role model we should applaud. He has said that Aboriginal people need to take responsibility for themselves, to learn how to budget their family incomes and to get away from alcohol, which is something that in my experience is so devastating for Aboriginal communities. It makes one cry when one sees some of these communities so affected by alcohol.

The last person I would like to mention is Lowitja O’Donoghue. When I first met her she was Lois O’Donoghue, but she has since returned to her Aboriginal name. She came to speak to a Liberal Party women’s conference many years ago when she was heading up the Aboriginal and Torres Strait Islander Commission. She talked about her childhood and the fact that she was removed from her parents. Even though she said she had had enormous experiences in her life and many opportunities, and that she did not regret them, the way she told her story meant that in that room there was not a single dry eye. At that time Lowitja O’Donoghue was a person who showed the women at that conference what it had been like. I think it gave us some understanding the like of which we would not otherwise have had.

While I recognise that this legislation gives some recognition to Aboriginal people, I also say that we need to ensure that we give Aboriginal people the sort...
of support that will allow them to become self-sufficient, to stand equally within our community and to achieve in terms of their skills and education so that they can have the level of self-sufficiency they need to play an equal role in our community, which they very richly deserve.

Debate adjourned on motion of Ms GREEN (Yan Yean).

Debate adjourned until later this day.

STATE SPORT CENTRES (AMENDMENT) BILL

Second reading

Mr THWAITES (Minister for Environment) — I move:

That this bill be now read a second time.

It is with pleasure that I introduce this bill to consolidate land management arrangements at the Melbourne Sports and Aquatic Centre in Albert Park.

The Melbourne Sports and Aquatic Centre is Victoria’s premier aquatic venue and is the nominated aquatic venue for the 2006 Commonwealth Games and the 2007 World Swimming Championships. The centre is currently undergoing a major redevelopment to cater for major events and generally improve community access. The redeveloped centre will include a roofed, 50-metre outdoor competition pool, with permanent seating for 3000 spectators and provision to cater for up to 12000. There will be improved car parking, a hydrotherapy pool, a Sportshouse and better public amenities.

The government is committed to completing this exciting project in time for the 2006 Commonwealth Games.

The aim of this bill is to rationalise land management arrangements for the redeveloped site and to put in place a more efficient, streamlined land management structure. The bill will also ensure that all Melbourne Sports and Aquatic Centre land is permanently reserved as part of Albert Park.

The current arrangements may best be described as a patchwork of land parcels and management structures. In total, there are four areas of land required for the Melbourne Sports and Aquatic Centre which are currently managed under different arrangements.

The largest of the four parcels is the area of land originally designated as the ‘Melbourne Sports and Aquatic Centre land’ when the State Sport Centres Act was enacted in 1994. This land is part of Albert Park and is managed by the State Sport Centres Trust, which leases the land from Albert Park’s committee of management, Parks Victoria.

The second parcel of land is the former Distance Education Centre, which was added to the Melbourne Sports and Aquatic Centre site in 2001. It is managed by the Trust as a committee of management and will be the site of the new Sportshouse. The land was reserved in 2001 for sporting, recreational, social, entertainment and education activities, but is not part of Albert Park.

The third parcel of land is the gravel car park adjoining the former Distance Education Centre. The car park is permanently reserved as part of Albert Park and comes under the control of Parks Victoria. It will be used as part of the redeveloped centre.

The fourth parcel is a sliver of former railway land which is temporarily reserved as part of Albert Park and also comes under the control of Parks Victoria. It is located between the proposed Sportshouse and the railway line, and will become part of the redeveloped site.

The State Sport Centres Act 1994 will be amended to consolidate these four areas of land under the management of the State Sport Centres Trust. Rather than leasing the land or acting as a committee of management, the trust will become the designated land manager for the consolidated site. This is consistent with the significant role already played by the trust in managing this land and will bring much-needed uniformity to arrangements for the site.

The bill therefore expands the definition of ‘Melbourne Sports and Aquatic Centre land’ to encompass these four areas of land and inserts a revised map into schedule 1 to the act.

The bill also re-reserves two of the four parcels of land. In a significant gain for Albert Park, clause 10 of the bill revokes the existing reservation over the former Distance Education Centre land and permanently reserves it as part of Albert Park.

The bill also revokes the temporary reservation over the sliver of former railway land in Albert Park and replaces it with a permanent reservation.

I wish to reassure members of the house that there will be no net loss of public open space as a result of this consolidation of land. The construction for the
redevelopment of the Melbourne Sports and Aquatic Centre is taking place on land that is already built on and was previously used as an education centre and car park. Furthermore, the decision to add the former Distance Education Centre to Albert Park will result in a net gain to the park in real terms.

Importantly, clause 5 of the bill inserts a new provision into the State Sport Centres Act 1994 to specify that the trust must maintain the land to a standard that complements Albert Park. This acknowledges the trust’s significant responsibility as a land manager in Albert Park to preserve the amenity of this outstanding sporting and recreational park.

The bill also provides a timely opportunity to update the description of the purposes of the Melbourne Sports and Aquatic Centre. The State Sport Centres Act 1994 currently includes ‘gaming’ as one of the centre’s recreational purposes, but there is no intention for the centre to host gaming activities. The bill therefore deletes all references to gaming and replaces them with references to ‘education’ as one of the centre’s key functions.


The Australian Grand Prix Corporation works closely with Parks Victoria in relation to the annual staging of the formula one grand prix in Albert Park. The proposed amendments reflect that in future the corporation will be dealing with two land managers in Albert Park instead of one.

The bill therefore provides a new definition of ‘committee of management’ in the Australian Grands Prix Act 1994 to encompass both the committee of management of Albert Park and, in relation to Melbourne Sports and Aquatic Centre land, the State Sport Centres Trust.

The bill ensures that the State Sport Centres Trust has the same powers, rights and obligations under the Australian Grands Prix Act 1994 as Parks Victoria, but only in relation to Melbourne Sports and Aquatic Centre land.

The Australian Grand Prix Corporation already liaises with the trust in relation to the staging of the formula one grand prix, and it is not anticipated that the amendments will require major changes to the way the corporation and the trust work together. The amendments are required principally to take account of the trust’s new role as land manager and ensure that in relation to Melbourne Sports and Aquatic Centre land the trust has the same powers, rights and obligations as Parks Victoria in respect of land management issues connected with the formula one grand prix.

The government is pleased to present this bill, which will streamline land management arrangements for the redeveloped Melbourne Sports and Aquatic Centre and assist the State Sport Centres Trust to operate the site with maximum efficiency.

**Statement under section 85(5) of the Constitution Act 1975.**

I wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by this bill.

New section 50A of the Australian Grands Prix Act 1994, to be inserted by clause 23 of the bill, states that it is the intention of new section 34(3A), to be inserted by clause 20 of the bill, to alter or vary section 85 of the Constitution Act 1975.

Section 34(3) of the Australian Grands Prix Act 1994 currently provides that if there is a dispute between the committee of management of Albert Park and the Australian Grand Prix Corporation about the standard of restoration in the ‘declared area’ in Albert Park land, the committee or the corporation may refer the matter to the ministers administering the Crown Land (Reserves) Act 1978 and the Australian Grands Prix Act 1994 for a joint decision, and the decision of the ministers is final.

New section 34(3A), to be inserted by clause 20 of the bill, will similarly provide that if, in relation to the part of Albert Park that is Melbourne Sports and Aquatic Centre land, there is a dispute between the State Sport Centres Trust and the Australian Grand Prix Corporation about the standard of restoration of that land, the trust or the corporation will be able to refer the matter to the ministers administering the State Sport Centres Act 1994 and the Australian Grands Prix Act 1994 for a joint decision, and the decision of the ministers will be final.

New section 34(3A) is therefore inserted to prevent the institution or continuation of court proceedings by the State Sport Centres Trust or the Australian Grand Prix Corporation that would review a joint decision of ministers in respect of any dispute between these authorities about the standard of restoration of Melbourne Sports and Aquatic Centre land.

The reason for preventing the institution or continuation of such proceedings in the Supreme Court is that it is not appropriate for statutory authorities funded by the government and subject to ministerial direction to seek...
a judicial review in the Supreme Court of a decision by ministers in relation to the standard of restoration of public park land.

Court action could also lead to delays in the restoration of land in Albert Park following the formula one grand prix. The ability of the ministers to make a final decision under section 34(3A) ensures that any disputes between the trust and the corporation can be resolved in the most efficient and expeditious manner possible.

It is also important that in relation to Melbourne Sports and Aquatic Centre land, the State Sport Centres Trust has the same powers, rights and obligations under the Australian Grands Prix Act 1994 as Parks Victoria to ensure that the status quo for land management in Albert Park with regard to the formula one grand prix is maintained.

The bill amends other sections of the Australian Grands Prix Act 1994 which, when originally enacted, also had section 85 statements made in relation to them. Those sections are set out in section 50 of the act. The government has obtained legal advice from the Solicitor-General and the Chief Parliamentary Counsel which states that it is not legally necessary for section 85 statements to be made in relation to those sections, and that the previous statements were made out of an abundance of caution. Accordingly the bill does not include a statement of intention to vary section 85 of the Constitution Act 1975 in relation to those provisions.

I commend the bill to the house.

Debate adjourned on motion of Mr HONEYWOOD (Warrandyte).

Debate adjourned until Thursday, 30 September.

LIMITATION OF ACTIONS (ADVERSE POSSESSION) BILL

Second reading

Mr THWAITES (Minister for Environment) — I move:

That this bill be now read a second time.

The Limitation of Actions (Adverse Possession) Bill 2004 implements an important aspect of this government’s recognition of local government as a distinct and essential tier of government.

This bill effectively exempts council land from claims of adverse possession through amendments to the Limitation of Actions Act 1958. This act sets limitation periods for the commencement of legal actions, including actions to recover land.

The aim of this amendment is to ensure the protection of community interests by preventing the unintended loss of public land to individual claimants.

What is ‘adverse possession’?

The rule of adverse possession dates back as far back as the 1623 Jacobean statute of limitations. Adverse possession allows a person occupying another’s land to acquire the land in certain circumstances. To acquire the land, the occupier must have been in possession of the land for a prescribed period of time.

In Victoria this period is 15 years as provided by the Limitation of Actions Act 1958. The occupation must also have been without the permission or licence of the legal owner of the land and must have meant that the legal owner was no longer in possession of the land.

Under the Limitation of Actions Act 1958 the person claiming a possessory title must show either:

(1) discontinuance by the actual owner followed by possession; or

(2) dispossession of the actual owner.

Where these circumstances are satisfied, the legal owner of the land can no longer sue to recover possession of the land.

The land will only be transferred to the occupier upon application to the registrar of titles under section 60 of the Transfer of Land Act 1958 for an order vesting the land in him or her in fee simple. The process set out in the Transfer of Land Act 1958 provides for public notice to be given and allows for caveats to be lodged against such a claim. The application can be made anytime after 15 years of possession of the land.

The philosophy behind adverse possession is that land should not lie ‘unused’ and that the title of the land can be altered to reflect the fact that there is a new ‘possessor’ of the land by making them owner.

Why exempt council land from claims of adverse possession?

Both Crown land and land owned by Victorian Rail Track (a statutory authority established under the Rail Corporations Act 1996 which owns all land in Victoria used for rail purposes) are protected from claims of adverse possession by virtue of sections 7 and 7A of the Limitation of Actions Act 1958.
LIMITATION OF ACTIONS (ADVERSE POSSESSION) BILL

Thursday, 16 September 2004

Like the Crown and Victorian Rail Track (VicTrak), many Victorian councils (especially rural councils) hold large areas of unfenced land which people can easily encroach upon and not be detected to be doing so or be detected at significant cost.

The loss of council land through adverse possession is a loss of community assets, which is against the public interest. Council land is held by a distinct and essential tier of government on behalf of the community. Council reserves are used by the public for recreation, drainage or access.

Such land should be protected in the same way that Crown land and Victorian Rail Track land are protected in the public interest.

Local government has for some time experienced the loss of public land through adverse possession.

For example, in the 1999 decision in the Supreme Court of Victoria, Monash City Council v. Melville, Monash City Council lost a large area of land to an adverse possession claim by neighbouring land owners, the Melvilles.

Without detracting from the rights of the Melvilles to claim this land by way of adverse possession, the claim resulted in a loss to the Monash City Council of a large area of public open space, being part of Valley Reserve. This land would be protected from adverse possession by this amendment.

It is in the public interest to prevent the loss to local residents of access to public land, the loss of community management of council land and the loss of potential revenue from the use or sale of council land.

Key features of the bill

I now turn to some of the key features of the bill.

Process for protecting council land

The Limitation of Actions (Adverse Possession) Bill 2004 provides for the amendment of the Limitation of Actions Act 1958 to exempt land of which a council (or a former council) is the registered proprietor under the Transfer of Land Act 1958 (clause 3).

Most roads and reserves created after 1988 are registered in the name of the local council. However, reserves (including those created prior to 1988) that are not registered in the name of the council will not be protected under this amendment.

Councils will be required to weigh up the costs of transferring these reserves into their name compared with the cost of losing such land.

Applications to place such reserves in the name of the council will need to be made under section 24A of the Subdivision Act 1988 to the Department of Sustainability and Environment (Land Victoria).

Local roads and laneways

A number of adverse possession claims have been made over suburban laneways at the rear of properties. Landowners adjoining the laneway have often encroached onto the laneway and, over time, lodged adverse possession claims. Laneways may or may not be public highways.

Many councils have also closed some laneways that are no longer being used and gained ownership of the land under section 207B of the Local Government Act 1989. Under this section, where a road is discontinued, the land on which the discontinued road was situated vests in fee simple in the local council. These councils can then sell the land to adjoining owners.

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

The newly commenced Road Management Act 2004 also provides that the rights of the public in relation to a public highway can only be extinguished under that act or under another act.

Transitional provisions

The interests of parties who have lodged claims or who have occupied land adversely over 15 years are protected under the proposed amendment.

The Limitation of Actions (Adverse Possession) Bill 2004 provides that:

any claim for adverse possession of council land lodged prior to the commencement date will be processed by Land Victoria as if no amendments were made;

potential claimants (those who have occupied council land for over 15 years) will have 12 months from the date of commencement of the bill to lodge a claim with Land Victoria.
Formal stakeholder consultation

This bill has been the subject of public consultation through the release of a draft bill and explanatory paper. Twenty-nine formal submissions were received by Local Government Victoria in response.

The Municipal Association of Victoria has expressed concern that this bill does not give comprehensive protection to land that is vested in or managed by councils.

The Municipal Association of Victoria has suggested that councils should be empowered to ‘certify’ whether land is or is not council land.

This suggestion is not reflected in this bill.

This government believes that a ‘certification power’ given to councils would place disproportionate power in councils to determine what land can be adversely possessed and what cannot.

There would be no independent third party (such as the registrar of titles) to determine the claim. To require unsuccessful applicants to appeal to the Supreme Court would place an unfair financial burden on applicants compared to their current access to the independent assessment of the registrar of titles.

This bill protects land of which a council is registered proprietor. This will ensure clarity and certainty for applicants, councils and Land Victoria. Councils need to audit their land-holdings to ensure that their ownership is recognised by Land Victoria.

Conclusion

The Limitation of Actions (Adverse Possession) Bill 2004 is evidence of this government’s commitment to the recognition of local government as a distinct and essential tier of government. This bill will ensure the protection of community interests by preventing the unintended loss of public land to individual claimants.

I commend the bill to the house.

Debate adjourned on motion of Mr HONEYWOOD (Warrandyte).

Debate adjourned until Thursday, 30 September.
character, the current section 45 often involves a 'court-like' formal hearing before a delegate of the secretary. Section 45 is also used as the head of power for the secretary to terminate the employment of an officer for unsatisfactory performance, on receipt of a comprehensive report from a principal, after the officer has undergone a process involving monitoring, support and assistance at the local school level.

The new section 45 is designed to deal with genuine physical or mental incapacity. Allegations of character and conduct, and inefficiency associated with unsatisfactory performance, will now be dealt with under the new part V.

The secretary is required to establish procedures for the investigation and determination of an inquiry under the new section 45. The secretary may delegate the investigation, nominate an investigator or constitute a board of review to report to the secretary. The officer or employee must be given notice in writing of the matters to be considered and provided with an opportunity to respond in writing. Prior to making a decision, the secretary must give the officer or employee an opportunity to make submissions on the findings and whether a termination should occur. An employee or officer may appeal to a merit protection board against a determination under section 45. The secretary will comply with the Workplace Relations Act 1996 and state and federal antidiscrimination legislation in implementing these procedures.

The new section 45 will enable the secretary to make a determination ‘on the papers’ without holding an oral hearing. The secretary may decide to hold an oral hearing, or take the evidence orally of all or any witness, or permit cross-examination of all or any witness, if the secretary considers it appropriate to do so having regard to the seriousness of the allegation; whether an oral hearing would assist in evaluating the information submitted on the inquiry; any reasons submitted by the officer or employee in support of a request for an oral hearing; or any other matter that the secretary considers relevant.

The new section 45 continues to allow officers whose employment comes to an end on the ground of ill health early access to long service leave benefits under section 37.

Third, it will substitute part V entitled ‘Discipline’ and replace it with a new part V entitled ‘Misconduct and inefficiency’. The matters listed as ‘offences’ in the current part V are replicated in the new part V and merged with aspects of the current section 45 (other than mental or physical incapacity) to create a simplified and streamlined provision establishing the grounds on which the secretary may take action against employees and officers including:

- disgraceful, improper or unbecoming conduct;
- misconduct; criminal conviction; negligence, inefficiency or incompetency; contravening a provision of the Teaching Service Act 1981; a ministerial order; administering corporal punishment; failing to comply with a lawful direction; being absent without permission and without reasonable excuse; and being unfit on account of character or conduct (whether before or after becoming an officer or employee).

If the secretary finds that a ground or grounds exist, the secretary will be empowered, after a proper process has been followed, to take one or more of the following actions: reprimand; fine; reduction in classification; or termination of employment. Transfer from one school to another has been removed as a penalty as it is not an appropriate disciplinary outcome as it merely shifts the problem from one school location to another. Additionally, transfers are no longer possible without central encroachment on the department’s local school-level, merit-based, staffing selection practices.

The bill provides that the secretary must establish procedures for the investigation and determination of whether there are grounds for action. It is envisaged that unless there are extenuating circumstances, the employee or officer’s school principal will be the investigator, or if the officer the subject of the allegations is a school principal, the investigator will be the regional director. The officer or employee must be given notice in writing of the allegations and opportunity to respond in writing. In most cases, the officer or employee will meet face to face with the investigator. The investigator will prepare a report for the secretary. Prior to making a decision, the secretary must give the officer or employee an opportunity to make submissions in writing on the matters to be considered by the secretary and on any action that may be taken. In some cases, the secretary may determine that it is appropriate to meet face to face with the officer or employee or any other person. An appeal from the secretary’s decision to take action will lie with the newly established disciplinary appeals board.

In relation to unsatisfactory performance, teachers will continue to be managed via the local level school-based unsatisfactory performance process involving monitoring, support and assistance. If the teacher does not improve to the required standard, the secretary may terminate his or her employment on the grounds of inefficiency or incompetency under the new part V.
(instead of the current section 45). The secretary will comply with the requirements in the Workplace Relations Act 1996.

As with the new section 45, the new part V will enable the secretary to make a determination ‘on the papers’ without holding an oral hearing. The secretary may decide to hold an oral hearing, or take the evidence orally of all or any witness, or permit cross-examination of all or any witness, if the secretary considers it appropriate to do so having regard to the seriousness of the allegation; whether an oral hearing would assist in evaluating the information submitted on the inquiry; any reasons submitted by the officer or employee in support of a request for an oral hearing; or any other matter that the secretary considers relevant.

Oral formal disciplinary hearings are cumbersome, outdated and not in keeping with modern employment practices including the practices applicable to state and federal public servants. The amendments will reduce the time involved for senior executives who conduct hearings and reduce the need for students and teachers to give evidence at formal hearings and be subjected to cross-examination, thereby reducing stress and lessening the disruption to schools, enabling schools to focus on student outcomes. Hearings are also costly both in terms of legal expenses and time.

Fourth, the new part V carries over and strengthens a number of existing provisions from the current part V including —

A new s. 70 enabling the secretary to suspend an officer or employee from duty with or without pay if the secretary believes there may be grounds for taking action or if the officer or employee is charged with a criminal offence. The secretary cannot suspend an officer or employee from duty without pay without first giving him or her the opportunity to make a submission in writing. A suspension will continue at the secretary’s discretion until a final determination is made and action is taken, including termination of employment. If an appeal to the Disciplinary Appeals Board is lodged, the secretary may continue the suspension (provided the employment of the officer or employee has not been terminated) until the outcome of the appeal. An officer or employee who is suspended without pay may engage in other employment provided they first seek permission of the secretary. If grounds for action against an officer or employee are not established, the secretary must remove any suspension and pay any salary due in respect of the period of suspension.

A right to appeal to the new Disciplinary Appeals Board against a decision of the secretary. An appeal will be conducted de novo. The board will have the power to order reinstatement or pay in lieu of an amount not exceeding six months salary. An officer or employee who is reinstated will be treated as having had continuous service.

A new s. 75A replicating the current s. 75A in relation to the procedure to be followed if the current address of an officer or employee is not known.

Fifth, the bill will establish a new Disciplinary Appeals Board to hear appeals of decisions of the secretary to take disciplinary action against employees and officers. The Disciplinary Appeals Board will have no other function than hearing disciplinary appeals. Members of the board will be Governor in Council appointments and each board will comprise three members: one legally qualified person appointed by the secretary, who will be the chairperson; a person appointed by the secretary who has experience in or knowledge of education, education administration or public administration; and a person nominated by the minister after calling for expressions of interest from teachers and principals in the teaching service.

The board may continue as a board of two people in the event of a member being unable to perform the duties of office when a hearing has commenced but not concluded. Officers and employees may be legally represented at hearings before the board, and all proceedings will operate without regard to legal formalities, which is important given that students may be required to appear as witnesses in any appeal.

Sixth, for the purpose of ascertaining the fitness of an officer or employee to participate in any procedures under the Teaching Service Act 1981, or to perform his or her duties, the bill enables the secretary to direct the officer or employee to submit to a medical examination by a qualified medical practitioner nominated by the secretary. The bill also provides that this direction must be complied with. This is an important reform to enable the secretary to more effectively manage officers or employees who seek to avoid disciplinary action by providing sick leave certificates from their doctor.

Finally, the bill amends sections 26 and 53 of the act, both of which contain no compensation provisions. When section 26 was inserted in 1993, section 77B was also inserted and a section 85 statement was made in relation to it. The government has obtained legal advice from the Solicitor-General and the chief parliamentary counsel which states that it is not legally necessary to comply with section 85(5) of the Constitution Act 1975
for amendments to provisions such as section 26 and section 53 and that previous statements were made out of an abundance of caution. Accordingly, the bill does not include section 85 statements in relation to those provisions.

I commend the bill to the house.

Debate adjourned on motion of Mr PERTON (Doncaster).

Ms KOSKY (Minister for Education and Training) — I move:

That the debate be adjourned for two weeks.

Mr PERTON (Doncaster) — On the question of time, Acting Speaker, I would like to draw to the minister’s attention the fact that this bill is coming in on effectively the last day of term. If it has the normal two-week adjournment it will come on again on the Tuesday or Wednesday after the school holidays have ended. If the opposition, The Nationals and the Independents are to properly consult with teachers and the like, it would be better for debate on this bill to have a four-week adjournment or for the minister to give an undertaking that if additional time is required for the consultation process, the debate will not come on at the end of two weeks but come on instead in the following week of sitting. If the minister can give me that undertaking then I will not formally move an amendment to change the length of the adjournment.

Ms KOSKY (Minister for Education and Training) — I can certainly give that undertaking. This bill has been through a very long consultation process, so my view would be that the different stakeholders who have been involved in the consultations would be only too willing to brief the opposition over the holiday period. But I understand the issues that are being raised, and if that is a problem we will certainly take that into account.

Dr NAPTHINE (South-West Coast) — I thank the minister for that undertaking and I give my case as an example. As a country member I will be going back to my electorate tonight or tomorrow, and by the time I post out copies of the second-reading speech and bill, the schools will already be on holidays. Therefore there needs to be an opportunity for teachers and principals to be able to access the bill and the second-reading speech and, perhaps, get back to me as their local member.

I understand that there has been consultation with the peak bodies and others, but as the local member I need to consult with the teachers, principals and school communities in my electorate, and the consultation period, being over the school holidays, is inadequate. I therefore appreciate the advice that the minister will delay the debate on the bill so that we have time for people to take — —

An honourable member interjected.

Dr NAPTHINE — I think it will be needed, just by virtue of the fact that if I send the material out tomorrow the schools will not even receive it until they return from holidays in early October.

Motion agreed to and debate adjourned until Thursday, 30 September.

SECOND READING

Mr CAMERON (Minister for Agriculture) — I move:

That this bill be now read a second time.

The bill makes a number of amendments that will strengthen the enforcement powers under the Fisheries Act 1995. These amendments include:

providing that conspiracy and attempts to commit offences against the Fisheries Act will trigger the automatic forfeiture provisions in the Confiscation Act 1997 if the export value of the fish is $50,000 or more;

providing that conspiracy, incitement and attempts to commit offences against the Fisheries Act will invoke the Fisheries Act enforcement, seizure and forfeiture provisions;

providing that the money laundering provisions of the Crimes Act 1958 also invoke the Fisheries Act enforcement, seizure and forfeiture provisions where the proceeds of crime are from an applicable fisheries offence; and

enabling restrictions to be made on the scope and purpose for which confidential information may be released, providing an offence for breach of those restrictions, and better integrating confidentiality provisions with other privacy principles.
The amendments to the Fisheries Act will also improve requirements relating to documentation under the national docketing system. This scheme has been adopted nationally and provides an audit trail for trade in high value fish, including abalone, to reduce the illegal trade of such fish both within Victoria and across our borders.

The bill also provides for the establishment of a central register for dangerous, menacing, and restricted breed dogs under the Domestic (Feral and Nuisance) Animals Act 1994. This register will provide councils with the ability to determine whether a dog that has changed ownership or been moved to a new municipality has been previously declared as dangerous, menacing or a restricted breed with one query.

Currently, if a council declares a dog to be dangerous, menacing or a restricted breed, only the municipal council making the declaration records the declaration. If a dog is moved to a new municipality, the new municipal council is not able to rely on its own records to determine the status of the dog. To establish whether another municipal council has made a declaration in relation to the dog, the new council would currently need to contact all other councils in Victoria seeking access to their records.

The amendments contained in the bill will introduce new mandatory reporting requirements for owners of dangerous, menacing, and restricted breed dogs and the municipal councils in which such dogs are located. Municipal councils will be required to forward on information regarding dangerous, menacing, and restricted breed dogs for inclusion in the central registry. Under the new requirements, the owners of such dogs will be required to notify municipal councils of changes to their address or to the location of the dog, in addition to their existing reporting requirements. This information will also be forwarded on to maintain the currency of the registry.

The establishment of this central registry will allow municipal councils to easily verify the status of dogs and will provide an important resource for the compilation of statistics regarding these dogs.

The bill also makes an amendment to the Domestic (Feral and Nuisance) Animals Act to reduce the age at which dogs and cats must be registered with a municipal council from six months to three months. This change will assist in identifying the owners of lost pets and reduce the problem of reuniting currently unregistered animals with their owners.

Two substantive changes to licensing under the Dairy Act 2000 are proposed to be made. The first of these changes will enable Dairy Food Safety Victoria to determine, in consultation with the dairy industry, the method and timing for collecting licence fees. It will also clarify the current installment payment practice and confirm the validity of dairy industry licences that were permitted to be paid by installments previously. The second change will exempt businesses from holding a licence under the Dairy Act if they are licensed under a comparable food safety regime in Victoria, and the quality assurance program of the business adequately covers dairy food safety. Any standards that are mandatory under the Dairy Act will be applied to that part of the business dealing with dairy products. This will be achieved through a memorandum of understanding between Dairy Food Safety Victoria and the Department of Human Services, PrimeSafe, and the Municipal Association of Victoria.

Following consultation with the Victorian Horse Council, the bill introduces an amendment to the Impounding of Livestock Act 1994 to provide a proprietor of a place where a horse is agisted with the ability to apply a lien over that horse in the event that agistment costs are not paid. This lien will arise on service of a default notice on the horse owner and will enable an agistment provider to recover from the proceeds of sale of a horse up to three months of costs arising before and up two months of costs arising after the default notice is served.

Under the Duties Act 2000, a duty is imposed on the sale of sheep at the rate of 12 cents for each animal or carcase. This duty is received by the commissioner of state revenue and paid to the credit of the Sheep and Goat Compensation Fund under the Livestock Disease Control Act 1994. Interstate producers who sell sheep in Victoria are liable to pay the duty but do not receive compensation from the compensation fund. Accordingly, the bill makes an amendment to the Livestock Disease Control Act to enable interstate sheep producers to receive a refund from the Sheep and Goat Compensation Fund equal to the duty paid.

The bill makes a number of amendments which will strengthen and improve the operation of the Prevention of Cruelty to Animals Act, specifically the bill proposes to:

- ensure that persons who are operating within the scope of the Wildlife Act 1975 must also comply with the provisions of the Prevention of Cruelty to Animals Act where they are conducting scientific procedures on animals;
ensure that permits to operate a rodeo or a rodeo school are held by the person who both provides and manages the welfare of the animals to be used; and

provide inspectors with sufficient powers of entry to premises and dwellings to ensure that the Prevention of Cruelty to Animals Act and its Regulations can be enforced.

I would now like to move to amendments proposed for the Agricultural and Veterinary Chemicals (Control of Use) Act 1992. The ruminant feed ban ensures that ruminant animals are not fed restricted animal materials and is an essential part of Australia’s procedure for maintaining and demonstrating freedom from bovine spongiform encephalopathy. Mandatory labelling of stock food and meal of animal origin is an important part of this feed ban.

The Agricultural and Veterinary Chemicals (Control of Use) Act currently provides that a person who manufactures meal of animal origin must not sell the meal unless it is accompanied by a label or advice note that complies with the regulations. There are currently no labelling requirements set out in the regulations. Instead, the labelling requirements for meal of animal origin are set out in an order under the Livestock Disease Control Act 1994. However, it is proposed to amend the Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996 to provide for labelling requirements and place the ruminant feed ban on a more permanent footing. The amendment contained in the bill will enable the making of those regulations to replace the order.

In addition, the Agricultural and Veterinary Chemicals (Control of Use) Act is to be amended to provide for the automatic indexation of fees under that act in accordance with the Monetary Units Act 2004. The minister fixes fees under the Agricultural and Veterinary Chemicals (Control of Use) Act by notice published in the Government Gazette. Because the fees are not set out in the act or regulations they are not subject to automatic indexation. The amendment contained in the bill will provide for the conversion of existing fees fixed by notices under the Agricultural and Veterinary Chemicals (Control of Use) Act to fee units. This amendment will ensure that the true value of the fees is maintained over time.

The bill also makes a minor amendment to the Mineral Resources Development Act 1990 that will enable local agents to issue miners rights. A miners right entitles a person to search for minerals on Crown land, subject to some exemptions. Currently, the Mineral Resources Development Act does not provide for a miners right to be issued by a local agent. This means that a person may have to travel some distance to a Department of Primary Industries office to obtain a miners right. Accordingly, the proposed amendment will provide for easier access to miners rights.

The Barley Marketing Act 1993 is to be repealed following the deregulation of the barley export market in July 2001. The repeal of this Act follows a national competition policy review of barley legislation in Victoria and South Australia that recommended that the domestic barley market be deregulated and that the Australian Barley Board retain its single desk, or monopoly, for export barley sales for the shortest practicable transition period. As the powers of the single desk for export marketing have sunset, the Barley Marketing Act is now redundant and can be repealed.

I commend the bill to the house.

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

Debate adjourned until Thursday, 30 September.

DRUGS, POISONS AND CONTROLLED SUBSTANCES AND THERAPEUTIC GOODS (VICTORIA) ACTS (AMENDMENT) BILL

Second reading

Ms PIKE (Minister for Health) — I move:

That this bill be now read a second time.

This bill seeks to amend the Drugs, Poisons and Controlled Substances Act 1981 and the Therapeutic Goods (Victoria) Act 1994 to give effect to recommendations arising from two national competition policy reviews, and to make other miscellaneous amendments to improve the operation of the legislation.

All states and territories have legislation governing the supply of medicines and poisons. In Victoria, the relevant legislation is the Drugs, Poisons and Controlled Substances Act 1981.

A major objective of this act is to promote and protect public health and safety by preventing:

accidental poisoning:
deliberate poisoning;

medicinal misadventures; and

diversion for abuse or manufacture of substances of abuse.

Victoria participated in a national competition policy review of state and territory drugs and poisons legislation.

Many of the recommendations arising from the review require action at a commonwealth level. This bill gives effect to a number of recommendations that can be progressed by Victoria immediately, as a demonstration of Victoria’s commitment to the reform process.

I now turn to the specific provisions of the bill.

The bill will allow Victoria to adopt national drug scheduling decisions automatically.

The Standard for the Uniform Scheduling of Drugs and Poisons contains the decisions of the National Drugs and Poisons Schedule Committee regarding the classification of drugs and poisons into schedules. The particular schedule in which a drug is classified determines the degree of control intended to apply to the substance. The standard also includes a number of related provisions that concern the substance (for example, labelling, packaging and advertising) or interpretation of the schedules.

The process for determining the schedule is set out in the commonwealth Therapeutic Goods Act 1989 and associated regulations. Scheduling decisions require the support of the majority of jurisdictions and do not have effect until they are included in state and territory legislation.

In Victoria, scheduling decisions require the approval of the Minister for Health before coming into effect in this state, via a mechanism in the act called the Poisons Code.

This system was introduced because the previous wording of the standard made it unsuitable for legislation, and because there were no notice provisions in the commonwealth act for the publication or announcement of the effective date of amendment to the standard. These issues have since been addressed, allowing for automatic adoption of scheduling decisions and the related provisions in the standard. This will remove an unnecessary bureaucratic process and further promote national consistency in this area.

Some aspects of the Poisons Code will be retained to allow Victoria to:

continue its pilot of developing a list of Chinese herbs for inclusion in schedule 1 of the poisons list, that will one day be included in the standard, subject to national agreement;

specify a list of substances not for general sale by retail, and

specify exemptions from schedule 1 of the poisons list or the schedules of the standard.

The bill will repeal licences to:

manufacture and sell or supply by wholesale or retail any schedule 5 or 6 poison; and

sell or supply by wholesale any schedule 5 or 6 poison.

Schedule 5 poisons include household poisons such as methylated spirits and turpentine with a relatively low potential for causing harm. Schedule 6 poisons include agricultural and industrial chemicals such as strong acids and pesticides with a moderate potential for causing harm.

The national competition policy review considered that the costs of the schedule 5 and 6 licensing provisions for industry and government were not justified and recommended that they be repealed.

All products in these schedules will continue to be labelled with the required signal headings, first aid directions, warning statements, and safety directions, and the containers must comply with performance standards and requirements to identify them as containing poisons that may have an untoward effect on humans or animals.

The government will offer a pro-rata refund for licences that expire more than six months after the date on which the relevant licence provisions of the act are repealed.

The repeal of these licences will remove the ability of the Department of Human Services to inspect the premises to which the licences had related. Therefore the bill authorises those who manufacture and sell or supply by wholesale or retail, or sell or supply by wholesale, any schedule 5 or 6 poisons. This will permit inspection by authorised officers under the existing powers and maintain regulatory oversight of schedule 5 and 6 poisons.
Schedule 11 to the act lists drugs of dependence and sets out the associated trafficable quantities.

Buprenorphine is used to treat heroin dependence and is not currently included in schedule 11. Since its introduction in 2001, there have been reports of its trafficking and abuse following diversion by pharmacotherapy clients. Accordingly, the bill adds buprenorphine to schedule 11 and sets a trafficable quantity of 2 grams.

The bill will repeal section 12M of the act, which allows the drugs and poisons regulations to add, delete, substitute or alter an item in schedule 11. It is not appropriate that the addition of a poison to schedule 11 be undertaken by regulation, due to the high level of penalty that is imposed. Changes to schedule 11 will in future need to be made by amendment to the act.

This bill also makes minor changes to improve the operation of the legislation. In particular, it:

- clarifies the operation of division 4 (which relates to licences, permits and warrants);
- clarifies that health service permit-holders may sell or supply poisons and controlled substances through authorised persons;
- allows for required records to be kept electronically; and
- clarifies what constitutes administering, supplying or prescribing a drug of dependence over a continuous period of time for the purposes of the act.

As I stated previously, this bill also amends the Therapeutic Goods (Victoria) Act 1994.

Part 5 of the Therapeutic Goods (Victoria) Act 1994 currently provides for the licensing of wholesalers of therapeutic goods. However, no application fee has ever been determined and no licence granted. An in-house national competition policy review of the act recommended the repeal of the licensing provisions for wholesalers of therapeutic goods, which is in accord with the national position on this issue. The bill repeals these provisions.

The national competition policy review of drugs and poisons legislation recommended that state and territory drugs and poisons legislation be amended to make compliance with the code of good wholesaling practice a condition of licence for wholesalers. In response to this recommendation, the 1991 code of good wholesaling practice is being updated nationally. It is proposed to be developed by stakeholders including pharmaceutical and medical devices industries and all levels of government.

Rather than amending drugs and poisons legislation, the bill will allow the code to be adopted through therapeutic goods legislation so that it will apply to wholesalers of all therapeutic goods (not merely medicines).

In this respect, the bill sets up a generic process for adopting or making codes of practice in Victoria that relate to therapeutic goods. This will allow Victoria to adopt the code of good wholesaling practice once it has been updated, and implement any other relevant codes that may be developed in the future. In order to ensure sufficient parliamentary oversight, the bill sets out the process for making and approving a code, for publicising it so that stakeholders are aware of it and can comply with it, and for the tabling of codes in Parliament.

Victoria is a national competition policy reform leader, and has been a model for implementing reform in a manner that best reflects the interests of the community. This bill is yet another example of the government’s commitment to the reform process.

I commend the bill to the house.

Debate adjourned on motion of Mrs SHARDEY (Caulfield).

Debate adjourned until Thursday, 30 September.

DANGEROUS GOODS LEGISLATION (AMENDMENT) BILL

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The primary purpose of this bill is to implement national principles for the regulation of ammonium nitrate, and to allow for the future regulation of other substances identified as being of a security concern. The provisions in the bill are primarily enabling and will allow regulations to be made to implement a licensing regime to control access to a high consequence dangerous good, throughout its supply chain, from manufacture and import to end use, consistent with the national principles. The bill will amend the Dangerous Goods Act 1985, the Terrorism (Community Protection) Act 2003 and the Road Transport (Dangerous Goods) Act 1995 to make these necessary legislative changes.
Ammonium nitrate is a legitimate product, used for legitimate purposes by the horticulture, dairy, and other agricultural industries, and in the mining and quarrying industries. However, this substance has been used to devastating effect in a number of appalling outrages, probably the best known example of which is the bombing in Oklahoma City in 1995.

Along with overseas governments, Australian jurisdictions have recognised that in the current environment, the ready availability of ammonium nitrate presents a risk that must be properly managed alongside the ongoing requirements of legitimate users. In recognition of this need, the Council of Australian Governments agreed on 25 June 2004 to a national approach to ban access to security-sensitive ammonium nitrate, except for specifically authorised users. The national principles are available on the COAG web site. Under the national principles, security-sensitive ammonium nitrate is defined to mean ammonium nitrate and any emulsion or mixture, but not solution, containing greater than 45 per cent ammonium nitrate.

Victoria has played a key part in the development of and agreement to the national principles for the control of ammonium nitrate on the basis that they enhance the security of the community whilst allowing legitimate users to continue to have access to it. Rather than a complete ban on the production and use of ammonium nitrate, including as a fertiliser, Victoria supported a regulatory regime to ensure that it remains available to legitimate users, while managing the risk that its continued ready availability would pose.

Regulatory regime for ammonium nitrate

‘Legitimate need’, as specified in the national principles, is largely confined to commercial production processes, mining, quarrying, the manufacture of fertiliser and explosives, educational, research and laboratory use, commercial agricultural use by primary producers, and services for transportation, distribution and use of the product. Household and domestic use, and the fertilisation of recreational facilities, will not be included as a ‘legitimate need’. These restrictions are justified by the ready availability of alternatives for these purposes.

Legitimate users will be required to obtain a licence and to implement satisfactory security measures. The licensing regime will affect commercial users, including the agricultural industry. The mining and quarrying industries and any other industries using security-sensitive ammonium nitrate as an explosive ingredient are already covered by the explosives regulations, which will have comparable measures to those for security-sensitive ammonium nitrate.

Licensing will also affect educational, research and laboratory users of security-sensitive ammonium nitrate. Transport and warehousing industries will also be required to obtain a licence to transport and store security-sensitive ammonium nitrate, and to implement security measures.

Regime to regulate other high consequence dangerous goods

It is likely that other dangerous goods will subsequently be identified as being of security concern nationally, and will require a similar regulatory approach to that proposed for security-sensitive ammonium nitrate. The amendments in this bill also make provision for the establishment of a regulatory framework that can in future include other dangerous goods of security concern.

The United Nations defines ‘high consequence dangerous goods’ to include those dangerous goods that have the potential for misuse in a terrorist incident and that may, as a result, produce serious consequences such as mass casualties or mass destruction. Amendments to the Dangerous Goods Act in this bill define high consequence dangerous goods to be those dangerous goods that are so declared from time to time by order of the Governor in Council.

The provisions in this bill are primarily enabling in character. This bill will enable regulations to be made concerning high consequence dangerous goods, including security-sensitive ammonium nitrate. They enable regulations to be made to implement a licensing regime to control access to a high consequence dangerous good throughout its supply chain, from manufacture and import to end use, consistent with the national principles. Licence applicants will be required to agree to background checking by the police and other authorised agencies to minimise the risk of any person with known or suspected terrorist associations gaining access to security-sensitive ammonium nitrate.

Limitation of the current primary producer exemption

The Dangerous Goods Act currently provides for regulations to be made requiring licences to be obtained by persons in relation to the manufacture, storage, sale, use, handling or transfer of dangerous goods. A specific and limited exemption applies to primary producers. However, primary producers are not exempt from compliance with the fundamental safety obligations
imposed by the Dangerous Goods Act in respect of storage, handling and use.

The national principles make no provision for any group, including primary producers, to be exempt from the new licensing requirements.

The existing ‘primary producer exemption’ also applies to explosives. It would be inconsistent to have more stringent controls on primary producers using security-sensitive ammonium nitrate fertiliser than on those using commercial blasting explosives. Therefore, this bill amends the exemption so that it will no longer apply to explosives. Subject to this change concerning explosives, the scope of the existing ‘primary producer exemption’ remains unaffected.

**Amendments to the Terrorism (Community Protection) Act**

The Terrorism (Community Protection) Act 2003 was passed by the Parliament last year as an element of the government’s approach to enhancing Victoria’s security. It contains a number of provisions to enhance Victoria’s capacity to prevent and respond to terrorist acts. The act currently provides for mandatory reporting of the theft or loss of prescribed chemicals or substances to the police without delay, to ensure that police are able to act promptly to prevent any possible misuse of them.

The national principles require that incidents of loss, theft, attempted theft and discrepancies of security-sensitive ammonium nitrate be reported to the regulatory authority, which in Victoria is the Victorian WorkCover Authority, and the police. The bill amends the Terrorism (Community Protection) Act to give effect to this requirement. These amendments will require that the attempted theft and discrepancies of any prescribed chemicals will also need to be reported to the police, and that the loss, theft, attempted theft and discrepancies of security-sensitive ammonium nitrate and other chemicals or substances identified as high consequence dangerous goods must be reported to VWA and the police.

This will enable VWA to investigate whether the conditions of the licence have been breached, and if necessary take action to suspend or cancel the licence. Reporting to Victoria Police will enable them to investigate the incident to determine whether action is necessary to prevent terrorist or other criminal activity. Chemicals and substances, and the threshold amounts of them, to which the reporting obligations apply, will be prescribed by regulations. Security-sensitive ammonium nitrate will be one of these prescribed chemicals.

**Forfeiture and disposal**

This bill will provide the VWA with power to forfeit and dispose of a quantity of a high consequence dangerous good or explosive where the owner is unknown or cannot be found. The government recognises that an administrative power to forfeit and dispose should not be conferred lightly, and therefore the bill provides that the power will only be able to be exercised by the VWA if it cannot find the owner of the goods after making reasonable inquiries or if the seized goods cannot be returned to the owner after making reasonable attempts.

The bill also allows for court-ordered forfeiture and disposal of seized high consequence dangerous goods or explosives, in the interests of public safety, before criminal proceedings are concluded. The court-ordered forfeiture provisions also enable a claim for compensation if a person charged is found not guilty. That person will be entitled to recover compensation equal to the market value of the goods at the time of seizure, and compensation for any loss suffered by reason of the seizure.

**Consultation**

There has been substantial consultation with stakeholders in the development of the national principles and this legislative response. The commonwealth government developed the national review and national principles for the regulation of ammonium nitrate with the participation of state and territory governments. The Commonwealth Department of the Prime Minister and Cabinet consulted representatives of peak industry bodies and sought the views of the main manufacturers of ammonium nitrate.

In July 2004, key Victorian stakeholders were invited to a series of meetings to discuss the principles and the steps to implement them in Victoria. The sectors represented at the meetings included agriculture, mines and quarries, importers and suppliers of fertiliser, road transport and recreational facilities.

The VWA will continue to consult the Victorian Farmers Federation and other key industry stakeholder groups during the development of the regulations, and will also promote awareness of the exact nature of the licensing regime.

The government recognises that users of security-sensitive ammonium nitrate will need a suitable period to prepare for the new regulatory
scheme. Allowance will be made for those who do not have a legitimate need, or are otherwise prohibited from holding security-sensitive ammonium nitrate products, to dispose of them, and also for those users requiring a licence to comply fully with the licence requirements. The proposed regulations will therefore not commence operation on the date they are made, but will specify a commencement date to provide a transition period. The VWA will ensure that the licensing regime is in operation by mid-2005.

I commend the bill to the house.

Debate adjourned on motion of Mr McIntosh (Kew).

Debate adjourned until Thursday, 30 September.

CHILDREN AND YOUNG PERSONS (AGE JURISDICTION) BILL

Second reading

Mr Hulls (Attorney-General) — I move:

That this bill be now read a second time.

In May this year I launched the justice statement. The justice statement sets out the government's visions for reform of Victoria's justice system. One of the key goals of the justice statement is to address disadvantage in the criminal justice system. This bill provides a critical step in achieving this goal by lifting the age jurisdiction of the criminal division of the Children's Court to include 17-year-olds.

Currently, the Children's Court has jurisdiction to hear and determine charges against children and young people aged 10 or above, who are under 17 years at the time of the alleged commission of the offence, and under 18 at the time of being brought before the court. The Children's Court does not, therefore, have jurisdiction to hear and determine charges against young people aged 17 at the time of the alleged commission of an offence. Instead, they must appear before — and, if found guilty, be sentenced by — an adult court.

This bill will bring Victoria into line with the United Nations Convention on the Rights of the Child. This convention defines a child as a person under the age of 18 for the purposes of criminal law.

By including 17-year-olds in the jurisdiction of the Children's Court, this bill acknowledges the particular vulnerability of 17-year-olds — as children — in their interactions with the criminal justice system. It will enable those young people to have their cases heard and determined in a separate specialist court catering solely for children and young people. The Children and Young Persons Act 1989 requires the Children's Court to focus on the welfare and rehabilitation of young offenders, and to sentence a young person to the least restrictive form of punishment. When sentencing a child, the Children's Court must have regard to a number of principles, including:

- the need to minimise the stigma to the child resulting from a court determination;
- the need to strengthen and preserve the relationships between the child and the child's family;
- the desirability of allowing the child to live at home and of allowing the child's education to continue without interruption; and
- the suitability of the sentence to the child.

Adult courts are not required to focus on such matters.

The effect of this bill is to give the Children's Court jurisdiction to hear and determine charges against children and young people aged 10 or above, who are under 18 years at the time of the alleged commission of the offence, and under 19 at the time of being brought before the court.

The bill will not alter the fact that the Children's Court does not have jurisdiction to hear charges of murder, attempted murder, manslaughter, arson causing death or culpable driving. Those charges will continue to be heard in the Supreme or County Court. The Children's Court will also continue to have the power to decline to hear a charge in exceptional circumstances — referring the matter to the Supreme or County Court.

The bill will also make a number of consistent consequential amendments to other pieces of legislation, including the Crimes Act 1958, the Crimes (Family Violence) Act 1987, the Sentencing Act 1991, and the Evidence Act 1958.

At present, 17-year-olds are treated as adults for the purposes of criminal law. This means that a person who is found guilty of committing an offence when aged 17 can be sentenced to imprisonment in an adult prison. While our prison system has a range of measures to protect vulnerable prisoners, the fact is that young people can be exposed through imprisonment to older offenders.

This bill will ensure that 17-year-old defendants whose charges are heard in the Children's Court are not
sentenced to adult prison. Instead, if the Children’s Court considers it appropriate, such offenders could be sentenced to detention in a youth training centre.

Aside from detention, the Children’s Court has a different range of sentencing dispositions under the Children and Young Persons Act 1989 from those that are available to the Magistrates, County and Supreme courts. Other options available to the Children’s Court include good behaviour bonds, probation, youth supervision orders and youth attendance orders. The juvenile justice program in the Department of Human Services administers the supervised and detention orders in the Children’s Court jurisdiction.

The juvenile justice program focuses on the early identification of risk factors which contribute to young people’s offending behaviour. Through an intensive case management approach, it implements a plan that addresses those factors for all young offenders supervised by the program — both those in the community and those in custody. In this way, the juvenile justice program incorporates a comprehensive array of rehabilitative programs and services that are appropriate to the individual developmental stages of children and young people.

The bill will not affect the operation of Victoria’s unique ‘dual track’ system, which allows adult courts to sentence vulnerable young offenders to detention in a youth training centre. While the bill will transfer primary jurisdiction in respect of 17-year-old and some 18-year-old defendants from adult courts to the Children’s Court, adult courts will continue to have the power to sentence offenders aged under 21 to detention in a youth training centre rather than to imprisonment.

The government recognises that there are further improvements that can be made to a number of provisions of the Children and Young Persons Act 1989 relating to the criminal division of the Children’s Court. These include the operation of some of the sentencing orders under the act, and the way in which unpaid infringement notices are dealt with in the Children’s Court. The government will continue to work with the Children’s Court to improve the way in which these provisions operate and, in particular, to ensure that they are clear, fair, consistent and make the most efficient use of the court’s time.

This bill illustrates the government’s ongoing commitment to the rehabilitation of young offenders, and to the Children’s Court as a highly skilled specialist jurisdiction best suited to hearing and determining matters involving children and young people.

I commend the bill to the house.

Debate adjourned on motion of Mr McIntosh (Kew).

Debate adjourned until Thursday, 30 September.

PLANNING AND ENVIRONMENT (GENERAL AMENDMENT) BILL

Second reading

Ms DELAHUNTY (Minister for Planning) — I move:

That this bill be now read a second time.

Victoria enjoys one of the most robust and inclusive planning systems in Australia. It also enjoys continuing record highs in building activity — we recently recorded the 17th consecutive month with building activity exceeding $1 billion. This activity is very welcome; however, it puts heavy pressure on the planning system.

Improving the quality of planning applications is an important component of the government’s metropolitan strategy Melbourne 2030 and a key election commitment. The government’s economic statement Victoria — Leading the Way recognises the importance of facilitating decision making in the planning system.

Better Decisions Faster is about promoting better prepared applications and speeding up decisions on planning permits. It also includes a number of initiatives to improve the processing of planning scheme amendments and to strengthen enforcement procedures. Estimated savings to the development industry are of the order of $50 million. Work on these initiatives is already well under way.

This bill delivers seven initiatives in Better Decisions Faster that require legislation. It will improve the efficiency of the planning permit process and the planning scheme amendment process and promote better outcomes from planning decisions for the community.

The government’s economic statement Victoria — Leading the Way recognises the importance of cutting red tape in development approvals and has committed $3.1 million to implementing Better Decisions Faster. The funding will be directed toward projects such as a new electronic permit activity reporting system, implementing pre-lodgment certification across all councils and simplifying the current system of planning application referrals. Supplementary funding to VCAT
(the Victorian Civil and Administrative Tribunal) is also part of this package.

These proposals are all practical improvements that will make processes more efficient and effective for both applicants and decision-makers.

I now turn to the bill.

For planning permit applications the bill significantly improves the processes in the Planning and Environment Act for requesting further information and modifying applications. The bill also clarifies the matters that the Victorian Civil and Administrative Tribunal is required to take into account when reviewing a decision under the act.

The bill will also improve the processes for modifying a planning permit that has been issued.

In relation to planning schemes, the bill will ensure a proposed amendment is assessed against state policy before it can be prepared. There will be a simpler approval process where the amendment to a planning scheme is of local significance only.

The bill also introduces monitoring to ensure continuous improvement of planning schemes and business processes.

I will outline each of these matters in more detail.

Approval of amendments to planning schemes

Councils as planning authorities currently prepare and exhibit most planning scheme amendments. Amendments to planning schemes are amendments to subordinate legislation and, rightly, must go through a process of rigour before they are approved. The Minister for Planning only becomes formally included at the end of the process — the approval stage.

The bill allows amendments that might affect state policy or interests to be identified ‘up front’.

The bill creates a requirement for planning authorities to seek the authorisation of the Minister for Planning to prepare any planning scheme amendment. This is already required in the case of green wedge areas. The need for parliamentary ratification will continue to apply only for green wedge areas.

A number of councils and the Municipal Association of Victoria have indicated that the authorisation proposal will be a useful early warning mechanism for all amendments.

The minister will be able to authorise an amendment subject to any conditions, including the giving of notice of an amendment. The bill also requires the minister to indicate whether the planning authority can approve the amendment or whether it must be returned to the minister for approval.

The ability for a planning authority to approve an amendment if authorised by the minister will remove an unnecessary stage in the amendment process and will allow quicker approvals for about two-thirds of planning scheme amendments every year. The initiative is consistent with government’s policy to restore local democracy. All councils will applaud this measure.

If a planning authority has been authorised to approve an amendment, the bill requires the authority to obtain ‘certification’ from the Secretary of the Department of Sustainability and Environment that the amendment is acceptable prior to the approval of an amendment. This certification is intended as a technical check on the quality of the amendment to protect the integrity of planning schemes in Victoria.

The new provisions will be explained to planning authorities before they come into force. Procedural arrangements will be established that assist them to implement the new process.

Regular review of planning schemes and processes

Councils as planning authorities must regularly review their planning schemes but there is no specified time period when they must do this. The act also includes a requirement for planning authorities to review their municipal strategic statement every three years. The bill removes the requirement to review the strategic statement and establishes instead a general responsibility for planning authorities to review and improve their planning scheme every three years. By setting out clearer requirements for reviews, the bill will promote continuous improvement of planning schemes and processes by councils.

Councils already do some reporting of planning matters through the Best Value program of the Department for Victorian Communities. This proposal will link with requirements for that reporting.

Amendment to applications before notice

A responsible authority can currently amend an application with the agreement of the applicant and after giving notice to the owner. Amendments are limited to changes to the use or development mentioned in the application or a change to the description of land.
It is most often the applicant that would like to initiate changes to the application. The bill replaces section 50 of the Planning and Environment Act with a new section that enables an applicant to amend an application before notice, provided notice is given to the owner of the land.

Requests for further information

Some responsible authorities report that up to 90 per cent of applications contain inadequate information when they are lodged.

Applicants often do not respond to requests for further information. Responsible authorities are then obliged to follow up requests before they can make a decision. This reduces the time planners can spend on making decisions about development proposals.

Therefore the bill provides that when a responsible authority requests further information for a planning permit application it must also specify a date within which the information must be received. The date specified must be reasonable in relation to the nature of the information requested.

An application will lapse if the requested information is not provided by the date specified by the responsible authority. Once an application has lapsed an application will not be able to be recommenced.

The bill enables the responsible authority to extend the date specified upon request from the applicant if the request is made before the application lapses. The applicant may appeal to the Victorian Civil and Administrative Tribunal for a review of a decision not to extend the time to submit the information.

Modifying an application

Development proposals often change during the permit process. This is a good thing because it allows a proposal to be improved in response to the concerns of objectors and the responsible authority.

The current process does not recognise this and changes cannot be made to an application after notification has occurred. This means that changes have to be specified as conditions on the permit. Objectors do not get to see the final form of the development and applicants are not provided with an opportunity to fully resolve their application before a decision is made.

At its worst, the current process encourages applications to be modified through a review of a decision rather than during the course of the application.

The bill sets out a new process to allow an applicant to modify an application while the application is being assessed, to respond to any concerns of objectors or the responsible authority. Any modification to an application must not be so substantial as to be a new application.

The responsible authority can consider whether any additional notification is needed where the proposed modifications may cause material detriment.

If a modification to the application is made then the statutory clock for the purposes of the act begins again. This will be provided for in the planning and environment regulations. This will ensure that the periods for notification and referral authority consideration are reasonable and that responsible authorities are not penalised by the threat of ‘failure to determine an application’.

A decision is made on the application in its final form. This allows a much more flexible process and builds efficiencies into the planning system while retaining the protection of neighbours’ rights to make comment.

Matters to be taken into account by VCAT

In relation to decisions about planning permits, the Whitney committee recommended that the act be amended to clarify and consolidate the matters that must be considered by a responsible authority and the Victorian Civil and Administrative Tribunal.

The bill restructures section 84B of the Planning and Environment Act to clarify the matters the tribunal must take into account when reviewing a decision, including a decision about a planning permit made by a responsible authority.

These amendments are not intended to change the actual requirements applying to either responsible authorities or the Victorian Civil and Administrative Tribunal, but simply state them more clearly.

Modifying a permit after it is issued

Currently, responsible authorities can make only ‘minor’ changes to planning permits. Many responsible
authorities are reluctant to classify a change to a permit as ‘minor’. The alternative is to require a new application to be submitted and the whole proposal is reassessed. This would be costly and inefficient and would open the whole application to reassessment.

The bill allows an applicant to request modification to a permit, including any associated plans, without being unnecessarily restricted to ‘minor’ modifications. The existing provisions in relation to minor amendments to permits are repealed.

The responsible authority will now simply need to consider whether material detriment is likely to be caused by the proposed modifications. Notification will be given in the normal way if the modifications may cause material detriment. The tests for notification will be the same as for any permit; however, only the effect of the proposed modification will be assessed, so that the whole development is not opened to reassessment.

The bill also provides for a review of a decision about modifying a permit by the Victorian Civil and Administrative Tribunal, in the same manner as a decision about the original permit application.

The new process will avoid the need to make artificial judgments about whether the effect of a proposal is minor or not. This means that the processes for determining a permit or a modification to a permit will be essentially the same. A new fee will be prescribed in the planning and environment regulations for this new process.

Allowing an existing permit to be modified will also reduce confusion where a number of ‘live’ but superseded permits continue to exist for a single piece of land.

The new process for modifying permits will not be applicable to permits issued at the direction of the tribunal or the minister under sections 96J or 97F.

The bill is an important step in maintaining the strength of the Victorian planning system. It provides benefits for local government, industry and the community and is well supported.

Debate adjourned on motion of Mr BAILLIEU (Hawthorn).

Debate adjourned until Thursday, 30 September.

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**STATE TAXATION ACTS (AMENDMENT) BILL**

Second reading

Mr BRUMBY (Treasurer) — I move:

That this bill be now read a second time.

This bill makes a number of important amendments to the Accident Compensation Act 1985, the Duties Act 2000, the First Home Owner Grant Act 2000, the Land Tax Act 1958, the Pay-roll Tax Act 1971 and the Valuation of Land Act 1960. These amendments add certainty to administration, and reflect the government’s commitment to a robust but fair taxation system.

**Amendments to the Accident Compensation Act 1985**

The bill amends the Accident Compensation Act 1985 to bring the definition of ‘remuneration’ into line with previous and current government policy intentions.

The Victorian WorkCover Authority calculates an employer’s annual WorkCover premium by reference to the ‘remuneration’, as defined in section 5 of the Accident Compensation Act 1985, that an employer pays to employees.

In 1994, that definition of ‘remuneration’ was amended to include fringe benefits, as defined by the commonwealth Fringe Benefits Tax Assessment Act 1986. This aligned the definition of ‘remuneration’ with the definition used for payroll tax, with the intention being that employers could use the same remuneration figure as the basis for calculation of payroll tax and WorkCover premiums.

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In 1997, similar amendments were made to include superannuation within the definition of ‘remuneration’, again for consistency with payroll tax legislation.

It is quite clear that when the original amendments were made in 1994 and 1997, there was no policy intention to exclude wages and salaries and superannuation contributions from the remuneration base used to calculate WorkCover premiums payable by employers that are exempt for commonwealth fringe benefits tax purposes. There was and is no policy intention that these employers would have their WorkCover premiums calculated on a different basis from that applying to all other employers. Since 1994 and 1997, all employers have had and continue to have premiums calculated on the same basis, and have been paying premiums accordingly.
Issues with the wording of section 5(9) have resulted from inadvertent drafting oversights in 1994 and 1997. The VWA recently became aware of the need to clarify the wording of section 5(9) of the Accident Compensation Act 1985, which excludes ‘exempt benefits’, as defined by the commonwealth Fringe Benefits Tax Assessment Act 1986, from the definition of remuneration. Under fringe benefits tax definitions, all benefits paid to employees of certain categories of employers, known as ‘exempt employers’, are ‘exempt benefits’. This includes wages, salaries, and superannuation contributions.

‘Exempt employers’ include bodies such as religious, charitable and benevolent institutions, including some hospitals.

The VWA sought senior legal advice on this issue. This advice recommended that the act be amended to clarify that wages and salaries, and superannuation contributions, paid by ‘exempt employers’ (who are ‘exempt’ for the purposes of the Fringe Benefits Tax Assessment Act 1986) are included in the definition of remuneration applicable to all other employers, for the purposes of WorkCover premium calculation.

Advice received by the VWA also recommended that this amendment have retrospective effect, to provide certainty in relation to past as well as future collection of WorkCover premiums. This will ensure that proper effect is given to government policy intentions of the past and present.

The bill therefore amends section 5(9) of the Accident Compensation Act 1985 to clarify that wages and salaries, and superannuation contributions, paid by ‘exempt employers’ clearly form part of the remuneration base for calculating WorkCover premiums and will have effect from 1 July 1994.

These amendments give valid effect to a policy that is generally considered by both sides of this Parliament to have been applicable since 1994 and 1997.

**Amendments to the Duties Act 2000**

The bill introduces further amendments to the exemption in the Duties Act available where transfers of property take place as part of a corporate reconstruction. This follows industry consultation and feedback after significant changes introduced in 2003.

The amendments clarify a range of definitions including extending the definition of ‘corporation’ to include a public offer superannuation fund. Such funds have comparable characteristics to public unit trusts and companies, are open to subscription to the general public, and they should be similarly eligible for the corporate reconstruction exemption. The changes demonstrate the willingness of the government to listen and respond to industry concerns.

The Duties Act currently exempts from duty, in certain circumstances, a transfer from a trustee in bankruptcy back to a former bankrupt. The bill introduces an amendment where the trustee in bankruptcy transfers the bankrupt’s interest in the family home to the non-bankrupt spouse. The government does not believe someone should be unnecessarily prejudiced because of their spouse’s bankruptcy.

If a beneficiary under a will or intestacy disclaims a gift prior to administration of the estate this affects a change of beneficial ownership of the property of the estate that is to take place on distribution. The bill introduces an amendment to clarify that duty can be charged in such circumstances, as was clearly the case under the previous Stamps Act 1958, and has always been the intent of the legislation.

Victoria is the only jurisdiction to allow an exemption from duty in respect of a transfer of dutiable property made in consideration of marriage in particular circumstances. This exemption is an historical anomaly and is easily exploited. The transfer is not limited to transfers from natural persons and there is no time limit specified between the transfer and the marriage. Indeed, there have been instances of transfers being made years in advance of an anticipated marriage. The exemption fosters the practice of dowry, which should not be an appropriate matter for taxation incentives. The bill removes the concession. Victoria already exempts transfers between spouses and domestic partners and will continue to do so.

There are occasional circumstances where property is vested in a transferee by statute, either a Victorian statute or one of another jurisdiction. Such vesting is not currently considered a dutiable transaction. New South Wales and Western Australia have both recently amended their legislation to bring such vesting to duty and the bill brings Victoria into line with these changes. It is a matter of equity that such property transfers should be taxed in the same way as any other transaction.

The commissioner has detected misuse of the exemption allowed for demonstrator vehicles used by retail car dealers. It is apparent that some car dealers are registering high-value vehicles as a duty-free demonstrator, then selling them very quickly as second-hand vehicles attracting a lower rate of duty than they would if sold as new. The objective of the
amendment is to require high-value vehicles to be held by dealers for a minimum period of two months before the lower used car rate of duty applies. The government will act to protect the integrity of the revenue base when it is threatened blatantly, covertly or inadvertently. The State Revenue Office in conjunction with the Victorian Automobile Chamber of Commerce will ensure, through publications, that car dealers are fully aware of their rights and obligations in this area.

Commercial reality dictates that purchasers of real estate often obtain finance through loans, and so the financial institution provides a portion of the purchase monies. This reality causes difficulty when the High Court decision of Calverley v. Green is applied strictly to the section 34 exemption for transfers from a trustee to a person who has provided the purchase monies. This is because that case would suggest that a purchaser could not be said to have provided the purchase monies when subject to a mortgage, which undermines the exemption and prejudices some parties. The act is to be amended to ensure the policy intent of the exemption is met.

The bill contains provisions, which, for the first time in Australia, will recognise special arrangements members of the Islamic community enter into to comply with Islamic law that prohibits the payment of interest. These arrangements usually result in two transfers, one at the start and another at the end of the relationship between purchaser and lender, and thus two payments of conveyance duty, before an individual eventually takes full ownership of property. The bill will recognise these transactions and impose duty only once, as is the case for all other Victorians who purchase property. This government values Victoria’s multicultural society and is committed to ensuring all Victorians are treated equally. The Islamic community welcomes these changes, which other states can be expected to follow.

The bill makes a number of changes to the Duties Act and the Land Tax Act as a result of the government’s e-conveyance project. This development, where again Victoria is leading the nation, promises significant savings and efficiencies for the conveyancing industry and most importantly consumers when buying or selling property.

**Amendments to the First Home Owner Grant Act 2000**

Since the introduction of the First Home Owner Grant Act, the SRO has received specific requests from the Victorian and federal police, the director of housing and Consumer Affairs Victoria for information in connection with persons who are applicants for the grant. It is important that law enforcement agencies have appropriate access to information in furtherance of criminal investigations or of consumer protection issues outside the Commissioner’s jurisdiction. Comments have been made in this house calling for action against unscrupulous vendors and builders taking advantage of first home owners. The provision of information upon specific request, with appropriate prohibitions on secondary disclosure, will help ensure such practices are fully investigated and dealt with by law.

**Amendments to the Land Tax Act 1958**

The exemption from land tax is available where a property is used as the principal place of residence of the owner. To this end this bill amends that section of the act dealing with temporary absence from a principal place of residence following a VCAT decision that considerably extended the intended scope of the exemption. The proposal is to tighten this exemption to better reflect original policy intent and to make it more consistent with the exemptions provided in other jurisdictions. The proposal will specifically define a temporary absence as a period of up to six years, with other specific criteria.

The bill also amends that section of the act dealing with unoccupied land subsequently used as a principal place of residence to clarify the intent that a refund can only be claimed if the owner did not derive any income from the land whilst it was not occupied as the owner’s principal place of residence. Furthermore, the bill also adopts, for land tax purposes, the more modern secrecy provisions of the Taxation Administration Act 1997, which apply to all other taxes.

**Amendments to the Pay-roll Tax Act 1971**

The bill makes minor amendments to the Pay-roll Tax Act to allow greater ease in the occasional requirements to amend an administrative form and to remove some references to antiquated or repealed expressions.

**Amendments to the Valuation of Land Act 1960**

The bill clarifies the provisions of the Valuation of Land Act 1960 by clearly stating who may object to a valuation issued by a rating authority (a local council) and by restating when this objection can be made.

A rate and valuation notice includes three valuations: the capital improved value (CIV), the net annual value (NAV) and the site value (SV). A person may lodge an objection to any of these valuations. In the first instance the objection is made to the local council. Information about the process to lodge an objection with a rating authority is included in the rate and valuation notice and
further advice can be obtained from the council or from the Valuer-General.

Section 16(4) of the Valuation of Land Act 1960 has been amended to clearly state that any person given a notice of valuation may object to the valuation. This has the effect that either an owner or an occupier may object to a valuation. This clarifies an ambiguity in the current act.

Section 18 of the Valuation of Land Act 1960 outlining when an objection can occur is unaltered. A person still has two months to lodge an objection when they receive a rate and valuation notice from a rating authority each year. The bill makes no changes to the current situation.

The changes to the Valuation of Land Act 1960 are effective from the date of the Minister for Planning’s announcement in relation to the intention to clarify these components, that is, 16 July 2004. However, all matters lodged with the Victorian Civil and Administrative Tribunal or the Supreme Court before 16 July 2004 will not be impacted by the changes in the bill.

I commend the bill to the house.

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

Debate adjourned until Thursday, 30 September.

PARLIAMENTARY SUPERANNUATION LEGISLATION (REFORM) BILL

Second reading

Mr BRUMBY (Treasurer) — I move:

That this bill be now read a second time.

On 12 February 2004, the Premier made a commitment to bring superannuation arrangements for Victorian parliamentarians into line with those available to the broader community. This bill honours that commitment.

The primary purpose of the bill is to close the parliamentary contributory superannuation scheme to new members. The bill also deals with a range of downstream and miscellaneous superannuation issues.

From the commencement of this bill, all new members of Parliament will receive employer contributions at a rate of 9 per cent as required by the superannuation guarantee. This is consistent with the superannuation arrangements that apply to the vast majority of the Victorian work force.

The bill provides that the 9 per cent employer contributions will be paid into a complying superannuation fund or retirement savings account nominated by the member. Where a member does not nominate a superannuation fund or retirement savings account, the employer superannuation contribution will be paid into a default fund chosen by the Minister for Finance in consultation with the presiding officers of both houses.

Importantly, given that the new parliamentary superannuation arrangements will be less generous, the bill provides that new MPs will be able to make additional contributions to an accumulation fund by way of salary sacrifice. Salary sacrifice is widely available in the general community and entails no additional cost to the employer.

These new arrangements largely mirror recent changes that were made to commonwealth parliamentary superannuation arrangements.

The bill also includes some consequential amendments to the Constitution Act Amendment Act 1958.

The Constitution Act Amendment Act 1958 provides certain former members with a right of return to the public service and their former superannuation scheme. This right of return is exercisable where the former member leaves Parliament but has not qualified for a parliamentary pension. Following the closure of the current parliamentary scheme, no new MP will ever qualify for a parliamentary pension. Therefore, failure to qualify for a parliamentary pension is no longer a suitable criteria to determine eligibility to exercise these rights.

Therefore, the bill amends the Constitution Act Amendment Act 1958 to clarify these rights of return, and to ensure that an appropriate time limit for the exercise of these rights applies to new MPs. That time limit is five years from the date of entry to the Parliament. The amendments also rectify a number of definitional and technical issues.

The bill also deals with an issue not directly related to parliamentary superannuation but superannuation more broadly. These amendments reflect this government’s commitment to sound and prudent management of Victoria’s public sector superannuation funds.

It has become apparent that steps are needed to ensure members of the State Superannuation Fund can take advantage of commonwealth co-contributions.
To this end, this bill amends the acts governing the State Superannuation Fund to ensure that it can accept co-contributions for members. It is estimated that around 30,000 State Superannuation Fund members will be eligible for some level of commonwealth co-contributions, with the first co-contribution payments being made in November 2004.

The amendments being introduced by government will ensure that State Superannuation Fund members who qualify for a co-contribution will not have to open a new account with another superannuation scheme to receive those co-contributions, or have these co-contributions paid into the ATO’s superannuation holding account reserve.

I commend this bill to the house.

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

Debate adjourned until Thursday, 30 September.

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**ESSENTIAL SERVICES COMMISSION (AMENDMENT) BILL**

*Second reading*

Mr BRUMBY (Treasurer) — I move:

That this bill be now read a second time.

The proposed amendments contained in the Essential Services Commission (Amendment) Bill 2004 have three key functions:

- to implement minor and technical amendments to regulated industry acts which are important to provide clarity around decisions and determinations made by the Essential Services Commission (ESC);
- to enshrine the ESC’s independence from ministerial direction, except under the circumstances provided for in the Essential Services Commission Act 2001 (ESC act) or any relevant legislation; and
- to allow the chair of the ESC to undertake other paid employment at the discretion of the Governor.


These amendments are sought, as currently there is a lack of clarity for regulated industries around what is a decision and what is a determination under the ESC act. This is important as determinations made under the ESC act have a particular status requiring specific procedures for consultation and appeal processes.

Allowing the chair of the ESC to undertake other forms of paid employment at the discretion of the Governor in Council will bring the ESC act in line with the Electoral Commission Act 2002.

I commend the bill to the house.

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

Debate adjourned until Thursday, 30 September.

 Remaining business postponed on motion of Mr BRUMBY (Treasurer).

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**ADJOURNMENT**

The SPEAKER — Order! The question is:

That the house do now adjourn.

Rail: Sandringham line

Ms ASHER (Brighton) — The issue I have is for the Minister for Transport, and my request is that he personally intervene to ensure the appalling service on the Sandringham line improves. The minister is responsible for overseeing massive taxpayer subsidies paid to Connex of the order of $345 million per annum. I ask him to direct his attention to the Sandringham line to ensure improvement to that train service.

The facts of this abysmal service are as follows: from 29 December 2003 to 26 March 2004 there were 250 cancellations on the Sandringham line — the highest in the system and an average of 83 a month. In May 2004 again Sandringham had the highest number of cancellations — 115 in one month. In the last quarter there were 499 cancellations, more than any other line. This is a disgraceful service and it is getting worse.

The government has commissioned a consultancy called the Sandringham line passenger survey. The consultancy is being compiled by Counters Plus Pty Ltd, and the government is paying over $5000 for it. There is no need for the government to spend that $5000 because I can tell you what commuters think. I have been presenting a series of petitions in relation to service improvements on the Sandringham line over the last few sitting days. The petitions call for improvements to the exceptionally poor services in relation to cancellations, lateness and overcrowding. The irony is that on one occasion in the last sitting
week, after a number of cancellations, I was nearly late coming to Parliament to present this petition.

The minister needs to understand the palpable anger felt by commuters on this line. He needs to understand they are angry about being late to work. He needs to understand that the carriages are packed — and I have been advised of people fainting in the carriages. He needs to understand that further down the line there are commuters who cannot even get on the trains. While it is possible to get on the trains at Hampton, Brighton Beach, Middle Brighton, North Brighton and Gardenvale, further down the line at Prahran, for instance, I have seen with my own eyes commuters unable to get on because of the overcrowding.

I wrote to the Minister for Transport about this matter. Three months later I received a response from his chief of staff alleging a shortage of drivers and problems with reliability. I do not accept this. I think there is a fair degree of incompetence included as well — for instance, Connex does not even offer the courtesy of correct announcements at Spencer Street and Richmond. I urge the minister, who takes his salary, to fix this problem.

Dandenong Hospital: bulk-billing clinic

Mr ANDREWS (Mulgrave) — I raise an issue for the attention and action of the Minister for Health. I ask the minister to continue her efforts to persuade the Howard federal government to approve the co-location of a bulk-billing clinic adjacent to the Dandenong Hospital. This is a very important issue in my local community and right across the south-eastern suburbs of Melbourne.

As you would know, Acting Speaker, bulk-billing rates are at a very low point. Indeed they are in absolute crisis across Victoria and especially in Melbourne’s outer suburbs. Those rates have been steadily falling since the election of the Howard government in 1996. Families in my region are paying a hefty price for that policy failure. For instance, bulk-billing rates fell quite dramatically across the south-eastern suburbs between 2000 and 2003. This data is collected on the basis of federal electorates. If we look at the federal electorate of Bruce, we see there was an 11.2 per cent decline. In the Holt electorate there was a 15.5 per cent decline, and in the electorate of Isaacs there was a whopping 23.9 per cent decline. By any measure that is a failure of policy and a failure of administration that represent a huge cost to families in my electorate.

It is very difficult to find a bulk-billing doctor. Fewer and fewer bulk-billed consultations mean more out-of-pocket expenses for families and more presentations to emergency departments. These are not emergency presentations to emergency departments but primary care-type presentations to emergency departments. This is not very pleasant for the people involved, but they have to go to emergency departments because they cannot find bulk-billing doctors. This obviously places a huge burden on our public hospital system.

Faced with that steady decline, that primary care crisis and those completely avoidable presentations to our accident and emergency departments, you would think the commonwealth government would do everything it could to approve co-located bulk-billing clinics, move forward and work in a partnership with the state government to try to address this crisis of its own making. But no — the federal Minister for Health and Ageing, Mr Abbott, has said no. That is another failure of policy and a failure to properly and appropriately provide for the many thousands of families who live in Melbourne’s south-east.

When looking at those emergency presentations it is worth putting on the record that 38 per cent of those who present to the Dandenong Hospital emergency department could and should be seen by a general practitioner, because they are primary care-type presentations. That is a huge burden on our community. I urge the Minister for Health to continue her efforts to present a high-quality, evidence-based case to the federal Minister for Health and Ageing to try to get this co-located facility approved as soon as possible.

Kyabram Secondary College: training programs

Mr MAUGHAN (Rodney) — I wish to bring a matter to the attention of the Minister for Education and Training that concerns funding for the vocational education and training (VET) and Victorian certificate of applied learning (VCAL) programs at Kyabram Secondary College. I have previously written to the minister about this issue, and I am unhappy with the response I received from the acting minister on behalf of the minister.

Kyabram Secondary College, which has about 950 students, is an excellent school doing a marvellous job. It has about 30 students doing VET or VCAL courses, which this government promotes and which I fully support and encourage. The reality is that these students are currently walking down the road to the Kyabram Community and Learning Centre, which is providing the training. The minister is well aware of this excellent centre. The problem is that Kyabram
Secondary College gets $450 per student whereas the Kyabram Community and Learning Centre needs to charge $1180 per student. That very significant shortfall is currently being made up by the college and the learning centre. This year they are each contributing about $900 from their own funds. Because the number of students doing VET and VCAL courses will increase about $900 from their own funds. Because the number of students doing VET and VCAL courses will increase next year, the amount will be even greater.

In her response the acting minister essentially suggested that the college is expected to contribute to the cost of VET programs from its own global school budget. I would remind the minister that Kyabram Secondary College is in an area which has been suffering a severe and prolonged drought. There is distress among many of the families who send children to that school, so the college has been dealing with a range of social issues. It is also fair to say that the college does not have the funds to provide these programs out of its global budget without cutting programs it is already running. If the VCAL and VET programs are going to be supported, it has to be at the expense of some of those other options provided to students.

I want to plead the special case of Kyabram Secondary College, which is in an area of disadvantage. The facts are that the VCAL and VET programs are most important, the Kyabram Community and Learning Centre is an excellent facility and those children should not have to go out of town to get the training they require. I ask the Minister for Education and Training to have another look at providing additional funding for Kyabram Secondary College.

**Hospitals: funding**

Mr DONELLAN (Narre Warren North) — The action I seek is from the Minister for Health. I ask the minister to ensure that Victoria gets its fair share of federal funding for public hospitals. I say this in the context of the Prime Minister’s comments in the great debate the other night, where he made it very plain that he believed the commonwealth government was putting more money into public hospitals than the states were. That is definitely not the story in this state. In Victoria we see a sorry story of neglect by the federal government. The neglect results from the bribes paid to other states with more of the marginal seats the Prime Minister needs to have his place in history. Sadly I do not think history will be written the way Mr Howard expects.

In 1999, under the old Australian health care agreement, the federal government was providing 49 per cent of the funding of public hospitals, with the state — Victoria — providing 51 per cent. By 2003 the federal figure had dropped to 43 per cent, and in the next financial year — the one we are part way through — the commonwealth is putting in only 41 per cent. Where is the money going? The money is going to those states where Mr Howard has more marginal seats to protect. This is a cynical exercise at the expense of all Victorians. To rub salt into the wound the Prime Minister has allowed bulk-billing rates to fall to such a low level that it is placing further pressure on our public hospitals.

As the Commonwealth Grants Commission highlighted in 2003, Victoria contributes more as a percentage of overall health funding than any other state — that being 53 per cent in 1988–89 and 55.7 per cent in 2002. Of course the federal government is not prepared to allow any change to the formula for state grants from the Commonwealth Grants Commission because at the end of the day that would mean the commonwealth could not spend like a drunken sailor in Queensland and the like at the expense of Victoria. We are pulling our weight in Victoria, but we are getting no help from state and federal Liberals because they will not take the Prime Minister on.

I again ask the Minister for Health to take this disgraceful anomaly in federal funding for Victoria up with her federal counterpart. Victorians are being taken for a ride by Mr Howard. He is simply not telling the truth and has failed the test of trust. Trust him to dud Victoria every time!

**Police: school program**

Mr WELLS (Scoresby) — I raise a matter of grave concern with the Minister for Police and Emergency Services regarding the Police in Schools program. The Bracks government has assured us time and again over the past four years that the program would be fully resourced and supported. However, the reality is quite different. The Police in Schools program is critical generally and even more critical in areas where it is needed to bridge the gap between certain groups and police. Some people who come from other countries have grave suspicions about the police, and it is important that the police in schools program is there to break down those barriers.

I recently visited a school in the north-west of Melbourne after it wrote to me about the program. It is a great school with a dedicated principal and teachers and a very active school council. This is what they say:

We have been involved in the past with this program and found it to be invaluable. We submitted an application in 2003 and were informed that the program would again be available to us this year. Earlier this year we were told that the
policewoman involved would be going on maternity leave and a replacement would be found. When nothing had happened by term 2 we made contact, to be told that the program would not proceed as there would be no replacements for people on maternity leave and there was some mention of union activity.

We have many children from troubled family backgrounds who invariably have numerous negative interactions with the police. It is imperative that we find some way to alter the perception which many of our students have of the police and the law. When the program has proceeded in the past the staff have felt that it has definitely assisted in this area. We will never know just how successful a program is but … we feel that it reaps many benefits for students in the present and in their future lives.

The school council would implore you to take all measures possible to ensure that the program is resourced in as many schools as possible. To not do so is a short-term money-saving measure which must surely have long-term, expensive repercussions.

I agree. This school needs the Police in Schools program as a matter of priority. It was assured by the government that the police would have a presence in this particular school. The policewoman has gone on maternity leave. That is fine, but a replacement must be found to continue the valuable work she was doing.

This situation is not unique to this school. I am calling on the Minister for Police and Emergency Services to commit to what the government previously promised — that is, that the Police in Schools program will be fully resourced. It is an important part of a child’s schooling.

**Gunnamatta: sewage outfall**

Ms BUCHANAN (Hastings) — My adjournment matter is directed to the Minister for Water, and the action I am requesting is for the minister to seek clarification from the federal minister for environment on the actual dedication of funds and the operational timetable for the closure of the Gunnamatta outfall, as per the recently announced federal Australian water policy *Securing Australia’s Water Future*.

Members would be aware that last Monday the federal Minister for Environment and Heritage, together with the federal member for Flinders, Greg Hunt, were down at Gunnamatta beach. In his press release of the same day, Mr Hunt made an announcement in relation to this $2 billion fund in which he said:

… the policy specifically identifies and envisages the fund to be used for the use of high-quality recycled water from the Melbourne Eastern Treatment Plant aimed at closing the Gunnamatta outfall.

Interestingly, when asked by a member of the Clean Ocean Foundation how much of this $2 billion would be directed towards Gunnamatta, neither of those Liberal Party members — neither the federal minister nor Mr Hunt — could give any details whatsoever. That is why I am now asking the question, because people in my electorate have been contacting me for details. They have not been able to get any from the federal government and they deserve answers from the federal minister and the local Liberal member.

I had a good look at the policy document a few nights ago and two things became clear to me. Firstly, in an obvious attempt to salvage Green votes for floundering Liberals like Greg Hunt, the Howard government has repackaged state money earmarked for roads, education and health and has not really provided any new funding. So when you take out the $1.5 billion that is for the states and local government, the Howard government’s most sarcastically generous commitment to the people of Australia to address the issue in *Securing Australia’s Water Future* is a measly $400 million for the whole of the nation. That is how much the issues of water recycling, salinity and river health mean to Mr Howard and Greg Hunt — $400 million nationally! That smirking Treasurer, Mr Costello, recently announced that they have a $25 billion surplus! Will a cent of that go towards Gunnamatta, or is it just smoke and mirrors again? There is nothing in the local federal member’s press release about specific recycled water programs for Gunnamatta or the recycled money.

The second thing that became obvious from page 1 of this policy was that it is a Clayton’s policy. Where are the facts in the Australian water policy? There are none. It has no targets, no time lines, no dollars specifically allocated to anything, no projects confirmed and no coordination of investment with measurable policy outcomes. This is policy on the run. The federal government has been in office since 1996, and it is still making policy on the run about something as nationally important as water.

All in all, this is a slap in the face to those on the Mornington Peninsula and around Western Port who are looking for support to progress water recycling opportunities. It is also a slap in the face for the local governments in the Hastings electorate. Were the Mornington Peninsula Shire Council that will lose nearly $270 000, the City of Casey that will lose $316 000 or the City of Frankston that will lose $250 000 to this Australian water fund advised? Again there is nothing in the policy. Was any consideration or acknowledgment given to local councils by the federal Minister for Environment and Heritage or the federal member for Flinders, Mr Hunt, that vital services would...
be severely compromised when they made their glitzy announcement? Again nothing was done.

Boating: Beaumaris mussel farms

Mr THOMPSON (Sandringham) — I wish to raise a matter for the attention of the Minister for Agriculture. I seek action to improve the safety arrangements adjacent to the Keefers mussel reef outside Beaumaris Bay.

For many years a small mussel farm known as Keefers existed, and to date it remains. The retail sales business of Keefers ceased approximately four to five years ago. This business operated from premises elevated above the high-water level at the base of the cliffs on Beach Road, Beaumaris, and was accessed by a walkway cut into the cliff face. In the last 24 months this particular area has had all remnants of the former buildings and jetties removed and has been beautified as a public viewing area. Quite recently it was officially named Keefers Cove.

In 2002 a further mussel farm appeared, almost abutting the existing Keefers farm to its south and east. This new farm was not identified and Beaumaris Motor Yacht Squadron was never notified, even though a significant danger existed for small power boats that could become entangled in the trailing ropes and gear of the farm. This problem is of particular significance at night when visibility is poor. This is borne out by the unfortunate experiences of some of the motor yacht squadron members when they are returning from recreational night fishing activities.

Despite contact with the former minister for the environment when this matter was first raised a number of years ago, there was no formal response. However, about three months after the initial inquiries were made and concerns were expressed regarding the safety of the siting and the lack of marking for the mussel farm, two new yellow marker buoys were installed as a form of identification. The new farm has recently been added to and again no identification is evident, leaving a considerable area of trailing ropes that represent an imminent danger to any boats passing in the vicinity and also to vessels belonging to Beaumaris Motor Yacht Squadron members, who must pass close by the mussel farm in their vessels to reach the club’s launching ramps. These vessels are often returning in the evening when it is dark, or in the early hours of the morning before the sun comes up.

While the Beaumaris Motor Yacht Squadron objects to the mussel farms as such, it is surely reasonable to expect that for the safety of vessels a proper and immediate identification be installed that is effectively illuminated at night. At this stage only one light is operative at night on a marker on the shore corner of the original lease, leaving the seaward area of both farms virtually non-sightable at night unless the yellow buoys become visible or unless they are close.

This is a matter which may overlap several portfolio areas in that it encompasses the bay — it encompasses ports in a sense, or the safety buoys and markers on the bay — and also concerns the mussel farms, and that is the immediate matter at hand.

National competition policy: Brimbank

Mr LANGUILLER (Derrimut) — The matter I wish to raise tonight is for the Minister for Local Government in the other place, Ms Candy Broad. I seek action from her in relation to making representations to the federal government and particularly to the Prime Minister, John Howard, to make him aware that decisions his government has made will severely disadvantage the municipality of Brimbank.

I condemn John Howard and Peter Costello for their decision to strip the states of $1.6 billion of funds earmarked to reward the states for competition reform. This is both a deceitful reneging on a signed agreement and a penalty on local communities taking away from local councils funds already factored into their budgets for basic community services that Victorian families rely on every day. More than $16 million of funding to local government will be lost forever. To suddenly rip away promised funding from local councils will deny communities of services they deserve. It is another example of how John Howard cannot be trusted. In my electorate the municipality of Brimbank will lose of the order of $299 000.

The municipality will be even worse off. Inquiries that I have made indicate that the loss of $299 000 from the local government incentive improvement program would impact on the following services: community transport; a reduction in hours of operations of libraries, leisure centres, recreational facilities such as the Hunt Club and West Sunshine Community Centre; seniors support in Castley, Glengala, St Albans and Errington; arts and culture; environmental conservation planning and conservation policies generally; community safety program; and support services for playgrounds. I am confident that Brimbank would try to spread the load as best it could so that there is no one part of the community that suffers, although there is no doubt it will suffer and services will have to be reduced.
I emphasise that this is an important matter to the municipality of Brimbank. I am confident that other members will concur with me in encouraging the Minister for Local Government to make representations to the Prime Minister to ensure that Brimbank and other municipalities in Victoria are not disadvantaged by draconian decisions made by John Howard and Peter Costello.

**Schools: funding**

Mr PERTON (Doncaster) — My issue is for the Minister for Education and Training and the action I call for is to reverse the savage education cuts mounted on 15 per cent of state schools. The announcement made today by the minister is the most vile attack on the children of this state. It is an attack on children, not for anything they have done but merely for the occupations of their parents. The attack that has been mounted today has racist impacts and overtones.

Glen Waverley Secondary College will lose over $200 000; Doncaster Secondary College will lose over $200 000; Camberwell High will lose $80 000; Kew High School will lose $100 000; and Canterbury Girls High School will lose $50 000, despite adding an extra stream of students. Why is this being done? It is because the funding for students in some absolute bizarre Marxist formula applies money to children on the basis of the occupation of their parents.

Ms Green interjected.

Mr PERTON — I take up the laughter of the dill sitting behind me, the member for Yan Yean. I ask the question: why does this government hate farmers? Why should the children of a farming family get less money applied to their education in a state school than the children of a tradesman? Why should a nurse’s child get less money applied to their education in a state school — —

Honourable members interjecting.

The ACTING SPEAKER (Mr Seitz) — Order! The honourable member, without assistance.

Mr PERTON — The lies and deceit of this government! When a journalist asked the minister for a list of winners and losers this morning she said it was private information. The budget for state schools is private information. It is secret information! But then the Premier this afternoon said the list would be released. So a list was released. That list was obviously cobbled together this afternoon. Doncaster Secondary College, which loses $200 000 according to the formula, was listed as gaining $400 000. Glen Waverley Secondary College, which loses $200 000, was listed as gaining. This government does not understand the nature of the formula. The member for Ballarat East, when asked by journalists today who had lost out in his electorate, said he did not know, but he thought Magpie Primary School might. When schools come back from holidays and understand what has happened to them this government will be under severe attack — —

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

**Tourism: Yarra Valley**

Ms McTAGGART (Evelyn) — The matter I raise is for the Minister for Tourism and the action I seek is that the minister make further strong representations to the federal government to gain federal funding for tourism projects in the Yarra Valley and not accept the recent rejection of the Victorian submission.

The Bracks government is a big investor in marketing tourism to the Yarra Valley with the $4.3 million Run Rabbit Run campaign, which is the biggest investment ever in marketing the Yarra Valley. It has seen tourism to the area increase, and it is recognition of the great tourism operators and the natural attractions of this beautiful region. But once again it is left to the state to do all the work, undertake all the investment and get to know all the issues, with the federal government choosing to ignore this major region.

I was happy, as were my parliamentary colleagues, to support a recent application for funding from the local tourism region to the federal government to support all the work that has taken place to date to grow tourism in the region. I was shocked and amazed to recently discover that it was knocked back and that no funding has been provided by the federal government to promote this region. It contains some premier wineries, fine food producers and the most beautiful natural scenery in one of the most beautiful regions in Australia.

The federal government is taking the region for granted and feels quite comfortable ignoring all the businesses that operate there and are looking for federal recognition and support. Obviously the federal representatives in the area are not doing their jobs and have no political sway, because they have not been able to influence this process and ensure outcomes for the region. The federal government has ignored the Yarra Valley, and once again it is left to the state to look after the region. Because the state has led the way in
investment the area is being penalised by the federal government.

Therefore I seek from the Minister for Tourism reassurance for the communities and tourism businesses in my electorate and surrounding electorates that he will communicate to the federal government our disappointment that their position as a priority for marketing development has been ignored and that the state government has once again been ignored in the process of determining which projects should be funded.

Responses

Mr PANDAZOPOULOS (Minister for Tourism) — I thank the member for Evelyn for her great passion for tourism in the Yarra Valley and her electorate. The member has highlighted what has occurred locally. Local tourism businesses in one of the best regions in Victoria are shocked and amazed that their recent application for funding to support their marketing campaigns focusing on the Yarra Valley and the Dandenong Ranges has been knocked back.

There is a program called the Australian tourism development program. When it started we were assured by the federal government that it would follow the advice of state governments in order to ensure that dollars are spent where they are most needed. Tourism Victoria was asked by the federal government to list its priorities. The Yarra Valley region was its no. 2 priority, and the no. 1 priority was the legends, wine and high country region and the Great Alpine Road area that links with Gippsland. Do members reckon that the no. 1 and no. 2 priorities of Tourism Victoria — which is best placed to know where extra resources should go if they are available, and which sees the big picture for all Victoria, working together with all the regions — would get any money? Absolutely not! To give the federal government credit, at least Tourism Victoria’s no. 3 priority, the goldfields region, got money, but members would be gobsmacked and amazed that the Yarra Valley did not get one razzoo out of the program.

Like the member for Evelyn I wonder what is happening in the electorate of McEwen. Is the federal government so arrogant that it thinks it will win that seat hands down, or has it given up? The federal member for McEwen has just become a minister, but she is ignoring her electorate — what sort of sway does she have? What have the member for Casey and the member for La Trobe — because the Yarra Valley region is a wider region than just the area around Healesville, Lilydale and Yarra Glen — done?

Absolutely nothing. What is the use of putting a program in place and saying, ‘We will follow the advice of the state-based tourism agency’, and then totally ignoring it? It seems that the federal government did not give much thought to priority and need, but just rushed out announcements prior to the federal election being called.

I am severely disappointed. I assure the member for Evelyn that we will continue to support the Yarra Valley. We will lobby the federal government to change its position. It should be supporting the Yarra Valley in the same way we do. We have seen a huge amount of growth in visitor numbers to the Yarra Valley from our investment. It has an increased profile interstate. It is a shame that the federal government does not support Yarra Valley tourism.

The ACTING SPEAKER (Mr Seitz) — Order! The Minister for Manufacturing and Export to answer the matters raised by the member for Brighton for the Minister for Transport, by the member for Mulgrave and the member for Narre Warren North for the Minister for Health, by the member for Rodney and the member for Doncaster for the Minister for Education and Training, by the member for Scoresby for the Minister for Police and Emergency Services, by the member for Hastings for the Minister for Water, by the member for Sandringham for the Minister for Agriculture and by the member for Derrimut for the Minister for Local Government in the other house.

Mr HOLDING (Minister for Manufacturing and Export) — I will draw those matters to the attention of the relevant ministers and see that they get back to the members.

The ACTING SPEAKER (Mr Seitz) — Order! The house stands adjourned.

House adjourned 6.22 p.m. until Tuesday, 5 October.
16 September 2004

Hon John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

My dear Prime Minister

NATIONAL COMPETITION POLICY PAYMENTS AND THE WATER SECTOR

We write to express our opposition to the proposed redirection of the States and Territories’ National Competition Payments (NCP) announced in your water policy on Monday 13 September, Securing Australia’s Water Future.

Your decision to fund the water policy by cutting at least $1.6 billion in competition payments to the States and Territories means you are effectively robbing our governments to pay for your policy. In addition to this you seek additional payments from the States and Territories to fund the key projects promised in your policy.

This will put intolerable pressure on the delivery of key services by the States and Territories. It will inevitably have an impact on hospitals and schools. This is an unnecessary assault on State and Territory Budgets given the Commonwealth Pre-Election Economic and Fiscal Outlook (PEFO) released on 10 September 2004 showed a cumulative underlying surplus of over $25 billion over the forward estimates period.

As you would be aware, the NCP is a multilateral agreement between the nine Australian governments through the Council of Australian Governments (COAG). The achievements delivered through the collective focus of all Governments have been impressive.
Your decision to fund your water policy by cutting NCP payments to States and Territories effectively ends the NCP, pre-empts the COAG endorsed 2005 review, contradicts the Murray-Darling Basin Agreement, repudiates the National Water Initiative (NWI) and fundamentally undermines the integrity and future of COAG.

Your policy is a breach of the undertaking you personally gave to all Premiers and Chief Ministers across the table at the COAG meeting in June. It was on this assurance that we, with the exception of Western Australia and Tasmania, agreed to the NWI.

It is also a breach of your written undertaking to Premier Geoff Gallop of 15 October 2003 to consult the states and territories on the issue of competition payments beyond 2005-06.

The Productivity Commission in its 1999 review of NCP estimated that competition reform would generate $4.6 billion per annum in additional revenue for the Commonwealth Government. Importantly, 80 per cent of the extra taxes collected by the Commonwealth directly results from State government reform. A basic premise of NCP was that all Australian governments should share in the economic growth and increased revenue due to reform.

Your decision to divert the States’ and Territories’ NCP payments to fund the NWI breaches the terms of the NCP Agreements to share the ongoing economic benefits of the NCP reforms with the States and Territories and, without consultation, damages our budgets and our ability to deliver services. The unilateral redirection of these funds to the NWI would mean that States and Territories would pay twice for water reform. This is unacceptable.

Water reform remains a priority for our Governments and we are committed to delivering on the initiatives we have outlined in each of our jurisdictions. However, we could not responsibly allow States and Territories to be treated financially as proposed under your package.

The policy you have outlined is not a reasonable basis on which the NWI can operate. You have effectively repudiated your commitment to the NWI and we take your actions as a termination of the NWI.

As you would appreciate, the States and Territories have a comprehensive package of water policy initiatives which we will continue to implement to secure Australia’s water future. In addition, we will continue to work cooperatively at a state level to progress national water reform in the absence of leadership from the Commonwealth.
Yours sincerely

HON BOB CARR MP  
Premier of New South Wales

HON STEVE BRACKS MP  
Premier of Victoria

HON PETER BEATTIE MP  
Premier of Queensland

HON MIKE RANN MP  
Premier of South Australia

HON GEOFF GALLOP*  
Premier of Western Australia

HON PAUL LENNON*  
Premier of Tasmania

JON STANHOPE  
Chief Minister ACT

HON CLARE MARTIN MLA  
Chief Minister Northern Territory

* Western Australia and Tasmania were not signatories to the NWI
QUESTIONS ON NOTICE

Answers to the following questions on notice were circulated on the date shown.
Questions have been incorporated from the notice paper of the Legislative Assembly.
Answers have been incorporated in the form supplied by the departments on behalf of the appropriate ministers.
The portfolio of the minister answering the question on notice starts each heading.

Tuesday, 14 September 2004

Education services: classroom replacement program

259. Mr PERTON to ask the Minister for Education Services with reference to the $14 million already spent on the relocatable class room upgrade program, what precise works was the $14 million allocation spent on.

ANSWER:

I am informed as follows:

The $14 million was spent in the decommissioning and destruction of portable classrooms containing high levels of asbestos and providing new replacement relocatables for these schools.

Education services: school maintenance

264. Mr PERTON to ask the Minister for Education Services with reference to the response to question 84 received on 26 August 2003, what are the priority zero items in the 2000 audit which have not been funded.

ANSWER:

I am informed as follows:

All eligible Priority zero items have been funded.

Schools will now be in a position to begin addressing Priority 1 & 2 items with funding provided each year as part of the School Global Budget.

The word ‘eligible’ means those priority zero maintenance items which are not related to out-buildings, relocatable buildings or buildings which are subject to current or impending capital works projects. Those items which are not eligible have not been funded.

Education services: Catholic school grounds — criminal activity

276. Mr PERTON to ask the Minister for Education Services with reference to the response to question 172b received on 26 August 2003 —

(1) In each of 1999, 2000, 2001, 2002 and 2003 to date —

(a) how many criminal activities reports were made by catholic schools to the Department of Education and Training; and

(b) what are the details of the types and numbers of criminal activities.

(2) Were there any schools or geographic areas where the number of reports were significantly higher than the average.
QUESTIONS ON NOTICE

586 ASSEMBLY Tuesday, 14 September 2004

ANSWER:

I am informed as follows:

The Department of Education and Training does not keep statistics of criminal activity on Catholic School grounds. There is no requirement for Catholic Schools to report criminal activity to the Department of Education and Training.

Education services: independent school grounds — criminal activity

277. Mr PERTON to ask the Minister for Education Services with reference to the response to question 172b received on 26 August 2003 —

(1) In each of 1999, 2000, 2001, 2002 and 2003 to date —

(a) how many criminal activities reports were made by independent schools to the Department of Education and Training; and

(b) what are the details of the types and numbers of criminal activities.

(2) Were there any schools or geographic areas where the number of reports were significantly higher than the average.

ANSWER:

I am informed as follows:

The Department of Education and Training does not keep statistics of criminal activity on Independent School grounds.

Education services: teacher offences

280. Mr PERTON to ask the Minister for Education Services with reference to the response to question 173c received on 26 August 2003 —

(1) For each of 1999, 2000, 2001, 2002 and 2003 to date, how many teachers were found to have breached their duty of trust to students.

(2) What are the bases for such findings, and how many of the said teachers were removed for each such reason.

ANSWER:

I am informed as follows:

During the five year period I can advise that less than twenty teachers have been charged by the Victoria Police with offences against students. The Government views these matters particularly seriously and where it is found that a teacher has breached his or her duty of trust to students the Department has acted quickly to remove the teacher from contact with students. No specific data is kept regarding teachers who have ‘breached their duty of trust to students’.

Teachers who are convicted for offences against students are dismissed and referred to the Victorian Institute of Teaching to determine the future of their registration as a teacher.
Education services: school services officers

397(a). **Mr PERTON** to ask the Minister for Education Services —

1. What percentage of SSO vacancies listed in the Education Times include contract positions which are filled by the incumbent holder of the contract in the previous year.

2. What is the Minister’s response to the proposition put by an existing SSO that ‘SSOs who are in excess and need to be redeployed, are required to ring around to establish whether listed vacancies are ‘real’ jobs, go through the process of letter applications, multiple copies for panel members, go through an interview, only to be given a predetermined and predictable result’.

3. What is the Minister’s response to the proposition put by an existing SSO that ‘the minister introduce a list of ‘real’ vacancies with many tagged ongoing to reduce the inefficiency of the current system and improve morale and job prospects for SSOs in government schools’.

**ANSWER:**

I am informed as follows:

Decisions on the advertisement of SSO vacancies in the Education Times are made at the school level. The Department does not keep aggregated data on vacancies and successful applicants. Parts 2 and 3 of the Question seek a response to an inference or imputation, and therefore are not within guidelines for Questions on Notice.

Attorney-General: workplace bullying

411(e). **Mr MULDER** to ask the Attorney-General —

1. How many cases of bullying in the workplace have been reported to each department or agency under the aegis of the Minister between 1 January 2003 and 31 December 2003.

2. How many of these claims resulted in WorkCover cases being established.

3. What was the total cost of these claims.

4. What has been the dollar increase in premiums for each individual department or agency due to claims for bullying in the workplace.

**ANSWER:**

I am informed that:

1. There have been five cases of bullying formally lodged with the Department of Justice between 1 January 2003 and 31 December 2003. To conduct a search of all statutory bodies under my administration would be an unreasonable diversion of my department’s resources.

2. None of the cases reported to the department resulted in the lodging of a WorkCover claim.

3. N/A

4. N/A

Education services: flame-retardant curtains and internal fittings

425(a). **Mr PERTON** to ask the Minister for Education Services how many schools are fitted out with flame retardant curtains and internal fittings as required under the Uniform Building Code of Australia in each of —
(1) State primary schools.
(2) State secondary schools.
(3) Catholic schools.
(4) Independent schools.

ANSWER:

I am informed as follows:

The document regulating building requirements in Australia is the Building Code of Australia (BCA) not the Uniform Building Code of Australia.

The Building Code of Australia does not regulate curtains or internal fittings for any school facility except for school halls containing a theatre area that is greater than 300m². In this case specialised fire resistant proscenium curtains may be utilised in lieu of a sprinkler system for the fire protection of the theatre area.

This is not information that the Department records centrally.

Transport: Kyneton–Bendigo train line

451. Mr MULDER to ask the Minister for Transport —

(1) For each of the four sections of track to be singled between Kyneton and Bendigo, what proportion of the rail was manufactured prior to 1955.

(2) If double track was retained between Kyneton and Bendigo with one track upgraded to class ‘HP’ (high performance) as well as the planned upgrade between Sydenham and Kyneton, and trains slowed if necessary for heritage structures, what would be the expected running time for a ‘V’locity’ train running express from Sydenham to Bendigo.

ANSWER:

I am informed as follows:

(1) The Department of Infrastructure has no known records on these proportions.

From a heritage perspective, it is the cutting and the rail corridor and not the actual track that has been classified as being significant.

(2) The Government has made its decision regarding the design of the track between Kyneton and Bendigo and is getting on with the job of delivering improved rail services for regional Victoria, so the information requested is not available or relevant to the project.

Education services: KPMG consultancies

464. Mr PERTON to ask the Minister for Education Services — how many consultancies have been awarded to KPMG in 2003 and 2004 and, in respect of each, what was the nature, scope and cost.

ANSWER:

I am informed as follows:

Within my Portfolio responsibilities there were no consultancy contracts awarded to KPMG.
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Education services: school capital upgrades

470. Mr PERTON to ask the Minister for Education Services with reference to the Minister’s statement in the adjournment debate on 20 April 2004 that capital upgrades reduce the cost of maintenance — how many new buildings are replacing severely ageing buildings (Physical Resources Management System (PRMS) rating 1–3).

ANSWER:

I am informed as follows:

Database information on which buildings are severely ageing is not specifically available.

However, as has been stated at PAEC and in other forums, it is estimated that every $1 million spent modernising school buildings reduces the maintenance liability to the Department by around $150 000.

Education services: primary schools — English as a second language

482(a). Mr PERTON to ask the Minister for Education Services with reference to Budget Paper No. 3, 2004/05, page 54 and the measure ‘eligible students in regular schools receiving English as a Second Language (ESL) support in primary schools’ what is the reason almost nine per cent of eligible students miss out on ESL support.

ANSWER:

I am informed as follows:

This question does not fall within my portfolio responsibilities and should be directed to the Minister for Education and Training.

Education services: Koori educators

483(a). Mr PERTON to ask the Minister for Education Services with reference to Budget Paper No 3, 2004/05, page 54 and the 15 Koori educators employed —

(1) Where are they employed.

(2) What are their duties.

ANSWER:

I am informed as follows:

This question does not fall within my portfolio responsibilities and should be directed to the Minister for Education and Training.

Education services: home liaison educators

484(a). Mr PERTON to ask the Minister for Education Services with reference to Budget Paper No. 3, 2004/05, page 54 and the six home liaison officers employed —

(1) Where are they employed.

(2) What are their duties.
ANSWER:

I am informed as follows:

This question does not fall within my portfolio responsibilities and should be directed to the Minister for Education and Training.

Education services: Traralgon South Primary School — Schoolyard Blitz program

493. Mr PERTON to ask the Minister for Education Services — will Traralgon South Primary School receive funds under the ‘Schoolyard Blitz’ program; if not, why.

ANSWER:

I am informed as follows:

All schools will receive funding under the program.

Education services: Birralee Primary School — student numbers

495. Mr PERTON to ask the Minister for Education Services with reference to the growth in student numbers at the school in the last five years under the leadership of its principal, Ashley Ryan —

(1) Is the school under entitlement in any, and which, areas.

(2) Is the school under entitlement for the —

(a) administration area;

(b) sick bay;

(c) staff areas.

(3) If the school is under any entitlement, what plans does the Government have for providing funding to the school to do the necessary works.

(4) What is the Government’s response to school’s request for a staff administration upgrade as part of the minor capital works program in the current financial year.

ANSWER:

I am informed as follows:

With an enrolment of 233 students, the Birralee Primary School is entitled to 10 General Purpose Classrooms, one art room and one library. Birralee has the correct number of teaching spaces needed for educational purposes.

Whilst some spaces are larger and others are smaller than entitlement, Birralee’s overall staff and administration areas are 24 per cent below entitlement. Whilst the area set aside for Birralee’s sick bays complied with the building regulations that existed when they were built, they are 17 m² below current regulatory requirements. The staff and student toilet spaces are 37 m² above entitlement.

The toilet upgrade program announced on 20 May 2004, included an allocation of $30 000 to finance improvements to Birralee Primary School’s toilets.

Each year Regions obtain submissions from schools seeking additional or upgraded facilities. The submissions are then evaluated on the basis of the school’s long term enrolment, condition of the buildings, the entitlement and actual number of teaching spaces and the entitlement versus actual non teaching areas. All submissions are
prioritised on both a regional and statewide basis, relative to the condition of other schools. Subject to budgetary constraints, the highest ranking projects are funded each year.

**Education services: TAFE — secondary school student fees**

498(b). Mr PERTON to ask the Minister for Education Services — with reference to Mark Latham’s promise to abolish Tertiary and Further Education (TAFE) fees for secondary school students and his statement on the ABC 7.30 Report on 12 May 2004 that Jenny Macklin has received the approval of the states and territories for this proposal —

(1) Has Jenny Macklin spoken to the Minister about this proposal.

(2) If so —

(a) when were these discussions undertaken;

(b) when was the abolition of any TAFE fees first discussed;

(c) how many/what proportion of school students actually pay TAFE fees;

(d) what fees are proposed to be paid by —

(i) students doing Vocational Education and Training (VET) in schools;

(ii) students doing a year 12 equivalent;

(e) will the Government pick up the cost of the TAFE fees or will the student be required to pay, if a student drops out of secondary school;

(f) will the Government abolish fees for school-based new apprentices;

(g) does a student who starts a school-based new apprenticeship in year 12, and the fee is abolished, have to pay TAFE fees in the second year;

(h) will the proposal also cover early enrolment in TAFE degrees, worth up to $12 000 a place;

(i) what will be the impact on State revenue;

(j) how much compensation will the State receive for each TAFE fee abolished.

**ANSWER:**

I am informed as follows:

This question does not fall within my portfolio responsibilities and should be directed to the Minister for Education and Training.

**Education services: school buses — fare-paying students**

505. Mr MAUGHAN to ask the Minister for Education Services —

(1) How many students were approved to travel as fare paying passengers on school buses in Victoria in 2003.

(2) How much revenue was collected from the students.

(3) Which government department was the beneficiary of the revenue raised.
ANSWER:

I am informed as follows:

Fare paying is managed at the individual school level. It is not possible to identify the number of students approved for fare paying travel as central records are not kept. Fares collected by schools are forwarded to a central account with $120,078.44 collected in 2003. The funds collected were distributed to a number of schools to enhance bus coordination activities.